

New provisions for Police Officers in BNSS

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Abstract

On July 1, 2024, three historic criminal laws—the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinayam (BSA)—replaced three antiquated statutes from the British colonial era in India. The new laws aim to improve India's criminal justice system and offer a more effective framework for dealing with criminal activity. The main points of the BNS, which aims to replace the Indian Penal Code (IPC), which was created a century ago, will be covered in this article. The BNS worsens the retributive system by introducing wide and imprecisely defined offenses, upholding crimes with roots in outmoded moral principles, and continuing the growth of state and police authority. It is argued that the main goal of the legislation's drafting appears to be to provide the impression that colonial legacies—that is, obsolete colonial laws—have been abandoned, all the while advancing a nationalist agenda meant to instill a sense of patriotism in the general populace.

Introduction

The Indian Penal Code (IPC) of 1860 was superseded as the country's penal code on December 25, 2023, with the Bharatiya Nyaya Sanhita (BNS) of 2023 coming into effect. This new law was passed amid a period of turmoil, with 144 opposition members from both houses suspended at the same time. Despite this, the laws were passed with little debate and very little time set up for consideration. Moreover, the parliamentary standing committee that was tasked with reviewing the laws failed to adequately take into account the opinions of those who disagreed. As a result, doubts concerning the legality and authority of this statute can be raised regarding its basic basis.

Significant modifications to the criminal justice system, including new clauses and adjustments to already-existing legislation, have been made by the BNS. The 20 chapters of the BNS are devoted to crimes against women and children. The statute has reduced the number of sections from 511 to 358 and combined offenses, thus streamlining the criminal justice system. Several violations now carry higher fines, and 33 offenses also have longer jail sentences. For minor infractions, community service has been included as a new type of punishment. Work that improves the community and lessens the load on jails is referred to as community service. Even though the definition of "community service" is not provided in Section 23 of the BNS provides clarification on the term "BNS" by stating that it refers to community-benefiting work that a court may order a convict to complete as a form of punishment. The following highlights some of the most significant and remarkable elements along with the infractions:

New Provisions for Police Officers in India

To comply with the new criminal code that went into effect on July 1, 2024, the Indian government has adopted several new regulations for police personnel under the Bharatiya Nagarik Suraksha Sanhita (BNSS). With these modifications, the police force's authority and duties will be strengthened. Additionally, steps will be taken to improve accountability and safeguard residents' rights.

Mandatory Videography

A significant addition to the law is the necessity that police personnel record everything they do when conducting various forms of law enforcement. This comprises:

- **Searches:** Video recordings during all searches under Section 185 of the BNSS are now required of police officers.
- **Crime Scenes:** Section 176 of the BNSS mandates that all crime scenes be videotaped.
- **Property Seizures:** According to the new regulations, police personnel are also required to film videos while seizing any type of property.

By creating a record of the events that may be used as evidence in court, these required videography laws hope to improve accountability and transparency in police operations.

Detention and Arrest Provisions

Additionally, the BNSS has added additional guidelines concerning police arrests and detentions of persons:

- **Detaining Persons Resisting Lawful Directions:** Police officials can now hold those who oppose or disobey legal orders they issue to stop someone from committing a crime under Section 172 of the BNSS. These people may appear before a magistrate or, in less serious situations, be released the same day.
- **Immunity for Police Officers:** When police officers carry out an executive magistrate's directive to disperse an unlawful gathering, the BNSS offers them an additional degree of protection. In certain situations, police officers cannot face legal action without the approval of the national government.
- **Expanded Jurisdiction for Producing Arrestees:** Police officials can now present an arrestee before any magistrate under Section 58 of the BNSS, even if the judicial officer does not have jurisdiction over the case. This is meant to cut down on delays and simplify the legal process.
- **Additional Medical Examinations:** A new section 53 of the BNSS permits a doctor to perform an extra medical examination on a detained person should they think it is required. The purpose of this is to document the arrestee's physical state in greater detail and to ensure their well-being.

Strengthening Arrest Reporting and Transparency

Concerns regarding police abuse of arrest powers have led the BNSS to implement several initiatives to improve accountability and transparency:

- **Designated Police Officer for Arrest Information:** State governments must appoint a police officer to be in charge of keeping records of all arrests and detainees by Section 37/B. At the district headquarters as well as in each police station, this information needs to be posted.
- **Expanded Notification of Arrests:** Beyond simply friends and family, the BNSS now allows other people to be notified of an arrest. It is now possible to give the information to "any other person."
- **Mandatory Record of Arrest Notification:** The police station is required by Section 48/3 of the BNSS to keep a record of who has been notified of an individual's arrest.

Provisions for Vulnerable Individuals

Additionally, the BNSS has certain clauses designed to defend the rights of those who are vulnerable:

- **Permission for Arrests of the Elderly and Infirm:** Before making an arrest, a police officer must get consent from a deputy superintendent of police or higher ranked officer if the accused is elderly or

disabled and the offense carries a sentence of less than three years in jail.

