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ANALYSIS OF NEW OFFENCES INTRODUCED IN BHARATIYA NYAYA SANHITA, 2023

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AN ABSTRACT

The Bharatiya Nyaya Sanhita³ (BNS) 2023 is a significant reform in India's criminal justice system, replacing the colonial-period correctional law (IPC)⁴ of 1860. The BNS was envisaged as a progressive legal instrument to make the criminal justice framework more ultramodern, inclusive, and concentrated on the requirements of victims. It encompasses a variety of recently established offenses that were preliminarily not adequately regulated or addressed due to the emergence of new felonious actions told by societal Indian and technological changes. Some of the most serious crimes include terrorism, organized crime, mob lynching, cybercrime, sexual exploitation through dishonesty, and snatching. This study completely evaluates the vittles of these new offenses, checking their legal base, implicit societal consequences, and the difficulties encountered in their perpetration. also, the study delves into the interpretations and case law handed by the bar, slipping light on how these recently established crimes are being applied. Interpretations and arising case law that interpret the operation of these recently established crimes under the BNS.

1. INTRODUCTION

The Bharatiya Nyaya Sanhita (BNS)⁵, 2023 represents a significant reform in India's felonious justice system replacing the Indian correctional law (IPC)⁶ of 1860, which had long served as the foundation of Indian felonious law. The IPC, which served as the foundation for addressing crime, had come outdated over time, pressing the necessity for a comprehensive legal reform. The preface of the BNS aims to modernize the felonious justice frame by addressing being gaps in the IPC and espousing a more holistic approach that's better suited to the current socio-

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³ Bharatiya Nyaya Sanhita No 45 of 2023, India code (2023).

⁴ Indian Penal Code No 45 of 1860, India Code (1860).

⁵ Bharatiya Nyaya Sanhita No 45 of 2023, India code (2023), <https://www.indiacode.nic.in>

⁶ Indian Penal Code No 45 of 1860, India code (1860), <https://www.indiacode.nic.in>

political geography and technological advancements. The BNS seeks to strengthen the safekeeping of individual rights, foster fairness, and guarantee that contemporary, intricate crimes similar as cybercrimes, terrorism, organized crime, and mob lynching — are meetly dealt with under Indian legislation

In addition to amending criminal laws to match current threats, BNS aims to integrate the principles of victim-centered⁷ justice and human rights protection measures. The changes implemented in BNS are part of a larger effort towards transitioning from outdated colonial laws to a legal system that aligns with the principles of modern democracy and inclusivity. These reforms are designed to address more common crimes of the 21st century, providing a comprehensive understanding of criminal acts that include psychological harm beyond physical violence, digital crimes, and socio-political instability.

This paper examines the newly instituted crimes that fall under BNS, focusing on their legal outcomes and the social changes they expect. Additionally, it examines the problems in implementing these provisions, such as doubts about how authorities explain or understand the law, and Safeguarding personal rights. Furthermore, the study will investigate recent court decisions that interpret these new provisions, analyzing how courts will act to execute and enforce these changes in Real-world cases. By studying these factors, this study attempts to participate in the debate on penal law reform in India, assessing whether the BNS represents an improvement towards a Practical and Fairer legal framework.

Introduction of New crimes

2. Terrorism

Terrorism¹⁰ continues to be a major global concern, and India has experienced a significant impact from its consequences. In response to the Bharatiya Nyaya Sanhita (BNS) 2023, a comprehensive legal framework has been introduced to bolster the country's counter-terrorism capabilities. Section 113 of the BNS offers a detailed definition of a "terrorist act," encompassing

⁷ See, Sakshi v. UOI(2004)5 S.C.C.518(India) recognizing the importance of victim right in sexual offences.

various activities including armed insurgencies, the funding of terrorism, and actions aimed at undermining the sovereignty of the nation. This new provision represents a significant advancement in India's legal framework for national security, imposing stricter penalties and expanding the scope of legal definitions compared to previous legislation. Although section 113 is expected to have a Strong impression on preventing terrorist acts, its Effective implementation requires Meticulous study. The Direct analyses of the Former terrorism prevention act in India emphasize the Relevance of maintaining a Sensitive equilibrium between ensuring public security and protecting fundamental human rights during the Implementation of the BNS. In order to be considered a terrorist act under section 113 of the Bharatiya Nyaya Sanhita, certain legal conditions must be met.

