

Policy Brief

BHARATIYA NYAYA SANHITA BILL (BNS)

The Bharatiya Nyaya Sanhita Bill (BNS) seeks to revoke the Indian Penal Code, 1860 (IPC), which currently stands as the primary legal framework governing criminal offenses and punishments thereof in the country. It introduces a total of 356 sections, replacing the current 511 sections. Out of these, 175 sections have undergone amendments, 22 sections have been repealed, and 8 new sections have been incorporated into the bill.

KEY PROVISIONS:

- **Terrorism:** Clause 111 of the Bill defines terrorist act as committing any act within or outside India with an attempt to threaten the unity, integrity, and security of India, intimidate the general public or a segment thereof, or disturb public order. Here, terrorist acts include the use of firearms, bombs, and hazardous substances causing property destruction and loss of human lives. Activities listed in the Second Schedule of the Unlawful Activities (Prevention) Act, 1967 fall under this as well. Terrorist acts leading to death will be punishable by death or life imprisonment, and shall also be liable for fine upto Rs. 10 Lakhs, and in any other case can be punished with imprisonment for not less than 5 years and shall also be liable to fine up to Rs. 5 Lakhs. The Bill also aims to punish those who collude or assist in any terrorist act. The same range of punishments will be considered for these individuals as well.
- **Sedition:** Broadly, the IPC, 1860 (Section 124A) defines sedition as an act attempting to bring contempt towards the government. The present Bill repeals the section and instead, under clause 150, proposes that whoever, by words, signs, electronic communication or by use of financial means, "excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished."
- **Mob Lynching:** Clause 101(2) of the new Bill proposes capital punishment as the maximum sentence and 7 years as the minimum sentence for lynching. While the term 'lynching' is not explicitly mentioned, the provision addresses instances where a collective of five or more individuals collaboratively commits murder on the basis of race, caste, community, sex, place of birth, language, personal belief, or any other specified ground outlined therein.
- **Causing Death by Negligence:** Section 104 of the BNS, 2023 punishes a person who commits death of a person through rash or negligible act that results in unintended deaths that go unreported. The Bill specifies a punishment of imprisonment (extendable up to ten years) and/or a fine.
- **Hiring/Employing/ Engaging Persons below Eighteen Years to Commit Offences:** Clause 93 states that individuals who hire, employ or engage any person below eighteen years of age with the primary purpose of committing an offense will be subject to an imprisonment term and/or a fine as though the person did it on their own.
- **Organized Crime:** Clause 109 of the Bill defines organized crime as any continuing unlawful activity including but not limited to robbery, land grabbing, contract killing, land grabbing, financial scams, cybercrime, human trafficking racket for prostitution either as a member of an organized crime syndicate or on its behalf and which involves the use of violence, coercion, and intimidation constitutes an organized crime. Such acts are punishable by death sentence or life imprisonment (in cases where the offense leads to any deaths). In other situations, the punishment may range from 5 years to life imprisonment, and a fine may also be imposed which shall not be below Rs 5 Lakhs.
- **Offences against Women and Children:** While the IPC, 1860 currently allows for the death penalty in cases of gang rape of women below 12 years of age, the proposed bill extends the penalty even to include gang rape of women below 18 years of age, along with corresponding fines.

- **Sexual Intercourse by Deceitful Means:** Clause 69 of the Bill criminalizes sexual intercourse with a woman, if a person through deceitful means or makes a promise to a woman without the intention of marrying her has sexual intercourse with her not amounting to rape, shall be punished with imprisonment which may extend to 10 years and shall also be liable to fine.
- **Expanding the scope of certain offences to include boys:** Currently, the Indian Penal Code (IPC), 1860 criminalizes importing girls under the age of 21 for illicit activities as a criminal offence. The proposed bill extends this provision to cover boys under the age of 18 engaged in similar activities.
- **Adultery:** The given bill omits adultery in furtherance of the 2018 Judgement of the Supreme Court in the landmark case of Joseph Shine v. Union of India which decriminalised adultery for both men and women.

