

THE BHARATIYA NYAYA SANHITA 2023

**Secondary Stage: Phase 2
Classes XI And XII**



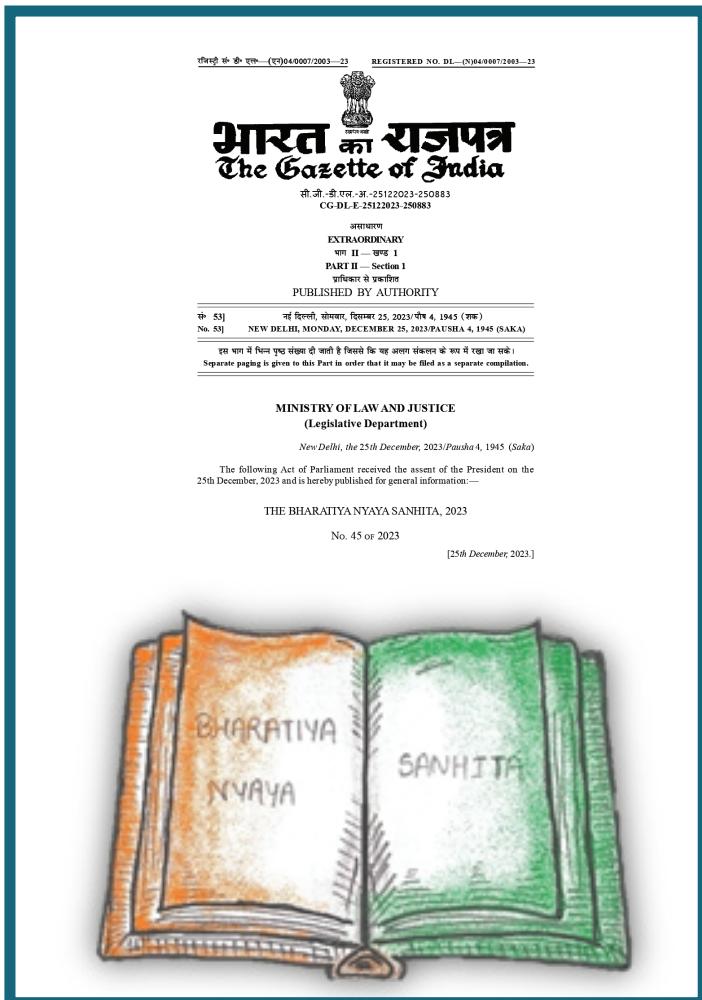
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राष्ट्रीय शैक्षिक अनुसंधान और प्रशिक्षण परिषद्
NATIONAL COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING



Ensuring Justice to All



“

“No man should tolerate injustice, whether it be against himself or against another”
-Mahatma Jyotiba Phule

Read the quote given above. What do you think of the above quote? You would be surprised to know that this was stated decades before globalisation, when such interconnectedness of nations, institutions and people did not exist. You would agree that this quote is a reminder to all of us to act responsibly when we witness injustice. To be not concerned thinking that it does not affect us is not the correct way of dealing with injustice. For justice to prevail, not only our laws need to be aligned with the evolving modern scenario but all of us need to be aware about the duties, rights and the existing laws. You will now read in the module about the new criminal legislation which would help you become a responsible individual. As a citizen of this country, the appropriate knowledge of laws and justice system goes a long way in helping you to perform your duties and be a law abiding person.

Learning outcomes



After going through this document, you will be able to

- discuss the latest criminal laws and jurisprudence.
- explain the manner in which it seeks to achieve equal opportunity and social justice.
- encourage readers to develop a constructive approach towards the Indian justice system.
- recognise legal issues and make students aware of the channels of redressal.
- interpret parameters given in the *Sanhita* with regard to protection of rights of self and others and become aware citizen engaged in promoting fundamental duties.
- Understand the different offences and their corresponding punishments.





