

## The Bharatiya Nyaya Sanhita, 2023: Analyzing the proposed replacement to the Indian Penal Code, 1860 (1/3)

### Introduction

1. The Bharatiya Nyaya Sanhita Bill, 2023 (“**Bill**”) was introduced in the Lok Sabha<sup>1</sup> on August 11, 2023 with the aim to repeal and replace the existing Indian Penal Code, 1860 (“**IPC**”) along with two other bills intended to replace the Code of Criminal Procedure, 1973 (“**CrPC**”) and the Indian Evidence Act, 1872 (“**Evidence Act**”). This note summarizes the most notable changes to the IPC which have been proposed in the Bill. The ‘Clauses’ as referred to in the Bill are referred to as ‘Sections’ in this note for ease of reference.
2. Summarily, the most significant changes sought to be introduced by virtue of the Bill include the consolidation of certain provisions of the IPC to make it more concise (356 sections as compared to 511 sections in the IPC); and introducing certain new offences such as hate speech and terrorism while re-characterising sedition as acts endangering the sovereignty, unity and integrity of India.

### Key Takeaway in relation to Economic Offences

3. While existing offences pertaining to economic crimes are not significantly changed by virtue of the Bill, the term ‘economic offences’ has been introduced for the first time as part of the offence of organised crime to include criminal breach of trust, forgery, counterfeiting



of currency and valuable securities, financial scams, running Ponzi schemes, mass-marketing fraud or multi-level marketing schemes with a view to defraud the people at large for obtaining the monetary benefits or large scale organised betting in any form, offences of money laundering and hawala transactions.<sup>2</sup>

### Cheating

4. Offences under Chapter XVII of the Bill (dealing with offences against property) largely retain the same language as the IPC. One change however can be found with respect to the offence of cheating under Section 415 and 420 of IPC (Section 316 in the Bill) which is one

<sup>1</sup> The three bills were introduced on the last day of the Monsoon session of the Parliament and have been sent to a Parliamentary Committee for scrutiny. The Bill will require to be passed by the Lok Sabha, the Rajya Sabha and receive the assent of the President before it becomes law and takes effect.

<sup>2</sup> Section 109 of the Bill pertains to “organised crime”.

of the ubiquitous provisions in the context of economic offences.

- Under Section 316 of the Bill, the existing provisions of the IPC, viz. Sections 415 (which defines the offence of cheating) and Section 420 (which provides the punishment) have been consolidated. Further, the new provisions sets out the various degrees of cheating, based on the extent of injury/harm suffered by the victim viz. (i) whoever cheats will be punishable with imprisonment up to 3 years; (ii) whoever cheats with the knowledge that he is thereby likely to cause wrongful loss to a person whose interest in the transaction such person was bound to protect to which the cheating relates shall be punishable with a term upto 5 years; (iii) if a person cheats and dishonestly induces the person deceived to deliver any property to any person or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years.<sup>3</sup>

### **Criminal Breach of Trust**

- The offence of criminal breach of trust, covered under Sections 405 to 409 of the IPC have been consolidated into one section under Section 314 of the Bill,<sup>4</sup> with the notable change being the increase in punishment for ‘criminal breach of trust’ (under Section 406 IPC) from imprisonment of up to 3 years to up to 5 years. The punishment for criminal breach of trust by a carrier, wharfinger, warehouse-keeper, clerk or servant, servant (under Section 407 and 408) remains as imprisonment up to 7 years and by public servant, banker, merchant, factor, attorney or agent (under Section 409) as imprisonment up to 10 years.<sup>5</sup>

### **Forgery and falsification of accounts**

- Certain provisions pertaining to the offence of forgery (covered between section 463 to 471 of the IPC) have been consolidated and re-arranged. For instance, Section 468 of the IPC which defines the offence of forgery,

its punishment under Section 465 and the offence of forgery for the purpose of cheating under Section 468, have been consolidated under Section 334 of the Bill.<sup>6</sup> Making a false document, under Section 464 of the IPC has been re-shuffled as Section 333 of the Bill,<sup>7</sup> while retaining the existing language and punishment, as does falsification of accounts under Section 477A of the IPC which is now re-numbered in the Bill as Section 342.

### **Selective Analysis of the other sections of the Bill**

- While the IPC provides Definitions under Chapter II – Explanations, the Bill sets out the Definitions under Chapter I – Preliminary.

