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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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INDIAN PENAL CODE 1860 AND BHARATIYA NYAYA SANHITA 2023 - A COMPARATIVE ANALYSIS

AUTHORED BY - A ABUTHAHIR

Assistant Professor of Law

Mother Teresa Law College, Pudukkottai

ABSTRACT

This research article seeks to provide a complete comparative analysis of the Indian Penal Code (IPC) and the Bharatiya Nyaya Sanhita (BNS), highlighting the significant changes that occurred throughout the reform. This research study focuses on historical evolution, legislative foundations, and significant provisions. This study will look closely at the structure and functioning of the IPC, as well as the growth of BNS. This research paper provides a comprehensive comparative examination of the Indian Penal Code (IPC) and Bhartiya Nyaya Sanhita (BNS), diving into the many legal nuances weaved throughout both important laws.

Keywords: Indian Penal Code (IPC), Bharatiya Nyaya Sanhita (BNS), legal reform, comparative analysis, historical evolution, legislative frameworks.

Introduction:

India's criminal justice system has a significant impact on its residents' lives. This system has recently undergone significant revision, with the adoption of three new laws: the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhinyam. These laws are intended to replace the colonial-era statutes The Indian Penal Code of 1860, the Code of Criminal Procedure of 1973, and the Indian Evidence Act of 1872. As the landscape of crime and criminality has changed considerably over the last century, these rules have struggled to keep up with current demands. Recognizing the need for a legal framework that reflects current reality, lawmakers have taken significant action to reform the criminal justice system. The Bharatiya Nyaya Sanhita, 2023 (BNS), which would replace the Indian Penal Code of 1860 (IPC), was reintroduced in the Lok Sabha on December 12, 2023, following the withdrawal of the initial draft to incorporate recommendations from the Standing

Committee. The updated Bill quickly progressed through the parliamentary process, with the Lok Sabha adopting it on December 20, 2023, and the Rajya Sabha following suit on December 21, 2023. The three Bills obtained Presidential assent on December 25, 2023, ushering in a new chapter in India's criminal justice system. The Bharatiya Nyaya Sanhita (BNS) 2023 was presented to replace the Indian Penal Code (IPC), with the goal of modernizing and refining the legal framework for dealing with various offences. The BNS carefully balances the need to avoid over criminalization and decriminalization. While it keeps key offenses such as those against the human body and the state, it modernizes the law by removing potentially obsolete clauses such as Sections 377, 124-A, and 309 of the IPC. Notably, the BNS makes substantial headway by identifying and handling hit-and-run instances under Section 106, which carries heightened penalties of up to ten years, indicating a gradual shift in the legal landscape.

Historical Evolution (IPC)

The Indian Penal Code served as India's official penal code, and it was inherited by British India. The code was developed based on the suggestions of the first Law Commission of India, which was constituted in 1834 under the Charter Act of 1833 and chaired by Thomas Babington Macaulay. The document was then carefully scrutinized by Barnes Peacock, who eventually became the first Chief Justice of the Calcutta High Court, and the future puisne judges of the Calcutta High Court, who were members of the Legislative Council, before being signed into law on October 6, 1860. The code was placed into effect on January 1, 1862. The code went into effect in Jammu and Kashmir on October 31, 2019, as part of the Jammu and Kashmir Reorganization Act, 2019¹, and superseded the state's Ranbir Penal Code.

For a long time, IPC has evolved in response to new problems and complicated transformations in society. Exploring the IPC's dynamic development throughout history is critical for understanding its strengths and weaknesses, as well as its impact on the contemporary legal environment. The concept of BNS emerged in response to the IPC's perceived shortcomings, with the goal of increasing its effectiveness and relevance. Through its historical context, BNS consistently upholds its vow to uphold justice, impartiality, and relevance within the Indian judicial system, exhibiting an unwavering commitment to these principles.

Bharatiya Nyaya Sanhita, 2023. The Indian criminal justice system has evolved through a series

¹ Jammu and Kashmir Reorganization Act, 2019

of obstacles and key milestones. In the beginning, there was no codified criminal law in primitive communities, and justice was mainly administered by kings. Muslim invasions introduced Mohammedan criminal law to the region. However, the most major adjustments occurred with the entrance of the British, who significantly improved the system. In 1834, the East India Company founded the Indian Law Commission with the purpose of developing a comprehensive Penal Code. The commission was directed by Thomas Babington Macaulay, a British colonialist and Member of Parliament. After developing the code and soliciting feedback, the Indian Penal Code (IPC) was passed on October 6, 1860, and went into force on January 1, 1862. The Preamble of the IPC stated unequivocally that its goal was to establish a standard criminal code for India, and the title emphasised the importance of crime punishment².