STANDING COMMITTEE DRAFT REPORT:

- **Clarifying Provisions on Terrorism:** The Committee has recommended that the bill clarify a few terms and definitions under Clause 111 : (i) clearly specify the term 'intimidation' to eliminate ambiguity in categorizing an act as a 'terrorist act'; (ii) Introduce mens rea (The mental state of a defendant who is accused of committing a crime) in Clause 111(6); (iii) Replace 'foreign country' with 'anywhere outside India' to extend the Section's coverage to all offenders located outside India; and (iv) Add the word 'sovereignty' before 'unity' in Clause 111(1). Furthermore, the Committee has also suggested adding a provision requiring approval by a senior police officer before registering a criminal case or FIR under this Clause , deciding whether it falls under UAPA, 1967 or BNS, 2023..
- **Community Service:** The Parliamentary Committee positively acknowledged the introduction of community service under Clause 4(f). However, it notes that the nature and term of community service have yet to be clearly defined in the Bill. Given this, the committee has recommended that the term and nature of community service be clearly defined under the ambit of law. It also proposes a provision for appointing a supervisor responsible for monitoring the execution of penalty relating to community service.
- **Penalty on Mob Lynching:** The committee suggests adding a legal definition for 'lynching' in the Bill. The committee extensively discussed the proposed 7-year imprisonment penalty under Clause 101(2) and recommends its removal. Additionally, the committee advises seeking input from the Attorney General and Solicitor General of India on the matter.
- **Marital Status as Deceitful Means:** The committee suggests amending Clause 69 of the BNS 2023, which addresses sexual intercourse through deceitful means. The proposed addition is to include "or marital status" after the phrase "suppressing identity" in the 'Explanation' section. The committee notes instances where individuals deceived multiple women into marriage or sexual relations by concealing their marital status, emphasizing that such concealment should be considered a "deceitful means."
- **Causing Death by Negligence:** The Committee identifies a potential conflict between Clause 104(2) and Article 20(3) of the Indian Constitution, which protects individuals against self-incrimination. While considering the Supreme Court's broadened definition of 'witness,' the Committee recommends a more in-depth examination before deciding on this provision. To simplify, the Committee suggests narrowing the scope of Clause 104(2) to motor vehicle accidents. Additionally, it proposes replacing 'or fails' with 'and fails' for more effective prosecution and advocates for defining a specific timeframe for incident reporting. The Committee advises collaborative redrafting of the Clause with the Ministry of Law and Justice.
- **Adultery:** The Standing Committee suggests reintroducing adultery as a gender-neutral criminal offense in the new Bill, replacing the struck-down Section 497 of the Indian Penal Code, 1860 that only punished men. It proposes keeping Section 377 for non-consensual acts and introducing provisions against non-consensual offenses for all genders, including addressing the offence of bestiality.

The parliamentary panel's recommendations include:

- Retaining Section 377 of the IPC, which was struck down by the top court in 2018 to the extent that it criminalized consensual homosexual activity between adults, in the new bill to deal with non-consensual acts.
- Addition of provisions regarding non-consensual sexual offenses against male, female, transgender, and bestiality in the Bharatiya Nyaya Sanhita.
- The importance of safeguarding the sanctity of marriage in Indian society is underscored by the committee report.

RECOMMENDATIONS :

- **Sedition:** The Bill eliminates sedition as an offense, however, there is no elucidation on what constitutes a threat to sovereignty, unity, and integrity.
- **False Information:** Clause 195(1)(d) of the Bill criminalizes the making or publication of false information. There is a need to clearly lay out parameters defining processes that help in identifying such information.
- **Sexual Offenses:** Sections 63, 64, 70, 73, 74, 75, 76, 77, and 78 cover sexual offenses. To address them, the Bill adds a new chapter headed "Offenses Against Women and Children." Similar offenses are listed in the IPC's 'Offenses Affecting the Human Body' chapter. The undertone of the restructuring means that the BNS does not recognize sexual offenses unless they are committed against a woman and children. The BNS does not include a specific offense for the rape of men and transgender people.
- **Community Service:** Though Indian courts have previously released those convicted of minor offenses after ordering them to plant trees, serve at religious sites, shelter homes, and orphanages, or manage traffic signals, the provision of community service for minor offenses has been proposed in penal law for the first time under the Bill. While this serves as a breather for overcrowded prisons, reforms in bail adjudication have not been spoken about.