First, there must be a clear intention, specifically to jeopardize the security, integrity, or sovereignty of India.

Alternate- the act must involve the use of murderous means, the destruction of property, counterfeiting of currency, or other forms of violent or subversive exertion.

Third- the consequences of similar conduct must lead to death, physical detriment, or substantial disruption to public order or essential services.

These components collectively establish the legal criteria for classifying an offense as a terrorist act within the statutory framework.

2.1. Explanation—

a) Public Functionary⁸

For the purpose of section 113, the term 'public functionary' is defined to encompass constitutional authorities like the president, prime minister, judges, and other officials who may be informed by the central government through the official gazette. This designation provides legal protection to individuals holding crucial public positions, acknowledging their significance in upholding the constitutional and administrative structure of the nation.

⁸ Bharatiya Nyaya Sanhita No 45 of 2023 SEC.113, explanation (a), Gazette of India, Extraordinary, Part II, Sec 1 Dec 25,2023 (India).

For instance, if someone were to target a judge during a court hearing, it would be considered a terrorist act under section 113, as it seeks to instill fear and disrupt the normal functioning of a public functionary while performing their official duties

b) Counterfeit Indian Currency⁹

In the context of section 113, 'counterfeit Indian currency' refers to fake notes or coins that closely resemble or undermine the essential security features of genuine Indian currency. The categorization of this information is determined after a comprehensive evaluation and official declaration by an authorized or government-approved forensic authority. This measure intends to address the economic threat posed by the circulation of advanced counterfeit currency, which could be utilized to destabilize the nation's financial system or fund illicit activities.

Illustration: the deliberate circulation of high-quality counterfeit ₹500 notes, with the intent to destabilize the Indian economy or finance terror-related activities, would fall within the ambit of a terrorist act under section 113.

2.2. Punishment for commit of this offence¹⁰

1. Punishments are outlined in sections 113(2) to 113(7) of the BNS.
2. The punishment for carrying out a terrorist act is outlined in subsection 2.
3. If a terrorist act leads to the death of any individual, the offender can face either the death penalty or life imprisonment, along with a fine. If the act does not lead to death, the punishment involves a minimum of five years of strict imprisonment, which can potentially extend to life imprisonment, along with a fine.
4. Penalty for collaboration, attempt, or provocation (sub-section 3).
5. Any person who conspires, attempts, incites, facilitates, or engages in preparatory acts toward the commission of a terrorist act shall be punished with rigorous imprisonment for a term not less than five years, which may extend to life imprisonment, along with a fine.
6. Penalty for participating in or encouraging terrorist activities (sub-section 4).

⁹ *Id.*

¹⁰ *Id.* at 113(2) – 113(7) of BNS.

7. Those responsible for coordinating or enticing others to participate in terrorist acts are subject to a minimum sentence of five years in prison, which can be extended to life imprisonment, accompanied by a fine.
8. Penalty for being a member of a terrorist group (sub-section 5).
9. Any person who is a member of an organization involved in terrorist activities can face imprisonment that may last a lifetime, along with a hefty fine.
10. Penalty for harboring or hiding terrorists (sub-section 6).
11. Anyone who harbors or conceals, or tries to do so, a person who has committed a terrorist act can face a minimum of three years in prison, with the possibility of a life sentence and a fine.
12. Penalty for owning property obtained through terrorist activities (sub-section 7).
13. Any person who is found to have possession of property acquired through terrorist acts can be sentenced to life imprisonment, along with a hefty fine.

2.3. Exception:

This provision does not apply when the person harboring the terrorist is the offender's spouse.