Comparative Analysis: Legislative Frameworks and provision

The Indian Penal Code, 1860, is divided into 23 chapters and 511 sections, each dealing with a specific type of offence. The structural organization makes it easier to detect and categorize criminal conduct, resulting in a more methodical approach to interpreting and enforcing the law. The purpose of this act is to establish a general penal code for India.

The code begins with an introduction before moving on to explanations and exceptions, and it covers a wide range of crimes and penalties. An offense's classification is determined by its seriousness and the harm it causes.

Punishments range from fines to imprisonment and, in certain cases, the death penalty. Its rules and regulations influence human behaviour, create law enforcement techniques, and set the standard for justice. This reform adds 20 new offenses and removes 19 provisions, increases sentencing durations for 33 offenses, and raises fines for 83 offenses. A mandatory minimum punishment has been implemented for 23 offenses. The recently established law embodies the ideas of fairness, morality, and fundamental liberties while reflecting the ever-changing face of criminal law. The proposed statute attempts to streamline legal terminology, the legal process, and address pertinent issues such as cybercrime and terrorism, all while maintaining public interest and involvement. The BNS rules are intended to streamline legal terminology, improve procedural effectiveness, and keep up with our society's ever-changing expectations.

² <https://www.lawctopus.com/academike/harmonizing-legal-jurisdictions-bns/>

Some of the important aspects and provisions of BNS are

1. The Bharatiya Nyaya Sanhita, which replaced the previous Indian Penal Code (IPC), is a codified substantive criminal law. It specifies the acts or omissions that constitute a criminal offense, as well as the resulting punishments, fines, or victim rights.
2. Structure and Organization: The Indian Penal Code (IPC) consisted of 23 chapters and 511 parts. The Bharatiya Nyaya Sanhita, 2023 (BNS) is a new law that has been divided into 20 chapters and 358 sections³.
3. Definition Clauses and Contextual References: The Bharatiya Nyaya Sanhita has a section for defining terminology used in the BNS. Section 2 of the Bharatiya Nyaya Sanhita specifically lists all of the terminology and allows for a contextual reading and comprehension of those phrases (as an exception), as required by the other sections of the BNS.
4. The Bharatiya Nyaya Sanhita, 2023, acknowledges 'transgender' as a gender alongside 'men' and 'women' under Section 2(10) for pronoun references. The IPC identified only 'men' and 'women' in reference to the meaning of the term 'gender' in the code. This is a positive shift in thinking, as transgender persons and their rights have become more widely recognized via various verdicts and societal developments. The Supreme Court acknowledged transgender people and their right to self-identification in the historic case of NALSA vs. UOI (2014) (2014 INSC275)⁴.
5. Crimes against children and women. The BNS has designated a specific chapter for offenses against women and children as one category under Chapter 5 of the Sanhita. This encompasses sexual offenses, criminal force and assault, marriage-related offenses, miscarriage, and child abuse. Categorizing offences against children and women together under one chapter (i.e. chapter 5) draws a parallel between their social vulnerability and keeps them on an equal footing, owing to the clubbing of these two as one kind of a category, which has drawn criticism from critics. However, these two are prone to crime in terms of gender-specific offenses and age vulnerabilities, and hence require special attention and categorization. Whether putting women and children in the same group creates any harm in terms of social or legal views or implications will be investigated in the future.

³ <https://www.lexisnexis.in/blogs/bharatiya-nyaya-sanhita-2023/>

⁴ Section 2(10) -The Bharatiya Nyaya Sanhita, 2023, NALSA vs. UOI (2014) (2014 INSC275)⁴.

6. However, over time, people's perspectives on the purpose of criminal law and punishment have evolved. The criminal law attempts to reform and rehabilitate convicts, as well as to take a victim-centric approach⁵.

The courts and the reformatory doctrine hold that every saint has a past and every sinner has a future. Community service has been included as a new form of punishment under Section 4 of the Sanhita, indicating a reformatory and restorative justice approach in cases involving first-time offenders or minor offenses.

