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Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



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Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



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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THE NOVELTY OF THE CRIMINAL LAWS – AN OVERVIEW

AUTHORED BY - NISHA KANDARI

The newly passed criminal law code has made some significant changes that cannot be overlooked. Finally, terrorism, corruption, and organized crime are now being brought under the purview of ordinary criminal law. The three criminal laws implemented from the British Era are finally replaced, as the Indian penal code, 1860 is swapped by Bhartiya Nyaya Sanhita Act (BNSS), 2023, Indian Evidence Act, 1872 is replaced by Bhartiya Sakshya Adhinyam (BSA), 2023 and Bhartiya Nagrik Suraksha Sanhita (BNSSS), 2023 got the place of Code of Criminal Procedure, 1973. Let's enlighten ourselves by briefly digging into the key concepts of the freshly made laws and know its wide scope.

- **Bhartiya Nyaya Sanhita Act (BNSS), 2023**

1. The Indian Penal Code has been simplified to 358 sections from 511, making it easier to understand and navigate. The new code includes "community service" as a form of punishment for minor offences.
2. The latest update to the code now includes an expanded definition of male pronouns that encompasses men, women, and those who identify as transgender, as outlined by the Transgender Persons (Protection of Rights) Act of 2019.
3. Additionally, the term "mental illness," as defined by the Mental Healthcare Act of 2017, is now used instead of outdated terms such as "insanity" or "unsoundness of mind."
4. Some new provisions and offences are introduced which specifically relate to offences against Women and Children as opposed to IPC in which these offences are given place with offences affecting Human Body.
5. A new offence has been introduced in Section 69 of the BNS, 2023, which makes it illegal to engage in sexual intercourse based on deceitful promises of marriage, employment, promotion, or by concealing one's identity. This is a step in the right direction towards protecting individuals from exploitation and ensuring that consent is given freely and without coercion.
6. Hiring of children below the 18 years of age is categorized as a punishable offence.

7. The definition of a document has expanded to include electronic and digital records which is legally binding.
8. It is interesting to note that the BNS, 2023 has brought together all three incomplete category offences - Attempt, Abetment and Conspiracy - under one Chapter- IV. Previously, these offences were part of different Chapters, which made it difficult to understand and apply the provisions effectively.
9. Introduction to novel Offences like organised crime, terrorist act, petty organised crime, hit and run, mob lynching, hiring a child to commit an offence, snatching, abetment outside India, acts endangering the sovereignty, integrity and unity of India and also among others, publication of false or fake news has also come into the light of new Nyaya Sanhita Act, 2023.
10. Obliteration of Attempts to commit suicide has also been a major attraction of the BNS Act.

- **Bhartiya Nagrik Suraksha Sanhita (BNSSS), 2023**

1. The range of offences included in the proclaimed Offender category has been increased. Previously, only 19 offences were included under the purview of this declaration. However, it did not include serious offences like rape cases. But now, the scope has been broadened to include all offences that carry a punishment of 10 years or more. This is definitely a significant step towards ensuring that those who commit such heinous crimes are brought to justice and face the consequences of their actions.
2. Prior approval from senior police officers before arresting individuals for offences carrying a punishment of less than three years is brought in picture which is an essential measure to uphold fairness and justice in law enforcement.
3. During the first 40/60 days of detention, the court may allow up to 15 days of police custody. However, this should not be a reason for refusing bail if the conditions for bail are otherwise met.
4. The Bhartiya Sakshya Adhinyam (BSS), 2023 introduces the concept of in-absentia trial, which allows the trial to proceed even if the accused is not present in the court. This is a significant step towards ensuring that justice is not delayed due to the absence of the accused.
5. Electronic FIR has been introduced, and it's a significant step towards simplifying and streamlining the process of filing an FIR. This new system will make it easier for people to report crimes and provide the necessary information to law enforcement agencies.

6. If someone is accused of committing an offence that is punishable by imprisonment for a term of three years to less than seven years, a preliminary inquiry may be introduced. During this inquiry, the court will determine if there is enough evidence to proceed with a trial. The accused may also be released on bail during this time, depending on the circumstances of the case.
7. The BNSS, 2023 has simplified the meaning of bail and the conditions under which it can be granted. It has also made it easier for those who are eligible for bail to access it, ensuring that they are not unjustly detained for extended periods without trial.
8. Bhartiya Nyaya Sanhita Act (BNSS), 2023, has provisions for plea bargaining which allows for first-time offenders to receive a less severe punishment. Under this provision, if the accused pleads guilty to the crime, they may be given a reduced sentence of one-fourth or one-sixth of the original punishment, depending on the severity of the offence.
9. An important development in terms of victim rights and police transparency is seen as the definition of 'victim' is being expanded to better reflect the experiences of those impacted by crime and it is mandated that the police officials will keep victims informed about the progress of an investigation that can help build trust in the criminal justice system and ensure that justice is served.
10. The number of adjournments has also been brought to a limit of two which is a necessary step towards a more efficient legal process.

- **Bhartiya Sakshya Adhiniyam (BSS), 2023**

1. The Bill explicitly expands the definition of evidence to include any statement or information given electronically. This provision allows witnesses, accused individuals, experts, and victims to appear before the Court through electronic means for the recording of their evidence. This amendment will have significant implications for the legal system and represents a clear recognition of the role technology plays in modern legal proceedings.
2. The bill proposes to widen the range of evidence that can be presented in court when the original primary evidence is not available or cannot be produced. Three types of secondary evidence are mainly introduced,
 - Oral Admissions: Statements made by a party involved in the case, spoken in court
 - Written Admissions: Documents or written statements that acknowledge certain facts.
 - Evidence of a Person Examining the Document: Testimony from a person who has

examined the document in question.

3. BSS has allowed the spouses to be competent witnesses in criminal proceedings against each other. The change can be considered driven by the recognition of the need for justice and the importance of revealing the truth in legal proceedings.

Traditionally, there were legal rules that restricted spouses from being compelled to testify against each other, known as spousal privilege or spousal immunity.

4. The new bill, through Section 52, is proposing a significant change to Section 57. It aims to update and restructure the provision to specifically enlist facts about India that the court can take judicial notice of. This could reflect a move towards decolonization and a more contextually relevant set of facts for the Indian legal system.

Conclusion:

We can see here that there have been some significant reforms in the New Codes, such as the consolidation of provisions and the introduction of audio-visual and electronic means for trials and investigation. It's also good to hear that stricter timelines have been implemented. The trial in absentia process is another welcome change that should help with the prompt disposal of trials against economic offenders who flee the jurisdiction of courts. However, it remains to be seen how effective these changes will be once the New Codes are enforced and interpreted by the courts across the country.

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