2.4. Explanation:

The responsibility of deciding whether an offence should be prosecuted under section 113 of the BNS or under the Unlawful Activities (Prevention) Act, 1967, lies with a police officer who is not below the rank of superintendent of police. This guarantees a level of administrative control and coordination between different legal frameworks that oversee counter-terrorism efforts.

3. Organized crime¹¹

Section 111 of the Bharatiya Nyaya Sanhita (BNS) 2023, specifically targets the phenomenon of organized crime by criminalizing a wide range of unlawful activities when committed on behalf of or in furtherance of the objectives of a crime syndicate. This provision acknowledges the organized and systematic nature of these criminal enterprises and seeks to dismantle them through strict legal actions.

¹¹ *Supra* 8 at Sec 111.

The section discusses various severe crimes such as:

Kidnapping and abduction carried out to extort money or exert influence extortion and threats, particularly when used to finance or empower criminal groups. Contract killings, which are premeditated murders arranged by criminal syndicates land grabbing, which involves the unlawful occupation or forceful possession of land financial scams and frauds, especially those involving large-scale deception or economic disruption

Cybercrime, which can be employed to generate income or target institutions on behalf of criminal networks, is a growing concern in the digital age.

By consolidating these offences under a single provision, section 111 seeks to effectively tackle the activities commonly linked to organized crime syndicates. It also supports the establishment of a unified legal framework to address crimes that were previously handled by different laws.

- The Bharatiya Nyaya Sanhita, 2023, outlines the legal framework for combating organized crime.
- The Bharatiya Nyaya Sanhita (BNS), 2023, tackles organized crime by outlining punishments under sections 111 and 112.
- Section 112¹² outlines specific penalties based on the seriousness and characteristics of the crime committed. Key provisions include:

3.1. Punishment

Organized crime resulting in death: punishable with death or life imprisonment, along with a fine of not less than ₹10 lakh in all other cases. Punishable with rigorous imprisonment for not less than five years, extendable to life imprisonment, and a fine of not less than ₹5 lakh being a member of an organized crime syndicate: punishable with rigorous imprisonment of not less than five years, which may extend to life, and a fine Possessing property derived from organized crime: Punishable with rigorous imprisonment for not less than three years, extendable to life imprisonment, along with fine and property forfeiture.

¹² *Supra* 8 at Sec 112.

Abetment, conspiracy, or attempt: Treated at par with commission of the offence and subject to the same penalties.

These provisions aim to not only punish individuals but also dismantle entire criminal networks by targeting their financial infrastructure, recruitment mechanisms, and leadership.

4. Mob- Lynching¹³

Mob lynching refers to the act of extra-judicial execution carried out by a collective group of individuals, often driven by biases stemming from race, caste, community, language, religion, or personal convictions. It entails the act of using physical force by a group of people to harm or threaten an individual who is not involved in the legal system or the authority of the state.

Acknowledging the severity of mob lynching, section 103(2) of the Bharatiya Nyaya Sanhita, 2023, has been introduced to establish a dedicated penal provision for such acts. It states when a group of five or more persons, acting in concert, commits murder on the grounds of race, caste, or community, sex, place of birth, language, personal belief or any other similar ground each member of such group shall be punished.

8.1 Punishment for mob lynching

- Death penalty or
- Life imprisonment,
- Along with a fine.

5. Snatching¹⁴

The Bharatiya Nyaya Sanhita, 2023 introduces a unique provision that specifically addresses the offence of snatching, recognizing its distinct nature and the rising prevalence of such crimes, especially in urban areas. According to section 304, codified under snatching, the act of

¹³ *Supra* 8 at Sec 103 (2).

¹⁴ *Supra* 8 at Sec 304.

forcefully taking movable property from a person without their permission and against their will is considered a sudden, quick, or forcible seizure.