7. The Bharatiya Nyaya Sanhita broadens the definition of a document and its legal implications. With the advancement of technology and the digitization of the world, the scope, creation, and storage of documents has changed dramatically. The term 'document' now encompasses electronic and digital documents (Section 2(8)).
8. Section 2 (21) defines 'movable property' as anything that does not fall within 'immovable property' and is not limited by the phrase 'corporeal property'. According to BNS, movable property can therefore be either incorporeal or corporeal.
9. Greater Extra-Territorial Applicability The Bharatiya Nyaya Sanhita now punishes abetting and abetting an offense outside of India, that is, outside of India, for an offense committed within India." A person abets an offense within the meaning of the BNS if they, without and beyond India, abet the commission of any act in India which would constitute an offense if committed in India," states Section 48 of the Sanhita, which addresses assist beyond India for offenses in India.
10. concurrence and Age According to Explanation 2 of Section 375 of the Indian Penal Code, a man's sexual relations with his woman were illegal if she was younger than 15 times old (Connubial rape is not considered an offense else). In Independent study vs. Union of India (2017 INSC 1030), the Supreme Court, still, read down this clause and changed the age to 18 times old (i.e., the age of maturity and in agreement with the POCSO laws).⁶ The age of concurrence for women has now been specifically raised by BNS to 18 times old. Still; connubial rape is still not considered a crime under the Sanhita, with the exception of cases involving women under the age of 18 (i.e., when concurrence isn't fairly honored under POCSO).

⁶ (Section 2(8)), Section 2 (21), Section 48 -The Bharatiya Nyaya Sanhita 2023.

11. Section 69 False Promise to Marry The crime of engaging in sexual exertion under false pretenses, including a fraudulent pledge to marry, has been explicitly conceded by the Bharatiya Nyaya Sanhita.

Indeed though the act is voluntary and not rape in and of itself, it's considered illegal because the concurrence for it was given under false pretenses, and according to court rulings, the pledge in question should have been false from the launch(i.e., made with no intention of fulfilling it).

12. Gender Neutral References In Sections 76 and 77(which deal with the offenses of assault and voyeurism, independently) of the BNS, the term" man" has been substituted with" whoever" to relate to the perpetrator or indicted.

In a analogous tone, Section 366A of the Indian Penal Code established the crime of earning minor ladies. still, Section 96 of the BNS addresses the crime of earning any sprat, anyhow of gender, since the expression" any child" is used.

13. Snatching (Section 304) The BNS establishes a distinct and particular crime for situations in which swiping involves robbery. Snatching is an offense that has been on the rise and has come commonplace over time; thus, it's applicable to fete and give for it independently. It involves removing, securing, snatching, or seizing portable property in order to commit theft⁷.

According to Section 304(2) of the Sanhita, snatching carries a maximum judgment of three times in captivity (any kind) and a fine. The Bharatiya Nyaya Sanhita does not, in proposition, contain the expression" seceding," as used in the ancient legislation, or the social crime. nevertheless," Acts venturing sovereignty, continuity, and integrity of India" are included under Section According to the clause, if someone designedly or designedly uses spoken or written words, signs, visual representations, technological communication, fiscal means, or any other system to arouse or seek to excite,

Those who engage in or carry out secession, fortified rebellion, subversive conditioning, or incite sentiments of separatist exertion, or who peril India's sovereignty, continuity, or integrity, will be penalized with a life judgment or a judgment that can last up to seven times, in addition to a forfeiture.

As a result, the clause has been rephrased and given a new name in the Sanhita. Obstacles and Difficulties in Operations for Bharatiya Nyaya Sanhita, 2023 On July 1, 2024, the new

⁷ Section 69, Sections 76 and 77 Section 366A Section 304 Section 304(2) BNS 2023

Bharatiya Nyaya Sanhita, 2023, went into effect. Due to its fully new legal ramifications and operation, as well as certain notable additions and variations, this substantial law will give a number of practical difficulties in its successful operation.