Evolution of Criminal Laws in India

The Indian Penal Code was drafted by the first Indian Law Commission, which included M/s. Neeleod, Adderson, and Mellel* as members and Lord Macaulay as its president. In addition to the English and Indian laws and regulations, they also referred to Napoleon's code and Livingstone's Louisiana code. After completing it in 1850, it was brought to the Legislative Council in 1856 and finally approved on 6 October, 1860. Thus, on 1 January 1862, the Indian Penal Code came into force. The Indian Penal Code is a codification of the country's criminal legislation. As the substantive law, it focuses exclusively on offenses.

A uniform Criminal Procedure Code was passed in 1882. Thereafter, came the Criminal Procedure Code of 1898 which remained operative till the present Criminal Procedure Code (Code of Criminal Procedure 1973) was enacted. The Criminal Procedure Code got the assent of the President of India on 25 January 1974 and it came into force on 1 April 1974.¹

* https://www.allahabadhighcourt.in/event/admin_of_criminal_justice_in_india.html

Criminal Law Jurisprudence

Criminal law is essentially based on the principle that the State is duty bound to protect the rights of the citizens and provide a robust justice system. The adversarial common law system that India has adopted for the administration of criminal justice was given by the British colonial rulers. It is a cardinal principle of our criminal justice system that every person accused of a crime is presumed innocent unless and until the accused is proved guilty beyond reasonable doubt. The accused is likewise protected by the right to remain silent and is not required to respond. The criminal justice system exists to defend the innocent and punish the guilty.

By implementing appropriate preventive and punitive measures that also serve the purpose of preventing private retribution—which is crucial for maintaining peace, law, and order in society—the State fulfils its duty to safeguard citizens' life, liberty, and property. Legislative acts that provide penalties for rights violations are passed. When these people rights are violated, it is the responsibility of the State to find the individual responsible, prosecute him fairly, and, if found guilty, to punish him. Only when the



procedural procedures used to enforce substantive penal laws are effective can they be considered effective.²

Bharatiya Nyaya Sanhita, 2023



The Indian Penal Code, 1860, enacted by the British government, was recently succeeded by the *Bharatiya Nyaya Sanhita (BNS)*, 2023, which received the assent of the Hon'ble President of India on 25 December 2023.

BNS takes into account the evolving nature of criminal activity as well as the requirement for technology support needed at different stages of the investigation and legal decision-making process. The protection of fundamental rights is highlighted by the new legislation, which follows a victim-centric approach. Encouraging police accountability, preserving people's rights, and promoting transparency (such as e-FIR adoption and audio-video recording of searches and seizures) are some of the goals of the new legislation.

BNS upholds individual rights, promotes inclusivity, and embraces modern technologies to lay the foundation for a more just and equal society.

BNS inserts a few additional offenses to the list of crimes while keeping the pertinent sections of the IPC intact. It also increases the punishment for an array of heinous offenses and eliminates those that the Supreme Court had declared unconstitutional. In addition, legislators have created a new crime for actions endangering the sovereignty, unity, or integrity of India, as well as the addition of community service as a measure of punishment. Among other things, the BNS categorises criminal breach of trust, forgeries, financial scams, Ponzi schemes, mass marketing frauds, and cybercrimes as "organized crime". This is a significant development that will result in the heavy punishment of similar organized crimes in India.

Rationale

With an emphasis on the fusion of technology and forensic science, the new criminal laws seek to elevate the Indian legal system to the forefront of the legal systems worldwide. The recently enacted criminal statutes

¹https://www.allahabadhighcourt.in/event/admin_of_criminal_justice_in_india.html

²https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf



create procedures for making criminal justice organizations responsible, encouraging openness and impartiality. Critical subjects including electoral crimes, crime towards women and children, and tampering with official documents and currencies are also addressed.

