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BHARATIYA NYAYA SANHITA, 2023 AND INDIAN PENAL CODE. 1860: A CRITICAL EVALUATION

AUTHORED BY - MANPREET SINGH

Abstract: The Bharatiya Nyaya Sanhita (BNS), 2023, represents a landmark reform in India's criminal law framework, replacing the colonial-era Indian Penal Code (IPC), 1860. This paper critically evaluates the key changes introduced under the BNS, examining their legislative intent, practical implications, and potential challenges. The study aims to determine whether the BNS truly modernizes the criminal justice system or merely repackages existing provisions.

1. Introduction The Indian Penal Code, 1860, enacted during British colonial rule, served as the backbone of India's criminal law for over 160 years. Despite its foundational role, critics have long argued that the IPC is outdated, colonial in spirit, and unresponsive to modern societal needs. In 2023, the Government of India introduced the Bharatiya Nyaya Sanhita, along with two other codes, to replace the IPC, CrPC, and Indian Evidence Act. This paper evaluates the reforms under the BNS, focusing on whether they address historical shortcomings and align with contemporary justice requirements.

2. Overview of Bharatiya Nyaya Sanhita, 2023 The BNS was drafted with the objective of decolonizing Indian criminal law, ensuring victim-centric justice, and promoting efficiency in the justice delivery system. It retains several IPC provisions while introducing new offences and modifying existing ones. The code contains 358 sections, streamlined in structure, with updated language for clarity.

3. Key Reforms Introduced

3.1 Repeal of Sedition Section 124A of the IPC, criminalizing sedition, has been repealed and replaced with Section 150 of the BNS, which penalizes "acts endangering the sovereignty, unity and integrity of India." Critics argue that the new provision may still enable suppression of dissent under broad interpretations.

3.2 Recognition of Terrorism and Organized Crime The BNS explicitly criminalizes terrorism and organized crime, previously covered primarily under special laws like the Unlawful Activities Prevention Act (UAPA). This brings such offences into the core criminal

code, potentially improving coherence but raising concerns about overlap and redundancy.

3.3 Mob Lynching and Hate Crimes A significant addition is Section 103, which criminalizes mob lynching based on race, caste, or community identity. This responds to increasing instances of communal violence, reflecting a shift toward acknowledging socio-political realities.

3.4 Community Service as Punishment The BNS introduces community service as a form of punishment for petty offences, aligning with restorative justice principles. This is a progressive move aimed at reducing incarceration and promoting reformation.

3.5 Reforms in Trial and Investigation The BNS emphasizes speedy trials by mandating the filing of charge sheets within 90 days and encouraging the use of forensic evidence and electronic tools. These measures aim to enhance efficiency but require substantial investment in legal infrastructure.

4. Critical Analysis While the BNS seeks to modernize the penal framework, several concerns persist:

- **Ambiguity in Definitions:** Provisions like Section 150 may be as vague and broad as the sedition law they replace.
- **Overlapping Laws:** The inclusion of terrorism and organized crime might conflict with existing special laws.
- **Implementation Challenges:** Effective enforcement requires training, technology, and public awareness, which are currently lacking.
- **Human Rights Concerns:** Broad powers under some provisions may lead to misuse against marginalized communities or dissenters.

5. Comparative Perspective Comparatively, many democracies have revised sedition laws or repealed them altogether. The BNS's move appears progressive, yet its replacement clauses must be scrutinized. The inclusion of community service echoes practices in Europe and North America, indicating a global alignment with restorative justice trends.

6. Conclusion and Suggestions The Bharatiya Nyaya Sanhita, 2023, is a bold legislative step toward updating India's criminal justice system. However, for the reforms to be effective, clarity in drafting, judicial safeguards against misuse, infrastructure enhancement, and

stakeholder training are essential. The success of the BNS will ultimately depend on its interpretation and implementation on the ground.

Recommendations:

- Amend ambiguous provisions to avoid misuse.
- Harmonize BNS with special laws like UAPA.
- Invest in training police and judiciary on new procedures.
- Launch public awareness campaigns on citizens' rights under the new code.

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