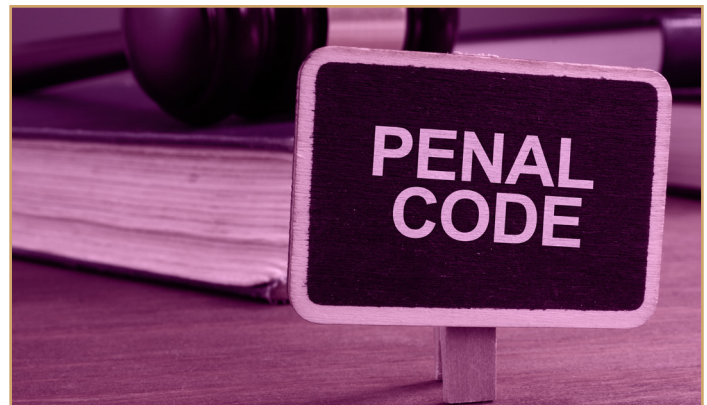


The Bharatiya Nyaya Sanhita, 2023: Analyzing the successor to the Indian Penal Code, 1860¹ (1/3)

Introduction

1. The Bharatiya Nyaya (Second) Sanhita, 2023 which aimed to replace the existing Indian Penal Code, 1860 (“**IPC**”) was passed by the Parliament in the recently concluded winter session, following which presidential assent was received on December 25, 2023. Along with the BNS, the Bharatiya Nyaya Sakshya Sanhita, 2023 (which replaces the Code of Criminal Procedure, 1973 (“**CrPC**”)) and the Bhartiya Sakshya Sanhita, 2023 (which replaces the Indian Evidence Act, 1872 (“**Evidence Act**”)) have also been passed by the Parliament and have received presidential assent. Once notified, it will be called the ‘Bharatiya Nyaya Sanhita, 2023 (“**BNS**”).
2. To allow India’s criminal justice system (judiciary and police machinery) to prepare and equip itself for a monumental overhaul, the three laws are reported to come into force after some months and not immediately.
3. Summarily, the significant changes sought to be brought in by way of the BNS include the consolidation of certain provisions of the IPC to make it more concise (358 sections as compared to 511 sections in the IPC); and introducing certain new offences such as organized crime, petty organized crime, terrorist act while re-characterising sedition as acts endangering the sovereignty, unity and integrity of India.



Key Takeaway in relation to Economic Offences

4. While existing offences pertaining to economic crimes are not significantly changed by virtue of the new law, 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-notes, bank-notes and Government stamps, *hawala* transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organisation for obtaining monetary benefits in any form.²

¹ Authors: Ankoosh K Mehta, Faraz Alam Sagar, Kapil Arora, Sara Sundaram, Nikhil Varshney, Srinivas Chatti, Rinkel Singh and Darshan Patankar, Sangram Parab, Nitya Ravichandran, Stuti Bhargava, Arunima Phadke, Aman Siwach

² Section 111 of the BNS pertains to “organised crime”.

Cheating

5. Offences under Chapter XVII of the BNS (dealing with offences against property) largely retain the same language as that of the IPC. One change however can be found with respect to the offence of cheating under Section 415 and 420 of IPC (Section 318 in the BNS) which is one of the ubiquitous provisions in the context of economic offences.
6. Under Section 318 of the BNS, the existing provisions of the IPC, viz. Sections 415 (which defines the offence of cheating), Section 417 (which provides the punishment for cheating) and Section 420 (which provides for cheating and dishonestly inducing delivery of property) of the IPC 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 three years, or with fine, or with both; (ii) whoever cheats with the knowledge that he is thereby likely to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, such person was bound to protect, shall be punishable with a term extending to five years, or with fine, or with both; (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, and shall also be liable to fine.³

Criminal Breach of Trust

7. The offence of criminal breach of trust, covered between Sections 405 to 409 of the IPC have been consolidated into one section under Section 316 of the BNS,⁴ with the notable change being the increase in punishment for 'criminal breach of trust' (under Section 406 of the IPC) from imprisonment of up to three years to up

to five years. The punishment for criminal breach of trust by a carrier, wharfinger, warehouse-keeper, clerk, servant (under Section 407 and 408 of the IPC) remains as imprisonment up to seven years and by public servant, banker, merchant, factor, attorney or agent (under Section 409 of the IPC) as imprisonment up to ten years.⁵

