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DECriminalization of Minor Offences

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Abstract

Bhartiya Nyaya Sanhita (BNS) signifies a crucial transformation in India's criminal justice system by replacing the colonial-era Indian Penal Code (IPC) with a structure that resonates with contemporary social, economic, and human rights ideals. The BNS removes criminal charges for minor infractions such as attempted suicide, petty theft, and public disturbances, moving from punitive actions to emphasizing rehabilitation through options like community service. This strategy aligns with international practices in nations like the UK and Canada, where non-custodial sentences are favoured for minor offenses. The BNS promotes judicial efficiency and confines harsh penalties to more severe crimes by alleviating the burden on India's overcrowded prisons and overloaded courts. Furthermore, it tackles systemic biases, as minor offenses have frequently had a disproportionate effect on marginalized populations, hindering their full reintegration into the community. The reform also considers financial implications, reducing the fiscal pressure of high incarceration rates on the government and lowering expenses associated with prison overcrowding. The BNS is informed by judicial precedents, including the Hussainara Khatoon case, which underscored the right to a speedy trial, reinforcing the commitment to just and efficient legal processes. Despite its advantages, the BNS encounters hurdles in execution due to insufficient infrastructure for overseeing community service and worries about repeat offenses in minor cases. Effective public communication will be crucial to convey the BNS's intention as a balanced reform rather than a loosening of legal standards. Ultimately, the BNS aims to establish a humane, efficient, and rights-focused justice system, prioritizing public safety while adapting to India's changing socio-legal environment.

Introduction to BNS

The Indian Penal Code (IPC), which was put into effect in 1860 during Lord Macaulay's colonial authority, is about to be replaced with the Bhartiya Nyaya Sanhita(BNS). In order to better reflect the socioeconomic realities of today, the BNS seeks to modernize India's criminal justice system. The IPC has drawn criticism for being out of date and neglecting to address contemporary challenges, including technology improvements, international best practices, and urgent human rights concerns, given that it has been in effect for more than 160 years. The BNS is an important step in the right way. As society develops, it becomes imperative that regulations change as well.

The IPC's criminalization of actions that are today considered insignificant or improper for harsh punishments is one of its main complaints. For instance, attempted suicide is illegal under Section 309 of the IPC, a clause that has long been thought to be unduly severe. By focusing on mental health interventions, **the Mental Healthcare Act of 2017** has already started a change. The BNS goes one step further by decriminalizing suicide attempts entirely. This modification reflects a contemporary realization that such behaviours frequently result from mental health crises, which require compassionate treatment as opposed to punitive measures.

Furthermore, Section 294 of the IPC, which makes "obscene acts" in public places illegal, has often been abused to punish infractions that are better handled with fines or other non-criminal penalties. In an effort to bring Indian legislation into compliance with modern international legal norms, the BNS thoroughly reexamines these outdated clauses. This legislative revision emphasizes the necessity of decriminalizing small infractions by adopting a human rights-based stance and removing needless strain on the legal and criminal systems.

Why Should Minor Offenses Be Decriminalized?

The right to life and liberty for oneself guaranteed under Article 21 of the Constitution constitutes the main legal foundation for decriminalizing minor infractions. The fundamental right to dignity has been added to the scope of Article 21 by the Indian judiciary in a number of rulings, and the harsh punishment of minor infractions frequently goes against this idea.

People lose their dignity and endure needless suffering when they are imprisoned for small-time crimes or minor public annoyances, for example.

Judicial Efficiency:

According to the National Judicial Data Grid, there are more than 40 million pending cases in India's courts, making the judiciary infamous for its backlog. Making minor infractions illegal jams the system and diverts judges' attention from more serious crimes that demand their whole focus. The BNS wants to speed up the administration of justice by decriminalizing minor offenses. Previous Supreme Court rulings, such as **Hussainara Khatoon v. Home Secretary, State of Bihar (1979)**, which emphasized the right to a quick trial as a crucial component of Article 21, support this strategy.

Economic Impact:

People who are imprisoned for very small offenses bear a heavy financial burden. **The National Crime Records Bureau (NCRB) 2020** report states that India's prisons are overcrowded, with an occupancy rate of 130%. Undertrials make up the majority of inmates in Indian jails, and many of them are incarcerated for relatively minor, non-violent crimes. Decriminalizing such offenses eases the financial burden on the government, freeing up funds for more serious crimes. In order to address this issue, **The Law Commission of India** suggested in its 268th Report (2017) that steps be taken to lessen the overcriminalization of minor offenses.

