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EXPLORING BHARATIYA NYAYA SANHITA 2023: WHAT YOU MUST KNOW

Mr. Shah commenced his opposition to Lord Macaulay's work stating - *“justice is not delivered timely... Tarikh pe Tarikh milti hain, police blame courts and government, courts blame police, the government holds the police and judiciary responsible...everyone keeps shifting the blame on each other.”*

On 20th December 2023, Shri Amit Shah, the esteemed Minister of Home Affairs, delivered a compelling speech establishing the underlying principles and ideologies of the Criminal law codes in India. In his opening address he articulated that the proposed three laws will usher in an era of speedier justice for the populace. The Hon'ble Home minister further stated that the primary problem regarding the existing bills were the unnecessary delays in the proceedings, ambiguous language and lack of emphasis on the reformation and fundamentally a punitive intent rooted since the colonial era.

The novel codes were introduced in the parliament with a lot of promise. The Government states that the codes carry with them the objective of speedier justice with the betterment of society as their main goal. The bill further brings in the promise of providing justice having high technological integration and smashing all maliciously intended provisions of the colonial era.

Thus, it becomes important to understand the clash behind the ideological war, as the Government states between the 'penalising IPC' and the 'Justice-driven BNS'. It is crucial to underscore that while the initial perusal of the BNS may seem impartial and reasonable, a more meticulous examination reveals certain irregularities that warrant attention and resolution.

ELIMINATING THE OFFENCE OF “SEDITION” FROM THE BNS AND DELINEATING BETWEEN “RAJ DROH AND RASHTRA DROH”.

*"Instead of **Rajdroh**, we have introduced **Deshdroh**. We are a free country now. Nobody will have to go to jail for criticizing individuals. But no one can speak against the country. I believe those who speak against the country should go to jail".*

- Home Minister Shri Amit Shah

Section 150 of the Bharatiya Nyaya Sanhita¹ deals with the criminalizing the “Acts endangering sovereignty, unity and integrity of India.” This provision stems from the growing atmosphere of discontent with the provision of sedition under section 124A of the Indian Penal Code,² used as an instrument of arbitrary restraint by the Government. Since 2010, there have been more than 800 sedition cases filed in India, involving over 13,000 individuals.³ Among this backdrop, the new provision of the BNS is advertised as the better replacement of the offence of the colonial and draconian law of sedition.

However, upon a closer analysis, one is able to grasp how there exists a huge aspect of ambiguity and potential implications caused by the provision. The usage of words subversive activities, and financial means brings in ambiguity and lack of clarification. While the Home Minister stated that the sedition laws have been struck down due to its colonial background and excessive penalizing intent, the ambiguity behind whether in fact section 152 of the BNS is free from a seditious nature has already arisen.

INTRODUCING THE ELEMENTS OF GENDER NEUTRALITY IN CERTAIN SEXUAL OFFENCES UNDER THE BNS.

¹ Bharatiya Nyaya Sanhita Act, 2023, § 150, No. 45, Acts of Parliament, 2023 (India).

² Indian Penal Code, 1860, § 124A, No. 45, Acts of Parliament, 1860 (India).

³ A Decade of Darkness, <https://sedition.article-14.com/>, (last visited Mar. 23, 2024).

Chapter V of the Bharatiya Nyaya Sanhita, 2023 identifies offenses against women and children, including sexual offences, assault and other offences related to marriage and children. Although some provisions recognise gender neutrality, the implementation appears to be inconsistent. Further, the legislation categories gender into Man, Woman, and Transgender, but it fails to provide adequate protection to the transgender population. Despite the recognition, the law does not grant them appropriate legal remedies against sexual offenses, and they can only seek recourse under the Transgender Protection Act, 2019,⁴ with penalties less severe than those for similar offenses under the BNS. Moreover, the BNS fails to recognise the adult males as victims of sexual abuse, further exacerbating the issue. Thus, while the BNS aims to address offenses comprehensively, it lacks in the consistent implementation and fails to protect the marginalised communities adequately.

THE REMOVAL OF THE PROVISION OF UNNATURAL SEXUAL OFFENCES UNDER SECTION 377 OF THE IPC.

The hon'ble Supreme partially invalidated Section 377 of the IPC,⁵ addressing unnatural offenses, decriminalising consensual sodomy but leaving other aspects intact, like the punishment for non-consensual sodomy and bestiality⁶. However, the BNS fails to identify any of such replacements and thus creates legal gaps, allowing acts like bestiality and sexual offenses against men and transgender individuals unpunished. Moreover, the efforts to include provisions of carnal intercourse with animals were unsuccessful. The evident oversight of lawmakers is apparent in the ambiguous language surrounding animal welfare legislation in the BNS. Additionally the glaring omission of provisions safeguarding male victims of sexual violence underscores a significant gap in legal protection, prompting serious doubts about the BNS's efficacy in delivering justice for all.

THE AMBIGUOUS CONCEPT OF "COMMUNITY SERVICE" IN THE ACT.

⁴ Transgender Protection Act, 2019, No. 40, Acts of Parliament, 2019 (India).

⁵ Indian Penal Code, 1860, § 377, No. 45, Acts of Parliament, 1860 (India).

⁶ Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.

The BNS introduces “community service” as a new form of punishment, a concept already ubiquitous in various common law countries and rooted in India’s traditional Panchayat system. Although welcomed by the legal fraternity and citizens, the statute lacks a clear definition and guidelines for community service. Section 4(f) identifies community service as a valid form of punishment, but fails to specify acceptable forms or duration for the same. The BNS introduces option of community service for minor offenses, yet lacks clarity on which offenses qualify and the duration of the sentence. This obscurity influences both the understanding and implementation of community service as a punishment.

While the need for a new criminal code is acknowledged the BNS falls short in addressing vital national concerns such as laws against necrophilia and marital rape. The recurring issue of ambiguity and vague language throughout the BNS is a particularly troubling issue. Whether it’s a replacement of sedition laws or the introduction of community service, these provisions are clouded by ambiguity leading to varied interpretations of their clauses.

Behind these complexities are the ordinary people affected by the law’s shortcomings. The absence of clear guidelines on community service can leave individuals uncertain about their fate, while the failure to discuss crimes like necrophilia and marital rape perpetuates injustice for victims. It’s imperative that legal frameworks prioritize clarity and comprehensiveness to ensure justice for all.