Highlights of BNS

- BNS contains 358 sections, streamlining from 511 sections under the IPC.
- Several provisions for the same offences have been consolidated at one place in the BNS. For example, provisions for stolen property under Sections 410 to 414 of IPC have been streamlined under Section 317 of BNS..
- It has simplified the language used in the *Sanhita* and removed the colonial language and references.
- Gender has been defined as— the pronoun ‘he’ and its derivatives are used of any person, whether male, female or transgender. (Transgender shall be defined as per section 2(k) of the *Transgender Persons (Protection of Rights) Act, 2019*).
- Child has been defined as any person below 18 years of age.
- For the first time ‘community service’ has been included as part of punishment (under Section 4) along with death penalty, imprisonment for life (rigorous, simple), forfeiture of property and fine. At the same time, imprisonment terms and fines have been increased.
- Community service maybe granted in the situations where — public servant unlawfully engages in trade; person fails to appear before the court; person attempts to commit suicide with the intent to compel or restrain any public servant from discharging official duty; or value of property is less than Rs. 5000 in cases of theft; there is misconduct in a public place after intoxication; there is defamation.
- Section 69 of the BNS defines sexual intercourse by deception or a false promise to marry as rape. It will be punished by a fine and simple or rigorous incarceration for a maximum of ten years.
- More strict actions with enhanced punishments have been introduced for sexual offences like rape, gang rape, etc., and a consolidated chapter has been given for offences against women and children (Sections 63- 78).
- Offences against children dealing with myriad issues like abandonment, kidnapping, procuration, selling and buying for prostitution, etc., are dealt under Sections 91- 97.

Did you know?

Previously, offences against women and children were sporadically located all over the IPC, but under the BNS 2023 it has all been consolidated in Chapter V.

Did you know?

BNS 2023 has introduced gender neutrality qua the perpetrators under Sections 76 and 77 and gender neutrality for victims under Section 141.



- Movable property will now also include intangible assets like patents, copyrights, etc.
 - Economic offences will include crimes like forgery, counterfeiting notes and government stamps, criminal breach of trust, financial schemes to do fraud on people, *hawala* transactions, etc.
 - Mob lynching — Section 101 (2) of BNS states that “When a group of five or more persons acting in concert commits murder on the ground of race, caste or community, sex, place of birth, language, personal belief or any other ground each member of such group shall be punished with death or with imprisonment for life or imprisonment for a term which shall not be less than seven years, and shall also be liable to fine.”
 - Chapter XIV of BNS specifies and lists the penalties for offenses against the public interest, including obtaining decrees for sums not due, harbouring offenders, and providing or creating false evidence.
 - Crimes against the public’s health, safety, convenience, decency, and morality are covered in Chapter XV of the BNS. Examples of these crimes include public nuisances, careless or malicious acts that spread disease, adulteration of food, drink, or narcotics, reckless driving, etc.

Did you know?

The expression 'Beggary' has been added to indicate 'exploitation' for the purpose of human trafficking.

Source: Times of India,
13.06.2024

Table of Some Offences and Corresponding Punishments

| S. No. | Offence | Punishment | BNS |
|--------|---|--|----------------------------|
| 1. | Rape | Imprisonment not less than 10 years and more (can extend to life imprisonment) and also be liable to fine. Death penalty is also provided in cases of gang rape for women under 18 years of age and repeat offender. | u/s 65- 73 |
| 2. | Physical relation with a woman by employing deceitful means | Punishable with imprisonment that may extend to 10 years and fine. | u/s 69 |
| 3. | Bigamy | Punishable with imprisonment that may extend to 7 years and fine. | u/s 81 |
| 4. | Abetment in India of offences outside India. Abetment outside India for offences in India | Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Sanhita for the punishment of such abetment, be punished with the punishment provided for the offence. | u/s 47 u/s 48 u/s 49 |
| 5. | Riot | Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. | u/s 189 |
| 6. | Terrorist act | Punishable with death or imprisonment for life without the benefit of parole and a fine of not less than 10 lakhs. | u/s 113 |