### **Types of Punishments:**

- The Bill provides for Punishments under Section 4 in Chapter II (earlier under Section 53 of Chapter III of the IPC), and types of punishments have been expanded to include imprisonment for life as ‘imprisonment for remainder of a person’s natural life’ and ‘community service’.<sup>8</sup>

### **Abetment, Criminal Conspiracy and Attempt:**

- Covered in Chapter IV of the Bill (corresponding to Chapter V of the IPC), the most notable change is the addition of Section 48 which deals with abetment outside India for an offence in India which would hold a person residing in another country guilty of abetment if he/she instigates another person situated in India to commit an offence.<sup>9</sup>

### **Offences Against Women and Children:**

- Chapter V of the Bill seeks to substitute Offences Affecting the Human Body, Offences Relating to Marriage under Chapter XVI of the IPC. While ‘marital rape’ has not been defined and/or categorized as an offence in the Bill, two new sections have been added namely:
  - Section 69: Sexual intercourse by employing deceitful means, or by making a promise to marry a woman

<sup>3</sup> Section 316 of the Bill pertains to “Cheating”.

<sup>4</sup> Section 314 of the Bill pertains to “Criminal Breach of Trust”.

<sup>5</sup> Section 314 of the Bill pertains to “Criminal Breach of Trust”.

<sup>6</sup> Section 334 of the Bill pertains to “Forgery”.

<sup>7</sup> Section 333 of the Bill pertaining to “Making a false document”.

<sup>8</sup> Section 4 of the Bill pertains to “punishments”.

<sup>9</sup> Section 48 of the Bill pertains to “abetment outside India for offence in India”.

without any intention of fulfilling the same with a punishment of imprisonment for up to ten years, and fine. In essence, this section has been introduced with an intent to curb the various instances of ‘false promise to marry’.<sup>10</sup>

- b. Section 70(2): Gang rape of a woman under eighteen years of age carrying a punishment of imprisonment for life, i.e., imprisonment for the remainder of that person’s natural life, and with fine, or death.<sup>11</sup>

## Offences Affecting Human Body:

- 12. Some of the most significant changes to the IPC have been made to the chapter pertaining to offences affecting the human body (Chapter XVI of the IPC) which are now specified under Chapter VI of the Bill. While largely retaining the description of existing offences, the Bill has sought to increase the quantum of punishment for some of them. A few notable changes include:
  - a. The punishment for murder is now specified under Section 101 of the Bill. In Section 101(2), a new offence has been introduced, of murder by a group of five or more persons acting in concert to commit murder on the ground of race, caste or community which would include lynching, and which is punishable with death, or with imprisonment for life or imprisonment for a term not less than seven years.<sup>12</sup>
  - b. Organised Crime: Section 109 of the Penal Bill introduces another new offence of ‘Organised Crime’ to be any continuing unlawful activity by the effort of groups of individuals acting in concert (including as a crime syndicate), engaged in kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offences, cyber-crimes having severe consequences, trafficking in people, drugs, illicit services etc., using violence, intimidation, coercion, corruption or any other unlawful means to obtain direct or indirect material



benefit including financial benefit. Punishment is varied depending on the level of involvement of the person in the offences with death or imprisonment for life being prescribed where the offence has caused death, at its highest.<sup>13</sup> Section 110 of the Bill covers petty organised crime or organised crime in general.<sup>14</sup>

- c. The abovesaid definition of Organised Crime also seeks to introduce within it, the concept of “economic offences” to include the offences of criminal breach of trust, forgery, counterfeiting of currency and valuable securities, financial scams, running Ponzi schemes, mass-marketing fraud or multi-level marketing schemes with a view to defraud the people at large for obtaining the monetary benefits or large-scale organised betting in any form, offences of money laundering and hawala transactions.<sup>15</sup>
- d. Further, through Section 111 of the Bill, the offence of a ‘terrorist act’ has been introduced.

## Offences Against the State

- 13. Under Chapter VII of the Bill, one significant addition is characterization of the offence of sedition (under

<sup>10</sup> Section 69 of the Bill pertains to “sexual intercourse by employing deceitful means, etc”.

<sup>11</sup> Section 70 of the Bill pertains to “Gang Rape”.

<sup>12</sup> Section 101 of the Bill pertains to “punishment for murder”.

<sup>13</sup> Section 109 of the Bill pertains to “organized crime”.

