



TODAY'S ANALYSIS

(01 July 2024)

TOPICS TO BE COVERED

- **BHARATIYA NYAY SANHITA ACT, 2023.**

New avatar

The Bills seek to replace the criminal laws that have been in force for more than a century in the country

NEW BILL	OLD LAW
■ Bharatiya Nyaya (Second) Sanhita Bill (BNSS)	■ Indian Penal Code, 1860
■ Bharatiya Sakshya (Second) Bill (BSS)	■ Indian Evidence Act, 1872
■ Bharatiya Nagarik Suraksha (Second) Sanhita Bill (BNSSS)	■ Code of Criminal Procedure, 1898



This is a pure Indian law after removing all the British imprints

AMIT SHAH, Union Home Minister

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BHARTIYA NYAYA SANHITA BILL

This bill is going to replace the **Indian Penal Code, 1860**.

The new bill seeks to include issues like **Love Jihad, Terrorism, Organised Crime, Mob lynching** and such like.

Changes in provisions related to **Sedition, Fake News & Mandatory minimum sentence** have been done.

PROMISE TO MARRY

The BNS introduces **Clause 69** that seems to ostensibly **tackle the “love jihad”** narrative by criminalising **“deceitful”** promise to marry. The phrase **“sexual intercourse not amounting to the offence of rape”** essentially criminalises consensual sexual activity too.

WHAT DOES DECEITFUL MEAN?

“Deceitful means” shall include **the false promise of employment or promotion, inducement, or marring** after suppressing identity.

MOB LYNCHING

The BNS provisions **codify offences linked to mob lynching** and hate-crime murders, for cases when a **mob of five or more individuals** commits murder based on factors such as

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race, caste, community, or personal belief. The provision has punishment that extends from **life imprisonment to death.**

In its **earlier version**, the Bill had proposed a **minimum sentence of seven years**, but this was brought at par with murder.

The Supreme Court in 2018 had asked the Centre to consider a separate law for lynching.

ORGANISED CRIME

For the first time, organised crime has been brought under the realm of ordinary law.

Although there exists **legislations in the states**, like **Maharashtra Control of Organised Crime Act, 1999 (MCOCA)** which give excessive surveillance powers & relaxed standards of evidence in favour of the states.

In the new legislation, the punishment for **attempt to commit organised crime** and for **committing organised crime** is the same, but a **distinction is drawn** based on whether a death is caused or not by the alleged offence. For **cases involving death**, the punishment ranges from **life imprisonment to death** but where there is no death involved, a **mandatory minimum sentence of five years** is prescribed which may extend to life imprisonment.

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Petty Organised Crime: “theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers.” Have been included.

TERRORISM

The BNS adds terrorism as an offence. It is defined as **“an act that intends to threaten the unity, integrity, and security of the country, intimidate the general public or disturb public order.”**

Importing large parts of the language in defining **“terror activities”** from the stringent Unlawful Atrocities Prevention Act has been done.

It is **unclear how both the UAPA and the BNS will operate concurrently**, especially when procedurally the UAPA is more stringent and the cases are heard in special courts.

ATTEMPT TO SUICIDE

The BNS introduces a new provision that criminalises **“whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty”**, and prescribes a jail term which may extend to one year with community service.

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This provision could be invoked to **prevent self-immolations and hunger strikes during protests.**

GENDER NEUTRALITY

The **BNS** has tweaked certain laws, especially those dealing with children, Gender Neutral.

- The offences dealing with **procurement of a girl** (for “illicit intercourse”, 366A of the IPC) has been made **gender neutral**.
- For the offence dealing with **kidnapping of minors**, the IPC (Section 361) prescribes different age limits: **16 years for male and 18 years for a female. The BNS makes it 18 for both.**
- For adults, the offence of outraging the modesty of women (354A of the IPC) and voyeurism (354C) now has gender neutrality for the accused under the BNS, which means that **women can also be booked under the law.**

FAKE NEWS

The IPC currently contains **Section 153B** which deals with “**imputations, assertions prejudicial to national integration.**”

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This, commonly referred to as the **“hate speech”** provision, criminalises, among other aspects, causing **“disharmony or feelings of enmity or hatred or ill-will”** between communities.