1. Obstacles in logistics the development of technology has been specifically conceded by the substantial felonious law (BNS). For illustration, electronic and digital records are now included in the BNS's description of "documents"(Section 2(8)). Questions that will come over along the process include how to handle similar documents, colourful legal and practical ramifications, and other technological aspects or bugs.
2. Junking of Section 377 Bharatiya Nyaya Sanhita has fully excluded all citation of offences that are n't natural (i.e., Section 377 IPC). The Supreme Court's five- judge panel incompletely capsized Section 377 in Navtej Singh Johar vs. UOI(2018 INSC 790), which interdicted same- coitus connections between subscribing grown-ups in circumstances involving consensual sexual contact. The remaining offenses, similar as sodomy, animalism, andnon-consensual sexual relations, were kept, nonetheless. But because BNS does n't view these conduct as crimes, there's a significant loophole that can be abused and used to avoid discipline for felonious exertion⁸.
3. Sedition Law Section 152 of the BNS addresses" Acts venturing sovereignty, continuity, and integrity of India." The language and generalities employed are broad, private, and nebulous, making them vulnerable to abuse or incorrect use by those in positions of authority. Section 152 expands the compass of conditioning and goods by mentioning this offense against" India" rather than just the" government established by law." No precise description or explanation is handed to clarify what precisely qualifies as" subversive conditioning" or" separatist conditioning." Through a series of court rulings, the provision will ultimately determine its factual meaning and compass.
4. Community Service In agreement with BNS Section 4(f), community service has been included as a new type of discipline. The Sanhita, still, makes no citation of what behaviours would be considered" community service," nor does it outline how it should be administered or covered continuously.
5. Clashing Duplication Because the BNS is a broad felonious law that deals with offenses, it has mentioned several offenses that are also addressed and penalized by

⁸ <https://www.scconline.com/blog/post/2024/07/01/decolonisation-of-ipc-understanding-bharatiya-nyaya-sanhita-2023/>

other specific laws. This results in spare titles. Sections 111 to 113 of the Bharatiya Nyaya Sanhita, for case, address the offenses of "systematized crime" and "terrorism."

Conclusion

In summary, this research study offers a thorough examination of the Indian Penal Code (IPC) and Bharatiya Nyaya Sanhita (BNS), examining their legislative frameworks, historical growth, and important provisions. This analysis has given important insight into how India's criminal laws have changed over time.

This significant change has the potential to modernize the Indian judicial system and better satisfy the needs of contemporary society while also expediting and enhancing the process's general efficacy and equity. These bills will promote peace and harmony by aggressively combating and regulating illegal conduct that endangers the peace and stability of society.

They will address and resolve the societal injustices and inequities that frequently act as catalysts for criminal activity by going deeply into the reasons of criminal conduct, finally focusing on the core of crime itself. BNS needs to cultivate a careful balance between tradition and modernity in order to succeed. As a result, the legal system will be better equipped to meet the complex demands of 21st-century Indian society. This study urges all stakeholders to thoroughly evaluate and enhance the criminal justice system for a more just and equitable future by performing a comparative analysis, which adds to the ongoing discussion on legal reform.

The change from the colonial-era Indian Penal Code (IPC) to the proposed Bharatiya Nyaya Sanhita (BNS) demonstrates how India's legal system has evolved. A comparison analysis reveals the stark contrasts between the two, highlighting the necessity of a thorough overhaul of the criminal justice system. The change from the colonial-era Indian Penal Code (IPC) to the proposed Bharatiya Nyaya Sanhita (BNS) demonstrates how India's legal system has evolved.

A comparison analysis reveals the stark contrasts between the two, highlighting the necessity of a thorough overhaul of the criminal justice system. As a product of its epoch, the IPC has limits when it comes to dealing with contemporary complicated crimes and reflects the punishing and hierarchical structure of colonial law. The BNS, on the other hand, provides a transformative strategy that emphasizes restorative justice, community-based projects, and

human rights. There are significant distinctions in the two codes' underlying ideas, substance, and structure. In contrast to the intricate and occasionally unclear requirements of the IPC, the BNS places a higher priority on relevance, accessibility, and clarity. Furthermore, by including emerging issues like organized crime, economic offenses, and cybercrime, the BNS recognizes the changing nature of criminality. For these reforms to be successful, there must be consistent political will, adequate resources, and effective implementation. To find possible problems and create solutions, a comprehensive evaluation of the current criminal justice system is required. The BNS will also need to be continuously assessed and observed in order to guarantee its efficacy and flexibility in dealing with new problems. The biggest democracy in the world has advanced significantly with the switch from the Indian Penal Code (IPC) to the Bharatiya Nyaya Sanhita (BNS).

It represents a legal system that is sensitive to the desires of its people and gives equal weight to the rights of the accused and the needs of victims, promoting a society that is more just and equal for all. In the end, the BNS has the power to completely transform Indian criminal justice, creating a more equitable and effective legal system that takes advantage of past successes while addressing current adequate.