<sup>14</sup> Section 110 of the Bill pertains to “petty organized crime or organized crime in general”.

<sup>15</sup> Section 109 of the Bill pertains to “organised crime”.

Section 124A of the IPC) into acts endangering sovereignty unity and integrity of India, for which imprisonment for life or up to seven years and fine has been prescribed. The new section increases maximum punishment from seven years to life imprisonment. While Section 124A of the IPC punished a person who brings or attempts to bring hatred or contempt or excites disaffection towards the Government established by law in India, the new Section appears to expand the scope of the gravity of the offence by including within it the act of also using electronic communication or use of financial means, (apart from the existing language in Section 124A of the IPC) any ‘subversive activities’, feelings of ‘separatist activities’ or endangers ‘sovereignty or unity and integrity of India’, thereby broadening its scope.<sup>16</sup>

14. An explanation provided under Section 150 may also require further clarification given that it presently reads *“Comments expressing disapprobation of the measures, or administrative or other actions of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite activities referred to in this section”*.

## Offences Relating to Coin, Currency, Notes, Bank Notes, and Government Stamps

15. The Bill provides for the same provisions in Chapter X (earlier provided under Chapter XVIII of the IPC). Unlike the previous two Chapters which only increased the penalty, herein, the most notable change is the addition of ‘coin and government stamps’ in addition to currency, notes and bank notes. Furthermore, the act of counterfeiting government stamps and coins has been defined under Section 176.<sup>17</sup>

## Offences Against Public Tranquillity

16. A notable introduction in Chapter XI (earlier provided under Chapter VIII of the IPC) laying out offences against public tranquillity is the inclusion of ‘electronic communication’ which is mentioned in the following provisions:
- Section 194: Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony by spoken/written words, visible representations or through electronic communication.<sup>18</sup>
  - Section 195: Imputations, assertions prejudicial to national integration by visible representations or through electronic communication.<sup>19</sup>

## Criminal Defamation

17. Sections 499 of the IPC defined the offence of ‘defamation’ and Section 500 prescribed the punishment for the same of a maximum term of imprisonment of two years. Under Section 354 of the Bill, Sections 499 and 500 have been consolidated and punishment of community service has been added.<sup>20</sup>

## Other relevant modifications proposed in the Bill

18. Section 302 of the Bill introduces the offense of snatching which states that *“Theft is “snatching” if, to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or his possession any moveable property.”*<sup>21</sup>
19. Certain offences particularly in relation to Offences relating to Elections (Chapter IX corresponding to IXA

<sup>16</sup> Section 150 of the Bill pertains to *“acts endangering sovereignty, unity and integrity of India”*.

<sup>17</sup> Section 176 of the Bill pertains to *“counterfeiting coin, government stamps, currency-notes and bank notes”*.

<sup>18</sup> Section 194 of the Bill pertains to *“promoting enmity between different groups on ground of race, religion, place of birth, residence, language etc., and doing acts prejudicial to maintenance of harmony”*.

<sup>19</sup> Section 195 of the Bill pertains to *“imputations, assertions, prejudicial to national integration”*.

<sup>20</sup> Section 354 of the Bill pertains to *“defamation”*.

<sup>21</sup> Section 302 of the Bill pertains to *“snatching”*.

of the IPC; Offences By or Relating to Public Servants (Chapter XII corresponding to Chapter IX of the IPC); Contempt of Lawful Authority of Public Servants (Chapter XIII corresponding to Chapter X of the IPC) have not been modified in substance but the Bill seeks to increase the quantum of punishment for certain specified offences. Notably however, under Chapter XIII of the Bill, the attempt to commit suicide to compel or restraint exercise of lawful power is sought to be included as an offence.

20. Significantly, Sections 377 (Unnatural Offences) and 497 (Adultery) have been omitted from the Bill – seemingly as a consequence of recent judgements passed by the Supreme Court in relation thereto.

## Conclusion

21. The introduction of this Bill along with the bills which propose to replace the CrPC and the Evidence Act is with the stated intent of rehauling the criminal justice system and reducing the timelines for obtaining justice. The consolidation and simplification of certain provisions makes the Bill more concise and proposed changes in terms of increased punishments particularly for certain serious offences can be viewed to act as a deterrent. However, certain additions mainly concerning offences against the state, public tranquillity etc. may need some clarifications and refinement, in order to avoid any ambiguity or misinterpretation.



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