Forgery and falsification of accounts

8. 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 of the IPC and the offence of forgery for the purpose of cheating under Section 468 of the IPC, have been consolidated under Section 336 of the BNS.⁶ Making a false document, under Section 464 of the IPC has been re-shuffled as Section 335 of the BNS,⁷ 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 BNS as Section 344.
9. Section 466 of the IPC is in respect of forgery of record of Court or of public register etc has also been correspondingly changed in Section 335 of the BNS, which has now expanded the scope and ambit of the provision by including within its fold 'identity documents issued by the Government including voter identity card or Aadhar card'.
10. The corresponding provision to Section 473 of the IPC (which punished the making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise) which is Section 341 of the BNS, in addition to penalising the making or counterfeiting of a seal, plate or instruments for making an impression, makes mere possession of such like instruments for making an impression knowing the same to be counterfeit (even without any intention to commit forgery), as an offence punishable with imprisonment upto three

³ Section 318 of the BNS pertains to "Cheating".

⁴ Section 316 of the BNS pertains to "Criminal Breach of Trust".

⁵ Section 316 of the BNS pertains to "Criminal Breach of Trust".

⁶ Section 336 of the BNS pertains to "Forgery".

⁷ Section 335 of the BNS pertaining to "Making a false document".

years and with liability to pay fine. Section 341 of the BNS further goes on to penalize the act of fraudulently or dishonestly using a seal or plate knowing or having reason to believe the same to be counterfeit.

Definition of movable property

11. A notable change that has been made in the BNS is in respect of the definition of movable property. The definition of movable property has now been made wider under Section 2(21) by using the phraseology 'property of every description'. The change prima facie appears to be casting a broader and wider net allowing all descriptions of property to fall within the meaning and scope of movable property.

Selective Analysis of the other sections of the Bill

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

Types of Punishments:

13. The BNS 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 'community service'.⁸

Abetment, Criminal Conspiracy and Attempt:

14. Covered in Chapter IV of the BNS (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.⁹

Offences Against Women and Children:

15. Chapter V of the BNS seeks to substitute offences affecting the human body, under Chapter XVI of the IPC. While 'marital rape' has not been defined and/or



categorized as an offence in the BNS, two new sections have been added namely:

- a. Sexual intercourse by employing deceitful means, or by making a promise to marry a woman 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'.¹⁰
- 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.¹¹

Offences Affecting Human Body:

16. 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 BNS. While largely retaining the description of existing offences, the BNS has sought to increase the quantum of punishment for some of them. A few notable changes include:

⁸ Section 4 of the BNS pertains to "punishments".

⁹ Section 48 of the BNS pertains to "abetment outside India for offence in India".

¹⁰ Section 109 of the Bill pertains to "organized crime".

¹¹ Section 70 of the BNS pertains to "Gang Rape".

a. The punishment for murder is now specified under Section 103 of the BNS. In Section 103(2) of the BNS, a new offence has been introduced i.e., an offence of murder by a group of five or more persons acting in concert to commit murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground, each member of such a group shall be punishable with death, or with imprisonment for life, and shall also be liable to fine.¹²

b. Organised Crime: Section 111 of the BNS introduces another new offence of 'Organised Crime' to be any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit. Punishment is varied depending on the level involvement of the person involved in the offences with death or imprisonment for life being prescribed where the offence has caused death, at its highest.¹³ Section 112 of the BNS covers petty organised crime or organised crime in general.¹⁴

c. The abovesaid definition of Organised Crime also seeks to introduce within it, the concept of "economic offences".¹⁵

d. Further, through Section 113 of the BNS, the offence of a 'terrorist act' has been introduced.

e. Section 106 of the BNS which corresponds to Section 304A of the IPC (which pertains to causing death by

negligence) now provides a relatively more stringent punishment than the erstwhile provision which only provided for imprisonment extendable upto two years or fine or both. Section 106 of the BNS now seeks to impose a penalty constituting imprisonment of upto five years and fine. An exception however has been carved out in the provision for an act has been done by a medical practitioner while performing medical procedure. In such an event, he shall be punished with imprisonment of either description for a term which may extend upto two years with fine.

f. Further, a new sub-provision has been introduced under the BNS, Section 106(2) of the BNS that makes escaping from the site without reporting such rash act not amounting to culpable homicide leading to the death of a person, to a police officer or a Magistrate, punishable with imprisonment extendable to ten years and fine.

Offences Against the State

17. Under Chapter VII of the BNS, a significant addition is re-characterization of the offence of sedition (under Section 124A of the IPC) as 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 into 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'.¹⁶

¹² Section 103 of the BNS pertains to "punishment for murder".

¹³ Section 111 of the BNS pertains to "organized crime".

¹⁴ Section 112 of the BNS pertains to "petty organized crime".

