

Indian Penal Code to Nyaya Sanhita: What's new, what is out, what changes

From sedition to fake news to mob lynching, the Bharatiya Nyaya Sanhita Bill, 2023 brings in several changes to the IPC, which it aims to replace.



Under the BNS, offences related to causing damage to public property now carry a graded fine, which means the fine corresponds to the amount of damage caused.

From bringing terrorism and organised crime under the ambit of ordinary criminal law, introducing gender neutrality for offences pertaining to children, to repealing Section 377 that criminalised homosexuality, the Bharatiya Nyaya Sanhita Bill, 2023 makes several key departures from the Indian Penal Code it seeks to replace.

New offences

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.

“Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine,” the provision reads adding that “deceitful means” shall include the false promise of employment or promotion, inducement, or marrying 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 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, tackling organised crime is brought under the realm of ordinary criminal law. There are several special state legislations for prevention and control of criminal activity by organised crime syndicates or gangs, the most popular being the Maharashtra Control of Organised Crime Act, 1999. These special laws prescribe vast powers of surveillance and relax standards of evidence and procedure in favour of the state, which is not found in ordinary criminal law.

Interestingly, 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.

A separate category of “petty organised crime” has also been brought in, which criminalises “theft, snatching, cheating, unauthorised selling of tickets, unauthorised betting or gambling, selling of public examination question papers.” An earlier version of the Bill used the overbroad words, “Any crime that causes general feelings of insecurity among citizens”, to describe petty organised crime, but that has been dropped in the current version. However, while the provision is aimed at tackling small law and order issues in everyday policing, it is unclear how this would be different from ordinary theft, etc.

Terrorism: Importing large parts of the language in defining “terror activities” from the stringent Unlawful Atrocities Prevention Act, the BNS brings terrorism under the ambit of ordinary criminal law. According to an analysis by National Law School of India University, Bangalore, the definition of “terrorist” borrows from the Philippines Anti-Terrorism Act, 2020. Crucially, the offence involving terror financing is broader in the BNS than in UAPA.

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

Deletions

Unnatural sexual offences: Section 377 of the Indian Penal Code, which criminalised homosexuality among other “unnatural” sexual activities, has been repealed under the BNS. However, the total omission of Section 377 has raised concerns, since the provision is still helpful to tackle non-consensual sexual acts, especially when rape laws continue to be gendered. The Supreme Court in 2018 read down the provision as unconstitutional only to the extent that it criminalised consensual homosexual relationships.

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. This provision is criticised for attaching colonial notions of criminality for certain tribes. The BNS has fully omitted this provision.

Gender neutrality: While rape laws continue to operate only for women, the BNS has tweaked some other laws, especially those dealing with children, to bring gender neutrality.

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.

Other tweaks

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

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 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.

Also, under the BNS, offences related to causing damage to public property now carry a graded fine, which means the fine corresponds to the amount of damage caused.