| S. No. | Offence | Punishment | BNS |
|--------|---|--|----------------------|
| 7. | Abandonment of child under 12 years by parents or person taking care of it | Punishable with imprisonment that may extend to 7 years or with fine or with both. | u/s 91 |
| 8. | Offences against children | <p>Section 95 of BN forbids the exploitation of children and punishes anyone who recruits, engages, or employs kids in illegal activity.</p> <p>Punishment— imprisonment for not less than 3 years and may extend up to 10 years with fine.</p> <p>Section 96 — imprisonment may extend up to 10 years with fine.</p> <p>Section 97 — imprisonment may extend up to 7 years with fine.</p> <p>Section 98 — imprisonment may extend up to 10 years with fine.</p> <p>Section 99 — imprisonment may extend up to 14 years with fine.</p> | u/s 95 u/s 96- 99 |
| 9. | Waging war against the government of any Foreign State at peace with Government of India. | Be punished with imprisonment for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine. | u/s 151 |
| 10. | Snatching | Imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. | u/s 302 |



| S. No. | Offence | Punishment | BNS |
|--------|----------------------------|--|------------|
| 11. | Right to private defence | BNS 2023 provides rights to private defence in varied circumstances. | u/s 34- 44 |
| 12. | Rash and negligent driving | Imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine. | u/s 106 |
| 13. | Organised crime | Organised crime is any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, by any person or a group of persons acting in concert. The maximum punishment which can be awarded for organised crime is death penalty. | u/s 111 |



Quiz

1. What is the aim of Bharatiya Nyaya Sanhita, 2023?

- (a) To improve educational level
- (b) To promote economic growth
- (c) To revise and update the criminal justice system in India
- (d) To develop infrastructure

(Key: c)



2. Which section of the BNS, 2023 deals with the Terrorist Act?

- (a) Section 23
- (b) Section 113
- (c) Section 61
- (d) Section 69

(Key: b)

3. Which new law replaced the Indian Penal Code (IPC), 1973 in India?

- (a) *Bharatiya Nagarik Suraksha Sanhita, 2023*
- (b) *Bharatiya Nyaya Sanhita, 2023*
- (c) *Bharatiya Sakshya Adhiniyam, 2023*
- (d) *Bharatiya Nagarik Adhiniyam, 2023*

(Key: b)

4. ‘The person’s right to defend their own body and the property’ comes under which section of BNS, 2023?

- (a) Section 37
- (b) Section 35
- (c) Section 49
- (d) Section 69

(Key: a)

5. When has the New Criminal Law been enforced in India?

- (a) 1 October 2024
- (b) 1 July 2024
- (c) 5 September 2024
- (d) 8 November 2024

(Key: b)



Case Study

You would like to know the reformative, rehabilitative and community centric approach to justice in the BNS:

The community service is targeted to replace punitive measures aligning with global trends of restorative justice and rehabilitation. Community service is targeted at minor offences such as:

- Public drinking (Section 355 BNS)
- Theft less than rupees 5000 (Section 303 BNS)
- Attempt to commit suicide to force or prevent the exercise of lawful power (Section 226 BNS)
- Defamation (Section 356 BNS)
- Involvement of public servants in illegal trade (Section 202 BNS)
- Non-appearance in response to a proclamation under Section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023

Ponder and reflect

1. What is Community Service? In your view how will it have a transformative impact on the mindset of the accused?
2. Organise a discussion in your class on Community Service and how will it help in restoration and rehabilitation of the accused.
3. Write a short note on offences covered by Community Service.

Activities

- (a) Whether all communities (even with lesser number of members) be allowed equal rights as enshrined in the Constitution?
- (b) Does recognising rights of other genders play any role in the gender justice system of the country?

Ponder and Reflect

- (a) Organise a discussion or a debate in your class regarding the newly enacted BNS, 2023 and discuss as to how it will have an impact on your lives.



- (b) With your classmates, prepare posters and messages to spread awareness about the rights given to victims under BNS, 2023.
- (c) Group activity—write and broadcast some jingles on gender equality and justice.
- (d) Organise a mock legal aid camp in your schools and educate your peers about various crimes and its redressal mechanisms.
- (e) Like the newspaper clipping given below, make a news item on any aspect of the new criminal laws.