¹⁵ Section 111 of the BNS pertains to "organised crime".

¹⁶ Section 152 of the BNS pertains to "act endangering sovereignty, unity and integrity of India".

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

18. The BNS provides for the same provisions in Chapter X (earlier provided under Chapter XVIII of the IPC). The most notable change is the addition '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 178 of the BNS.¹⁷

Offences Against Public Tranquillity

19. A notable introduction in Chapter XI of the BNS (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:

- a. Section 196: 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.¹⁸
- b. Section 197: Imputations, assertions prejudicial to national integration by visible representations or through electronic communication.¹⁹

Criminal Defamation

20. Sections 499 of the IPC defined the offence of 'defamation' Section 500 prescribed the punishment for the same of a maximum term of imprisonment of two years, or fine, or both. Under Section 356 of the BNS, Sections 499 and 500 have been consolidated and the punishment of community service has been added for the offence of defamation.²⁰

Other relevant modifications proposed in the Bill

21. Section 304 of the BNS introduces the offence 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.*"²¹
22. Certain offences particularly in relation to Offences relating to Elections (Chapter IX of the BNS corresponding to IXA of the IPC; Offences By or Relating to Public Servants (Chapter XII of the BNS corresponding to Chapter IX of the IPC); Contempt of Lawful Authority of Public Servants (Chapter XIII of the BNS corresponding to Chapter X of the IPC) have not been modified in substance but the BNS seeks to increase the quantum of punishment for certain specified offences. Notably, under Chapter XIII of the BNS, the attempt to commit suicide to compel or restraint exercise of lawful power is sought to be included as an offence.²²
23. Significantly, Sections 377 (Unnatural Offences) and 497 (Adultery) of the IPC continue to remain omitted from the BNS – seemingly as a consequence of recent judgements passed by the Supreme Court in relation thereto despite the recommendations of the Standing Committee to retain both the provisions.
24. Under Section 351 of the BNS, the offence of criminal intimidation has been clarified to include a threat 'by any means' which in effect would expand the meaning of the ways in which a threat may be carried out by a person threatening injury to person, reputation or property under this provision. Intimidation is also a means of carrying out an organised crime under Section 111 of BNS.

¹⁷ Section 178 of the BNS pertains to "counterfeiting coin, government stamps, currency-notes and bank notes".

¹⁸ Section 196 of the BNS 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".

¹⁹ Section 197 of the BNS pertains to "imputations, assertions, prejudicial to national integration".

²⁰ Section 356 of the BNS pertains to "defamation".

²¹ Section 304 of the BNS pertains to "snatching".

²² Section 226 of the BNS pertains to "attempt to commit suicide to compel or restrain exercise of power".

25. Section 209 of the BNS provides for punishment for proclaimed offenders who are so declared under Section 84 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**”). Notably, owing to the corresponding changes under Section 84 of the BNSS only offenders who have committed an offence punishable with imprisonment for a period of ten years or more, or life imprisonment or death, may be punished as proclaimed offenders under the BNS.

Conclusion

26. With BNS receiving the Presidential assent besides the BNSS (successor to CrPC) and the Bhartiya Sakshya

Adhiniyam, 2023 (successor to the Evidence Act), there is an expectation that the administration of criminal justice in the country will enter into a new era. Introduction of certain new offences that have been made in the BNS are a result of the technological advancements as well as societal changes that have transpired over the past few years. The increased punishments particularly for certain serious offences seems to be with the objective of acting a deterrent. However, certain additions mainly concerning offences against the state, public tranquillity etc. also widen the potential for abuse and ought to be exercised with extreme caution and circumspection.

Key Contacts:

Cyril Shroff
Managing Partner
cyril.shroff@cyrilshroff.com

Ankoosh Mehta
Partner (Co-Head - White Collar & Investigations)
ankoosh.mehta@cyrilshroff.com

Faraz Alam Sagar
Partner (Co-Head - White Collar & Investigations)
faraz.sagar@cyrilshroff.com

Contributors:

Kapil Arora
Partner

Sara Sundaram
Partner

Nikhil Varshney
Director - White Collar & Investigations

Srinivas Chatti
Principal Associate

Rinkel Singh
Senior Associate

Darshan Patankar
Associate

Sangram Parab
Associate

Nitya Ravichandran
Associate

Stuti Bhargava
Associate

Aman Siwach
Associate

Arunima Phadke
Associate

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Peninsula Chambers, Peninsula Corporate Park, GK Marg, Lower Parel, Mumbai 400 013, India
T +91 22 2496 4455 E cam.mumbai@cyrilshroff.com W www.cyrilshroff.com
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