The essential elements of this offence include:

- The unauthorized and unforeseen act of seizing portable property
- The lack of concurrence, combined with the use of force or urgency
- The intent to dislocate the property in pursuit of the seizure

This legal Acknowledgment Indicates a transition from previous frameworks under the Indian Penal Code of 1860, where snatching was Contained within general classifications like theft or robbery. By recognizing snatching as a distinct crime, section 304 allows for more precise classification and appropriate sentencing.

Punishment for snatching

Imprisonment: The offender may be subjected to imprisonment of either description for up to three years

Fine: In addition to imprisonment, the offender is also liable to a fine.

6. Sexual Intercourse by Deceitful Means¹⁵

Section 69 of the Bharatiya Nyaya Sanhita (BNS) 2023 addresses cases where sexual relations are established through dishonesty or cunning, violating the concurrence of the other person. This includes making false pledges similar as marriage or job offers, or hiding significant information, similar as one's identity. The law recognizes that if a person gives Consent for Physical effort grounded on false demesne or manipulation, their consent is not genuine. This section makes engaging in similar conditioning illegal and ensures that those who exploit others may face legal consequences.

This legislation acknowledges that consent obtained through deception is not genuine consent. It demonstrates a growing recognition in society and the legal system that manipulation, particularly of an emotional or psychological nature, is a severe form of

¹⁵ *Supra* 8 at Sec 69.

exploitation. If someone is exploited while they are emotionally fragile or ignorant of the truth, the act is not only unethical but also a punishable offense.

This offense is innovated on the principle that if someone consents to sexual activity due to being deceived or misled, the validity of their concurrence is questionable. In substance, when concurrence is attained through deception, it is not considered legally valid. This kind of deceitfulness can take numerous shapes for example-

- Making a false promise of marriage just to gain sexual access, with no intention of actually marrying the person.
- Offering a job or promotion in exchange for sex, which is a form of manipulation.
- Hiding or lying about important personal details, like being married or using a fake identity.

Statutory Provision

Section 69 of Bharatiya Nyaya Sanhita anyone who engages in sexual intercourse with a woman, without it being considered rape, if they deceive her make false promises of marriage, employment, promotion, or hide their true identity, will face punishment.

6.1. Punishment

According to section 69 of the Bharatiya Nyaya Sanhita, if someone is set up shamefaced of engaging in sexual intercourse through deceitful means, they can be doomed to rigorous imprisonment for up to 10 times, along with a forfeiture. Nonetheless, the inflexibility of the discipline can differ based on the specifics of the case, such as the severity of the deception, its impact on the victim, and the overall consequences of the act. The court considers these factors to determine the most suitable judgments.

7. Gang rape of minor girl below 18¹⁶

The Bharatiya Nyaya Sanhita (BNS), 2023 takes a firm stand against sexual crimes, especially

¹⁶ *Supra* 8 at Sec 70(2).

when the victim is a minor. Section 70(2) deals specifically with gang rape of a girl under 18 years of age. It treats this offence with the utmost seriousness, allowing for the harshest punishments under the law. This includes life imprisonment for the rest of the offender's natural life or even the death penalty, depending on how severe the case is. The provision reflects the law's commitment to protecting children and ensuring that those who commit such horrific crimes face strict consequences.

Statutory Provision-

According to Section 70(2) of the BNS:

When a woman under the age of eighteen is subjected to gang rape, each person who participated in the act shall be punished.

7.1. Punishment

- Life imprisonment until the end of the convict's natural life, or
- The death penalty in the most heinous cases

8. Voyeurism

Voyeurism¹⁷ refers to the act of secretly observing, recording, or sharing images or videos of someone during private moments, such as when they are changing clothes or using the restroom without their consent. It commonly occurs in locations where individuals anticipate privacy, such as their residence, a changing area, or a restroom. Even if someone doesn't personally record the videos but shares or forwards them to others, it is still considered voyeurism and a severe breach of personal privacy.

