**Issue Brief: Bharatiya Nyay Sanhita (BNS) and Adjunct Laws**

**Background**

* The Bharatiya Nyaya (Second) Sanhita, and Bharatiya Nagrik Suraksha (Second) Sanhita came into effect on 1 July, 2024 after being passed by the Parliament in December 2023 to replace the Indian Penal Code, and CrPC respectively.
* The Three Criminal Laws were bulldozed through Parliament while 141 opposition MPs were suspended, which is against parliamentary procedures and integrity.
* The period of consultation and scrutiny for the three bills was woefully short, and stakeholders and civil society members were excluded. This resulted in poor quality of the drafting of these bills, and ambiguity in the law.

**Highlights**

* The BNS2 removes sedition as an offence. The provisions on endangering the sovereignty, unity and integrity of India have retained aspects of sedition.
* The BNS2 retains the provisions of the IPC on rape and sexual harassment. It does not consider recommendations of the Justice Verma Committee (2013) such as making the offence of rape gender neutral and including marital rape as an offence.
* The BNS2 omits S. 377 of IPC which was read down by the Supreme Court. This removes rape of men and bestiality as offences.

**New Provisions**

* BNS: Community service is now a punishment for offences such as: theft of property worth less than Rs. 5,000, appearing in a public place intoxicated etc.
* BNSS: All trials, inquiries, and proceedings may be held in electronic mode. Production of electronic communication devices, likely to contain digital evidence, will be allowed for investigation, inquiry, or trial.
* A complainant may approach any police station irrespective of territorial jurisdiction to file an FIR. (173(1) BNSS). For crimes that are punishable by jail terms between 3 and 7 years, police have the discretion to conduct a preliminary inquiry for 14 days before the FIR is filed.

| Recommendations | Whether incorporated in BNS2 |
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| Rape (IPC s.375) – Any non-consensual activity of a sexual nature should be included in the definition of rape. Exception to marital rape should be removed. | No. Original provision retained in Clause 63. |
| Words, gesture, or act intended to insult modesty of woman (IPC s.509) - the section should be repealed. The offence of ‘eve-teasing’ can be charged under s.354 of the IPC (s.73). Remove the terminology ‘modesty of women’ from the IPC.9 | No. Original provision retained in Clause 79. |
| Assault or use of criminal force on woman with intent to disrobe (IPC s.354B) - penalty should be increased to imprisonment for at least five years up to 10 years.[[19]](https://prsindia.org/billtrack/the-bharatiya-nyaya-second-sanhita-2023#_edn19) | No. Penalty is imprisonment for at least three years up to seven years (Clause 76). |
| Adultery (IPC s.497) – the section violates Articles 14 and 21. It creates a distinction between men and women based on gender stereotypes, and is arbitrary. Justice Verma Committee suggested removing Adultery as an offence. The Standing Committee on Home Affairs suggested making Adultery a gender-neutral offence. | Yes. Adultery has been omitted. However, BNS2 retains s.498 of the IPC which penalises a man for enticing the wife of another man so that she may have intercourse with any person. |

| Missing offences | |
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| IPC section 377 | The Supreme Court read down Sec 377 to exclude consensual sex between adults. This meant that forced intercourse with an adult male is an offence, so is intercourse with an animal.  The BNS2 does not retain section 377. This implies that rape of an adult man will not be an offence under any law, neither will having intercourse with an animal. The Standing Committee on Home Affairs (2023) has recommended re-introducing this provision. |

**Suggested Questions**

Will the Minister of Home Affairs and Co-Operation be pleased to state:

1. What are the number of sedition cases filed, prosecuted, resolved and unresolved, and whether the number of sedition cases filed have reduced in the last five years?
2. Could the Minister provide a clear definition of “Acts endangering the sovereignty, unity and integrity of India” as mentioned in BNS 2,, and ‘seditious activities’ as mentioned in Clauses 150, 195, and 297 of the BNSS 2?
3. Whether the new criminal laws are expected to reduce the number of undertrials if so how?
4. The total number of cases currently pending in various courts of the country, and the disposal rate of cases over the past 5 years.
5. The specific measures taken under the three new criminal laws to expedite case disposal in the various courts of the country.

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