Global Precedent:

Decriminalization has been implemented by numerous judicial systems across the globe to further justice. For instance, **The Legal Aid, Sentencing and Punishment of Offenders Act 2012** in the UK acknowledges that non-violent offenses shouldn't result in incarceration and offers alternative punishments for minor offenses, such as fines and community sentences. India's trend toward decriminalization under the BNS is in line with international best practices since nations like Canada and Norway have also moved toward rehabilitation and alternative punishments.

Key Changes in Minor Offences

In Bharatiya Nyaya Sanhita, 2023 defines the Petty Organized Crime under Sec 112 of BNS, 2023, as minor offences that covers theft, snatching, cheating, unauthorized selling of tickets, unauthorized beating and gambling, selling of public exam question paper. In BNS, Community Service was included as a punishment for minor offences. Community Service was given as one of the punishments for petty theft, public nuisance, false defamation

complaints, attempt to suicide, unlawful trade by public servants, public intoxication, and failure to appear in courts on summons.

Key legal reforms are introduced by the BNS with the goal of striking a balance between upholding public order and minimizing needless punishment. The BNS's Section 93, which deals with small, non-violent crimes, has undergone a significant modification. These consist of:

- Petty theft, which is the theft of items with little value.
- Public nuisance (small-scale disturbances in public areas)
- Defamation claims that turn out to be unfounded or overblown
- In accordance with contemporary knowledge of mental health, attempted suicide, which was formerly a crime punishable under Section 309 of the IPC, is now decriminalized.

1. Attempt to Suicide:

Under IPC, Attempt to Suicide was defined in Sec 309 which criminalized attempted suicide in India. Any person who attempts to commit suicide and also if any person does any act towards the commission of such offence shall be punished with imprisonment for a term may extend to one year or with fine or both. But BNS does not include Attempt to Suicide as an offence as equivalent to IPC. Attempt to Suicide was decriminalized in India through the introduction of BNS. **The Mental HealthCare Bill, 2016** decriminalizes attempt to suicide. It provides for mental healthcare and services for persons with mental illness. "Notwithstanding anything contained in section 309 of the Indian Penal Code, any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said code". The Supreme Court held that criminal penalties for suicide violate the constitutional right to life by amounting to a double punishment; specifically arguing that women who attempt suicide after abuse cannot be criminally penalized for their suicide attempt¹.

Decriminalization of Attempt to Suicide:

Criminalizing of attempt to suicide place the blame on individuals who contemplates suicide. Such criminalization deters individuals from reporting such incidents due to fear of social

¹ P. Rathinam v. Union of India on 26 April 1994

stigma which prevents accurate data that is essential for developing suicide prevention strategies. The decriminalization of attempt to suicide paves ways for destigmatisation of suicides and attempt to suicides. India's first attempt to decriminalization of attempt to suicide was in the year 1978 where it was introduced in Rajya Sabha. Before it could be passed in Lok Sabha, it dissolved and the bill lapsed.

2. Public Nuisance:

Public Nuisance was defined under Section 268 of IPC. "A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes to use any public right". The punishment for Public Nuisance was defined under Section 290 of IPC. Any person who commits public nuisance shall be punished with punished which may extend to Two Hundred Rupees. In BNS, Public Nuisance is defined under Section 270 and the punishment was defined under Section 292. The difference that was made is the punishment which may extend the fine amount which may extend to One Thousand Rupees. The Hon'ble Court held that Public Nuisance is an offence that is against the public at large and is done by annoying the whole community or by neglecting to do something which is required to be done. It affects the general public or the public in the vicinity².

3. Failure to appear to Hon'ble Court on summons:

Section 174 of IPC defines the failure to appear on summons. "Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both". In BNS, this is defined under Section 208. There has been

² Kachrual Bhagirath Agrawal & Ors vs State of Maharashtra & Ors on 22 September, 2004

no change made in BNS. The Hon'ble High Court held that failure to appear in the court on summons will be punished with imprisonment which may extend to six months³.