According to Section 76 of the Bharatiya Nyaya Sanhita 2023, voyeurism is considered a felonious act. This is a pivotal step to guard individualities' sequestration and quality, particularly in the current period where phones and cameras can be fluently exploited. The law acknowledges that covertly observing or recording someone during their private moments without their knowledge or consent is a grave offense regardless of whether it occurs in person or through digital platforms. By tackling this problem, the law contributes to establishing a safer environment both on the internet and in the physical world.

8.1. Punishment

¹⁷ *Supra* 8 at Sec 76.

If an individual is restrained for the first offense of voyeurism, they may be sentenced up to 3 years in prison and be needed to pay a fine. In this situation, the crime is considered cognizable (which means the police can start a case and arrest without a warrant) and bailable, so the accused can get bail more easily.

Nevertheless, if the individual commits the same offense again the consequences become more severe. They may face imprisonment for a maximum of 7 years and will still be required to pay a fine. This time, the offense is non-bailable, making it more difficult to obtain bail and not a guaranteed right.

This demonstrates that the law considers repeated invasions of privacy to be a serious offense and seeks to deter such behavior by imposing more severe penalties.

9. Stalking

Stalking¹⁸ refers to persistently harassing someone in a manner that causes them to feel threatened or uneasy even after they have explicitly requested you to cease your actions. It can manifest in various ways such as incessantly trailing someone in public, persistently contacting them through phone calls or messages, monitoring their where about or surveilling them through social media or GPS tracking. These seemingly insignificant actions may appear harmless initially, but as time goes on, they can generate a deep-seated fear and anxiety within the individual being targeted.

Section 77 of the Bharatiya Nyaya Sanhita, 2023 deals with the offence of stalking and considers it a grave form of harassment. The legislation acknowledges that stalking can have a profound impact on an existent's well-being, causing them to feel unsafe, anxious, and harassed in both physical and digital spaces. It acknowledges that continuously covering someone's conduct, reaching them constantly, or tracking their movements without their authorization can induce significant emotional torture and instill fear, warranting legal consequences.

Section 77 is gender-neutral, so it applies to both manly and womanish victims and malefactors. This comprehensive legislation expands legal safeguards and recognizes that stalking can affect anyone anyhow of their background or circumstances.

¹⁸ *Supra* 8 at Sec 77.

9.1. Punishment for Stalking

According to section 77 of the Bharatiya Nyaya Sanhita 2023, the punishment for stalking is determined based on whether it's the first or subsequent offense, with different penalties for each. In the case of a first-time offense, the law allows for imprisonment for a period of up to three years accompanied by a fine. The offense is classified as cognizable and bailable, enabling law enforcement to take immediate action without the need for previous judicial blessing, while also providing the accused with the opportunity to request bail.

In the event of a second offense, the provision requires a harsher penalty, imposing a prison sentence of up to five years, along with a fine. Significantly, a subsequent offense is considered non-bailable, which means that the accused cannot be released on bail without the court's permission. The rise in punitive actions signifies the legislature's determination to address repeated instances of stalking with heightened severity, acknowledging the ongoing danger to the victim's personal safety and mental health.

10. Online Child Pornography

Section 149b of the Bharatiya Nyaya Sanhita (BNS), 2023 sets forth a comprehensive legal framework to tackle the grave problem of online child pornography¹⁹. This provision clearly states that it is illegal to create, distribute, transmit, or possess any pornographic material that involves minors using digital or electronic methods. The section aims to address the issue of child exploitation and abuse in the digital space by acknowledging that these actions are severe violations of the rights and dignity of minors. By enforcing strict penalties and treating the offence as it deserves, the provision aligns with both national child protection objectives and international legal norms, including obligation under the United Nations convention on the rights of the child. The preface of section 149b signifies the law's ongoing adaptation to attack cyber-enabled offenses, with a particular focus on securing vulnerable individualities, and underscores the necessity for a comprehensive legal framework to address arising digital pitfalls.

¹⁹ *Supra* 8 at Sec 149(b).