The BNS introduces a new provision here which **criminalises publishing false and misleading information.**

SEDITION

When the Sanhitas were first introduced in the Lok Sabha in August, Union Home Minister Amit Shah had said that the **law on sedition had been repealed.**

However, the BNS introduces the offence **under a new name and with a wider definition.**

Apart from a name change from **‘rajdroh’ to ‘deshdroh’**, the new provision brings under its sweep aiding through financial means acts of **“subversive activities”**, and those encouraging **“feelings of separatist activities.”**

This provision has incorporated the SC guidelines in the 1962 ***Kedarnath Singh case***, which upheld the constitutional validity for the crime of sedition.

MANDATORY MINIMUM SENTENCE

Section 303 of the IPC prescribed a **mandatory death sentence** for murder committed by a life-convict. In **1983, the Supreme Court struck down** the provision as unconstitutional since

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it took away the discretion of judges in awarding a sentence. The **BNS has now** tweaked this provision to prescribe a punishment of “**death or imprisonment for life, which shall mean the remainder of that person’s natural life.**”

In several other provisions, mandatory minimum sentences are prescribed. While the prescription of a minimum sentence limits the scope for judicial discretion and arbitrariness, it is seen to be **unfair to the convict**, whose mitigating circumstances, such as if they are a first-time offender or the sole breadwinner in the family, are often overlooked.

DELETIONS FROM IPC

- **Unnatural Sexual Offence:** Section 377 of IPC which criminalised homosexuality among other “unnatural” sexual activities, has been repealed under the BNS. (struck down by SC in 2018 wrt homosexuality)
- **Adultery:** The offence of adultery, which was struck down by the Supreme Court as unconstitutional in 2018, has been omitted under the BNS.
- **Thugs:** The **IPC under Section 310** criminalises those who have been “**habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder,**” and labels them a thug.

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This provision is criticised for attaching colonial notions of criminality for certain tribes.

The BNS has fully omitted this provision.

CRITICISM OF THE BILL

- The IPC provides **protection from prosecution to a person of unsound mind. The BNS changes this to a person with mental illness.**
 - The definition of mental illness excludes mental retardation and includes abuse of alcohol and drugs.
- The **definition of terrorism** includes an act that intends to intimidate public order.
- **Several offences overlap with special laws.** In many cases, both carry different penalties or provide for different procedures. This may lead to multiple regulatory regimes, additional costs of compliance and possibility of levelling multiple charges.
- The **BNS omits S. 377 of IPC** which was read down by the Supreme Court. This removes rape of men and bestiality as offences. (Section 377 was still invoked to penalise non-consensual sex, and is often the only recourse in cases of rape of men)

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MCQs

1. Consider the following offences & mark which of them have been defined for the very first time under Bharatiya Nyay Sanhita?

- (A) Love Jihad
- (B) Sedition
- (C) Fake News
- (D) Both A & C



Ans. (A)

2. Consider the following statements and mark the correct one:

- 1. The BNS has scrapped section 377 of IPC which criminalised homosexuality.
- 2. The BNS aims to establish gender neutrality

- (A) Only 1
- (B) Only 2
- (C) Both 1 & 2
- (D) Neither 1 nor 2

Ans. (C)

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3. Which of the following offences are defined as crimes under BNS?

1. Love Jihad
2. Organised Crime
3. Sedition
4. Spreading Fake News
5. Homosexuality

(A) 1, 2 & 3

(B) 2, 3 & 5

(C) 2, 3, 4 & 5

(D) 1, 2, 3 & 4



Ans. (D)

4. Consider the following statements & mark the correct one:

1. Sedition has a new name ie Rajdroh under the BNS.
2. The scope of Sedition has increased under the BNS.

(A) Only 1

(B) Only 2

(C) Both 1 & 2

(D) Neither 1 nor 2

Ans. (B)

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5. Consider the following statements and mark the correct one:
1. Terrorism has been defined under the BNS.
 2. The BNS is the first law to have an explicit definition of terrorism in India.
 3. The BNS will supercede the UAPA when it comes to cases related to terrorism.
- (A) Only 1
(B) Only 2
(C) Both 1 & 2
(D) All of the above



Ans. (A)

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