4. Defamation:

Section 499 of IPC defines defamation. "Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person". Punishment for defamation was defined under section 500 of IPC. Whoever defames another shall be punished with simple imprisonment for a term which may extend to Two years, or with fine, or with both. In BNS, defamation and its punishment were defined under section 356. There is a change in the punishment. Whoever defames another shall be punished with simple imprisonment for a term which may extend to Two years, or a fine or with both or Community Service. The Supreme Court of India dismissed challenges to the constitutionality of the criminal offense of defamation, holding that it was a reasonable restriction on the right to freedom of expression. The case had been brought by several petitioners charged with criminal defamation⁴.

Community Service: Community Service is introduced as a new punishment in BNS. Section 4(f) of the BNS formally introduces community service as a form of punishment in India. This legislative change aims to provide an alternative to traditional forms of punishment, addressing issues like prison overcrowding and promoting the rehabilitation of offenders.

The BNS also addresses behaviours that shouldn't result in jail time, such as public intoxication, the illegal trade by public employees under modest circumstances, and the refusal to show up for court summonses for unimportant concerns.

The BNS's punishment reforms place more emphasis on community service than incarceration, a significant change from earlier IPC punitive measures. For minor offenses, Section 93 expressly establishes non-custodial penalties, including fines, community work, and public apologies, which permit offenders to continue contributing to society while completing their sentences. This is also in line with worldwide patterns where courts are favouring non-

³ Directorate General of C.Ex. Intelligence vs State

⁴ Subramaniaswamy vs Union of India

custodial punishments for low-level offenders to keep them out of the criminal justice system's revolving door.

Impact on Society

The decriminalization of minor offenses in the BNS has important social implications, particularly in reducing criminal records and aiding the rehabilitation of offenders. The Supreme Court of India case, **State of Kerala v. Raneef (2011)**, emphasized the need for reformation over punishment for non-violent offenders. The BNS aligns with this by preventing lasting impacts from minor infractions, which can limit access to jobs and housing.

Decriminalization addresses systemic injustice for marginalized groups, as studies show they are often disproportionately affected by laws on petty offenses. The National Law University's 2017 report highlighted the increased scrutiny these communities face. By reducing criminalization, the BNS promotes equity and social justice.

Moreover, decriminalization can enhance community trust in the legal system. The Second Administrative Reforms Commission noted that excessive responses to minor offenses create public dissatisfaction. The BNS can establish a more equitable and compassionate legal framework by replacing criminal penalties with fines or community service.

Challenges & Criticisms

The decision to decriminalize minor offenses is a positive step, but it raises concerns about law and order. Critics warn that removing criminal penalties could lead to more repeat offenses, especially in petty theft and public disturbances. This sentiment is reflected in countries like the United States, where initial reactions to decriminalization, particularly regarding drug laws, have been cautious. Policymakers must implement Section 93 of the BNS scrupulously to ensure habitual offenders are held accountable.

Another challenge is the enforcement of community service as an alternative punishment. While the BNS supports this approach, India lacks the necessary infrastructure for widespread implementation. Both the Model Prison Manual (2016) and Supreme Court rulings highlight the need for reformatory justice, but without proper resources, sentences may remain unenforced.

Lastly, public perception of decriminalization can pose challenges. While the Legal Services Authorities Act (1987) promotes accessible justice, some may see the removal of penalties as an invitation to chaos. Effective public outreach is crucial to frame decriminalization as a necessary reform rather than a weakening of the law.

Conclusion

The Bharatiya Nyaya Sanhita (BNS) is a significant reform in India's criminal justice system, aligning legal practices with modern socio-economic conditions and international standards. By decriminalizing minor offenses, it addresses inefficiencies rooted in the colonial-era Indian Penal Code and promotes a focus on judicial effectiveness, economic factors, and human rights over punitive measures.

The BNS aims to reduce court congestion and prison overcrowding, emphasizing rehabilitation through alternative penalties like community service and fines. This approach benefits vulnerable groups, allowing them to reintegrate into society without the burden of a criminal record, ultimately improving trust in the legal system.

However, challenges remain, such as ensuring successful implementation, raising public awareness, and monitoring alternative penalties. Addressing concerns about repeat offenses is also crucial for maintaining public safety.

In summary, the BNS seeks to create a more equitable and humane criminal justice system in India. If applied effectively, it could transform the legal framework and better serve marginalized community.