11. Acts of Endangering Sovereignty²⁰

Section 152 of the Bharatiya Nyaya Sanhita (BNS), 2023, is a recently enacted law that replaces the previous sedition law and prioritizes the protection of India's unity and sovereignty. It classifies any attempt to divide the nation or incite violence against the state as a serious crime, whether through verbal communication, written materials, online content, or financial support. This encompasses conduct that encourage defiance, advocate for independence from India, or plump associations that oppose the nation's welfare.

If a person is condemned under this section still, they may face a judgment of life imprisonment or over to seven years in jail, along with a fine contemporaneously, the law explicitly states that expressing dissatisfaction with the government or championing for legal changes is not considered a felonious offense. The objective is to prevent dangerous and violent acts without infringing upon individuals' freedom of speech. Nonetheless, due to the broad language of the law, it's pivotal to exercise caution when applying it to help prevent unjust consequences for individuals expressing their opinions.

11.1. Punishment

Section 152 outlines a strict penalty system for actions that threaten the sovereignty, unity, and integrity of India. According to the provision, individuals convicted of these offences can face a lifetime imprisonment sentence or a prison term of up to seven years, along with a financial penalty. This graded punishment framework demonstrates the seriousness with which the legislature perceives threats to national security, while also providing a proportional sentencing approach based on the magnitude and consequences of the offense.

12. ANALYSIS OF NEW OFFENCES

- **Legal Implications**

The inclusion of these new offenses greatly enhances the legal framework, ensuring it is better equipped to address current challenges. Nevertheless, the broad interpretations of terms like acts endangering sovereignty give rise to apprehensions regarding potential legal uncertainties. The broad language used in these terms can be understood in various ways, which may result in

²⁰ *Supra* 8 at Sec 152.

inconsistent interpretations and applications of the law. The broad language used in the bill could potentially lead to abuse, where innocent individuals or groups could be incorrectly indicted or punished for conduct that does not actually pose a genuine threat to public security. As a consequence, although the laws are intended to guard the nation and its people, they must be diligently enforced to prevent inordinate intrusion and save the abridged rights of individuals.

- **Social Impact**

The Bharatiya Nyaya Sanhita (BNS) marks a significant shift in India's legal framework, aiming to address ultramodern societal challenges more effectively. By replacing outdated laws and introducing measures more suited to contemporary realities, the legislation seeks to enhance justice, safeguard public interests, and uphold individual rights. By explicitly criminalizing acts similar to mob lynching, voyeurism, gender-based violence, cybercrime, etc. The BNS underscores a commitment to guarding individual rights and fostering social harmony. These legal changes are a response to the growing public concern about the shortcomings of former legal systems in addressing contemporary forms of violence and exploitation. The incorporation of specific provisions against new crimes, especially those enabled by digital platforms, demonstrates a legal awareness that adapts to the changing landscape of technology and society. Ultimately, the BNS aims to strengthen the rule of law and foster a fairer and more inclusive society by establishing a legal framework that is responsive and forward-thinking

- **Implementation Challenges**

The Bharatiya Nyaya Sanhita (BNS), 2023 introduces several progressive vittles to address arising crimes, yet its effective perpetration faces significant challenges. One of the major enterprises is the Lack of functional readiness within law enforcement agencies. Addressing offenses similar to mob lynching, cybercrime, and organized crime necessitates sophisticated investigative methods and effective collaboration between different law enforcement agencies, which numerous original police forces presently lack due to inadequate training and

technological coffers. For illustration, combating cybercrime requires technical knowledge in digital forensics, but law enforcement agencies in multitudinous areas continue to calculate on conventional investigative ways.

Furthermore, the BNS introduces gender-neutral language in offences like voyeurism and stalking, but societal stations and hardwired impulses among law enforcement officers may impact the fair and harmonious operation of similar laws. The part of judicial interpretation will be vital, and any inconsistencies in the operation of these recently defined offences could lead to legal query. also, the recognition of mob lynching as a distinct crime necessitates the establishment of effective substantiation protection programs and expedited trials, which are presently lacking in multitudinous regions of the country.