Source: <https://www.thehindu.com/news/national/bar-council-of-delhi-office-bearers-cite-issues-urge-home-minister-to-not-implement-the-new-criminal-laws/article68010251.ece>

**Some more
Facts!**



Rationale behind enactment of new laws

The rationale behind enacting new laws is to address various shortcomings and challenges within the legal system:

- **Complexity of the legal system:** The existing laws and procedures were intricate, making it difficult for common citizens to navigate.
- **Backlog of cases in courts:** There was a significant backlog of cases pending in courts, leading to delays in justice delivery.
- **Low conviction rate:** The current legal framework resulted in a low rate of successful convictions, impacting the effectiveness of law enforcement.



- **Inadequate fines for crimes:** The fines imposed for certain crimes may not align with the severity of the offences, necessitating a review of penalty structures.
- **Overcrowding in prisons:** The high number of under-trial prisoners in prisons contributes to overcrowding, highlighting the need for efficient judicial processes.
- **Limited adoption of modern technology:** The legal system has been slow in integrating modern technologies, hindering efficiency and accessibility.
- **Delays in investigations:** Investigations often face delays, affecting the gathering of crucial evidence and prolonging legal proceedings.
- **Complicated investigation and hearing processes:** The complexity of investigation and hearing processes can lead to inefficiencies and protracted legal battles.
- **Inadequate use of forensic evidence:** The utilization of forensic evidence in legal proceedings is not optimal, impacting the accuracy of case resolutions.
- **Delay in justice for marginalised communities:** Marginalised communities often face additional barriers in accessing justice, leading to delays and disparities in legal outcomes.

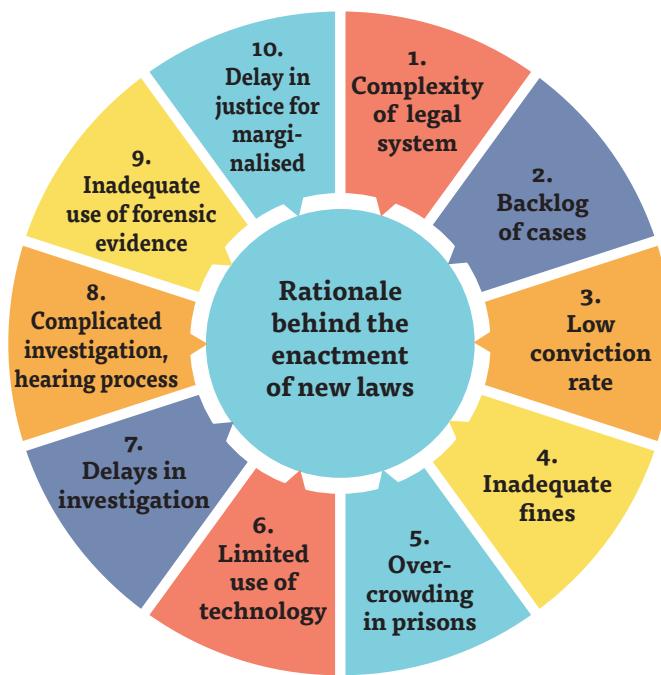


Fig.1: Rationale behind the enactment of new laws



The law and Us

By addressing these challenges through new laws, the legal system aims to enhance accessibility, efficiency, fairness, and effectiveness in delivering

Reflections

The readers will have better knowledge of laws that will make them more aware about their rights and their protection.

This will empower and encourage the readers to perform their duties as citizens of this country with appropriate knowledge of laws and the justice system. This in turn will promote a legal culture amongst the readers wherein they are not only aware of laws but also participate in information dissemination of such laws and policies.

This will inspire the educators and students to develop a positive outlook towards all genders and work for gender justice and equality.

Message for parents

The availability of technology, financial resources, and greater mobility for kids in the twenty-first century broadens kids' exposure to a wider range of influences, both good and bad. Particularly among children, there has been a rise in incidents of cyber bullying, deepfakes, fraud, blackmail, drug abuse, and trafficking. Teachers and parents now have a responsibility to educate kids about their rights and the resources available to them through



the criminal justice system. The new laws have been enacted to be more victim-centric, thereby granting greater protection and speedy justice.

Source: <https://blog.ipleaders.in/historical-development-criminal-justice-system/>



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