- **Gender Inclusivity:** To guarantee that the rights and concerns of women and other oppressed groups are appropriately handled in the criminal justice system, the new criminal laws brought about by the BNS place a high priority on gender inclusion.

Implementation and Awareness Efforts

The Indian government is taking the following actions to guarantee the new provisions are implemented effectively:

- **Training of Grassroots Functionaries:** More than 40 lakh grassroots workers, including police officers, are being trained by the Union Home Ministry to make sure that people are aware of the new criminal laws and how they affect people, especially women and children.
- **Nationwide Awareness Campaign:** On July 1, 2024, all police departments, universities, and other governmental organizations will host day-long events to inform the public about the main points of the new criminal laws through talks, workshops, and seminars.
- **Technological Advancements:** To further improve the effectiveness of the criminal justice system, the new criminal laws also include provisions for the use of technology, such as the opportunity to submit police complaints online and receive summonses via electronic means.

Offences Against Women

Based on the writings of Matthew Hale, the notion of irrevocable consent upon marriage has served as the foundation for the marital rape exemption. The Indian Penal Code (IPC) incorporates this idea, which was established in English common law. Though it was outlawed in the UK in 1991, it still exists today. In 2013, the Justice Verma Committee made the recommendation to remove this clause, however, it was never put into practice. The Delhi High Court rendered a unanimous ruling on the validity of the provision, but the Supreme Court has not yet addressed the matter. To decolonize India's criminal justice system, the BNS's passing offered a chance to end the marital rape exception and acknowledge married women's sexual integrity and bodily autonomy. Regrettably, Section 63 of the BNS keeps this exemption, upholding ideas from the colonial age that have aided in the spread of a culture of violence against women.

The Indian Penal Code (IPC) prohibits abortion in Section 312, except for procedures carried out to preserve the life of a pregnant woman. On the other hand, the Medical Termination of Pregnancy Act, of 1971 has made abortion more accessible in certain situations. However, this has been achieved through a system of exceptions rather than a basic right that grants women the autonomy to make decisions regarding their bodies. Because of this, BNS may be perceived as being unduly restrictive and denying women the freedom to make decisions regarding their reproductive health.

By emphasizing the character of victims over their bodily autonomy, the wording of "modesty" in Sections 354 and 509 of the IPC perpetuates a patriarchal conception of sexual abuse. In the BNS, using the term "sexual assault" for this wording would have marked a substantial break from colonial morality. Provisions on obscenity in Sections 292 and 294 of the IPC rely on subjective and community-based standards to establish what constitutes "obscenity. Due to their excessive breadth and reliance on individual and social morality, these standards can be arbitrarily applied. Although the Supreme Court has acknowledged the role that constitutional morality plays in shaping criminalization, these laws have not undergone any notable revisions as a result of its ruling.

Death Penalty

The debate over the death penalty in India heated up in 2015, leading to a careful analysis of the law's constitutionality. A detailed examination by the Law Commission concluded in a report arguing for its repeal, except for circumstances related to terrorism. According to the research, the death penalty is against Article 21 of the Indian Constitution, which protects the right to life, and Article 14, which enshrines the principle of equality before the law. The report also bemoaned the fact that in most capital sentencing cases, the retributive and restorative parts of justice are disregarded.

In 2018, the Home Ministry made a proposal that asked 14 state governments for their thoughts on doing away with the death penalty. Twelve states insisted that the death penalty is still an essential deterrence against serious and violent crimes, while just two states supported its abolition. On the other hand, human rights groups and advocates have persistently maintained that global empirical data indicates that the death penalty does not have a very effective deterrent effect on criminal activity.

Conclusion

In general, the new laws in India for police officers seek to achieve a balance between expanding the authority and responsibility of the police force and guaranteeing increased accountability and rights protection. It will be essential to track the effects of these reforms as they are implemented and make any required modifications to guarantee the fair and efficient operation of the criminal justice system.

The deeply ingrained structural inequities that were left over from the colonial era have not been sufficiently addressed by the recent legislative reforms in India. There has been little change in the dominant power relations that have historically disadvantaged particular castes and religious groups. The new law may worsen the issue by increasing the government's ability to marginalize people, rather than aiming to address these long-standing injustices. Moreover, the legislation exhibits a deficiency in notable divergence from its colonial origins, thereby missing a chance to institute substantial changes that may foster increased social fairness. It is imperative to reevaluate the effects of the BNS on the criminal justice system in India in light of these worries. While the Act brings certain desirable measures, such as community service and enhanced fines for specific offenders, it also reinforces the expansion of state and police powers and retains offenses founded on obsolete moral standards. Furthermore concerning is the nationalist agenda, which aims to instill patriotism among the general populace. Furthermore, further research is desperately needed to properly comprehend how this legislation affects Indian society and to reduce the possibility that it would worsen prejudice and harmful biases.