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BHARATIYA NYAYA SANHITA 2023: HAS INDIA TRULY DECOLONISED ITS CRIMINAL LAW?

~ *Gagandeep Kaur*

1. INTRODUCTION

For many years, the criminal law in India was governed by Indian Penal Code (IPC), 1860¹ which was drafted by Lord Thomas Babington Macaulay. It was drafted to maintain law and order to keep the people under colonial authority through stringent rules and regulations. On 1 July 2024, the Bharatiya Nyaya Sanhita (BNS), 2023² replaced the IPC. It is one of the most important criminal law reforms since Independence. It was enacted to liberate India from its colonial shackles. It brought many changes such as community service as a new form of punishment, reorganising and proving a new chapter on offences against women and children, abolishing the offence of sedition and also providing several new offences on terrorism, organised crime, mob lynching and snatching. However, it is important to examine and scrutinise whether this truly decolonised the Indian criminal law or not.

2. HISTORICAL BACKGROUND

The IPC is a legislation of excellent drafting, precision and systematic structure. However, the main purpose of this legislation was to serve the objectives of the British empire. It was not designed to protect and provide justice for the people of India. It primarily maintained the colonial authority of the British rule over the people. For instance, the offence of sedition was used to curb the freedom of speech and the criticism against the British government.

After the independence of India, the IPC remained in force but many legal scholars and experts criticised it for its archaic language and overly punitive provisions. It was a majorly a state-centric law rather than citizen-centric. Therefore, a lot of demands grew for a more modernised legislation for contemporary India. In 2023, three new criminal laws were introduced, namely, the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS)³ and the Bharatiya Sakshya Adhiniyam (BSA)⁴ with the aim to decolonise the Indian

¹ Indian Penal Code, 1860, Act No. 45 of 1860.

² Bharatiya Nyaya Sanhita, 2023, Act No. 45 of 2023.

³ Bharatiya Nagarik Suraksha Sanhita, 2023, Act No. 46 of 2023.

criminal system. However, it needs to be examined whether there exists a genuine decolonization as it is proposed or is it just a mere repackaging of the old law with a new title.

3. KEY FEATURES OF THE BNS

The BNS introduces several important reforms. It reduces the number of provisions from 511 sections in the IPC to 358 sections by merging similar offences and removing obsolete provisions. A separate chapter has been created for offences against women and children which makes these provisions more organised and provides protection through stricter punishments. The law also replaces outdated terms such as "minor" and "insane" with "child" and "person with unsound mind," and it makes the language more respectful and consistent with modern legal standards.⁵

Due to technological developments, the BNS expands the definition of documents to include electronic records such as emails, mobile phones, and server logs. It also supports digital processes like e-FIRs and requires the videography of search and seizure operations to improve transparency and reduce misuse of power.

Another significant reform is the introduction of community service as a punishment for certain minor offences. This indicates a move towards rehabilitation rather than imprisonment for less serious crimes.

The BNS introduces specific provisions dealing with organised crime, terrorism, mob lynching, and snatching, to address forms of crime that were not adequately addressed under the IPC.⁶

The removal of Section 124A⁷ Sedition has been presented as a major reform. However, Section 152⁸ of the BNS criminalises acts that threaten the sovereignty, unity, and integrity of India. Critics argue that its broad wording may continue to restrict legitimate dissent and freedom of speech.

4. POSITIVE ASPECTS

The BNS is an important effort to modernise India's criminal law. Replacing the colonial IPC with a law centred on the idea of "Nyaya" symbolises a shift towards justice rather than punishment. The separate chapter on offences against women and children, the introduction of community service, improved digital procedures, and the recognition of modern crimes all demonstrate an attempt to make criminal law more responsive to

⁴ Bharatiya Sakshya Adhiniyam, 2023, Act No. 47 of 2023.

⁵ S. M. Aamir Ali & Pritha Mukhopadhyay, *Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities?*, 62 Int'l Ann. Criminol. 406 (2024).

⁶ Amitabh Ranjan, *A Comparative Analysis of the Indian Penal Code, 1860, and the Bharatiya Nyaya Sanhita, 2023*, 2 U. Inst. L. Bull. 10, 11 (2024).

⁷ Indian Penal Code, 1860, Act No. 45 of 1860, § 124A.

⁸ Bharatiya Nyaya Sanhita, 2023, Act No. 45 of 2023, § 152.

present-day needs.⁹ The use of updated legal terminology also reflects greater respect for human dignity. Although many reforms are structural, they contribute to a more accessible and organised criminal code.

5. CRITICISMS

Despite these improvements, many scholars argue that the BNS falls short of genuine decolonisation. One criticism is that the legislation was passed without sufficient parliamentary debate and wider public consultation and input.

The law also leaves several longstanding problems unresolved, including police reforms, overcrowded prisons, delays in criminal trials, and the large number of undertrial prisoners. Section 152¹⁰ has attracted major criticism because its broad language may allow authorities to restrict peaceful criticism of the government. In addition, the provisions relating to terrorism and organised crime provide wider powers to law enforcement agencies without introducing equally strong safeguards against misuse of them.

Another concern is the overlap between the BNS and existing special criminal laws, which may create confusion regarding investigation and punishment. In addition, the BNS omits Section 377¹¹ of the IPC without introducing broader legal protections for LGBTQIA+ persons.¹²

6. CONCLUSION

The Bharatiya Nyaya Sanhita, 2023 is undoubtedly a landmark reform that replaces the 163-year-old Indian Penal Code. It introduces several positive changes, including modern terminology, digital procedures, community service, and provisions addressing emerging crimes. These reforms are an effort to update India's criminal justice system and reduce its colonial character.

However, decolonisation needs more than changing the name and structure of a statute. It demands deeper reforms in criminal justice institutions, policing, and the protection of constitutional rights. While the BNS marks an important beginning, its true success will depend on how fairly and effectively it is implemented. Only then can it fulfil its promise of delivering justice in a manner consistent with the values of an independent and democratic India.

⁹ Arushi Bajpai, Akash Gupta & Akshath Indusekhar, *Revisiting Criminal Law Bills: An In-Depth Critical Analysis of Bharatiya Nyaya Sanhita Bill and Bharatiya Nagarik Suraksha Bill*, 45 Statute L. Rev. (2024).

¹⁰ BNS § 152.

¹¹ Indian Penal Code, 1860, Act No. 45 of 1860, § 377.

¹² Ashim Nanda & Archana Gupta, *Critical Analysis of the Bharatiya Nyaya Sanhita Bill 2023 with Special Regard to Laws Concerning Rape and Unnatural Offences*, 2 Panjab Univ. L. Mag. - Maglaw (2023)