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THE BHARATIYA NYAYA (SECOND) SANHITA, 2023

[Seeks to repeal Indian Penal Code, 1860 (IPC)]

At a Glance

- **The Bhartiya Nyaya (Second) Sanhita, 2023** seeks to replace the Indian Penal Code (IPC) of 1860 and to consolidate and amend the provisions relating to offences and for matters connected therewith or incidental thereto. The Bill will have 358 Clauses instead of the earlier 511 sections.
- As of now, the IPC of 1860 is the principal criminal law applicable to the territory of India. Its various sections define specific crimes and provide punishment for them. It came into force in 1862 in all British Presidencies, although it did not apply to the Princely States, which had their own courts and legal systems then.
- Earlier, the Bharatiya Nyaya Sanhita, 2023 was introduced by the Union Home Minister; Shri Amit Shah on 11 August 2023 in the Lok Sabha and the Chairman, Rajya Sabha referred the Bill on 18 August 2023 along with other two Bills to the Department-related Parliamentary Standing Committee on Home Affairs for its consideration and report. The Committee after deliberations submitted its [Report](#) to Rajya Sabha on 10 November 2023 with many observations and recommendations.
- The recommendations made by the Committee were considered by the Government and it had been decided to withdraw the Bill pending in Lok Sabha and introduce a new Bill, the ***The Bhartiya Nyaya (Second) Sanhita, 2023*** incorporating therein those recommendations made by the Committee that have been accepted by the Government.

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Introduction

The Minister of Home Affairs, Shri Amit Shah said ‘The purpose of the old laws was to safeguard the government but the purpose of the new laws is to safeguard the rights of the public and to eliminate obstacles in the people’s access to those rights’ on 27 October 2023 while addressing the Dikshant Parade of 75 RR batch of IPS at Sardar Vallabhbhai Patel National Police Academy in Hyderabad¹. He said this in the context of the three laws that were introduced in Lok Sabha on 11 August 2023 to change the British era laws of CrPC, IPC and Evidence Act. The Home Secretary stated that the pre-independence criminal laws were used by the British to protect their colonial interests, to rule the people and the country and to maintain their authority and supremacy over India. There was a need for comprehensive review of the criminal laws, especially the Indian Penal Code, Criminal Procedure Code, and Indian Evidence Act and adapt them according to the present day needs and aspirations².

A long process had been followed in making of these laws. In 2019, Prime Minister Shri Narendra Modi had said that all the laws made during the time of the British across all the departments should be discussed and reviewed in accordance with the present times and in the interest of the Indian society. The Government had carried out extensive consultations to make these laws in which 18 States, 6 Union Territories, Supreme Court, 16 High Courts, 5 Judicial Academies, 22 Law Universities, 142 Members of Parliament, about 270 MLAs and public have given their suggestions regarding these new laws. The Home Minister said, for 4 years

¹ <https://pib.gov.in/PressReleaseSelfframePage.aspx?PRID=1971944>

² https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/15/188/246_2023_12_15.pdf?source=rajyasabha

intense discussions were held on these laws and he himself was present in 158 consultation meetings.³

Background

In the year 1834, the first Indian Law Commission was constituted under the Chairmanship of Lord Thomas Babington Macaulay to examine the jurisdiction, power and rules of the existing Courts as well as the police establishments and the laws in force in India. The Commission suggested various enactments to the Government. One of the important recommendations made by the Commission was on the Indian Penal Code which was enacted in 1860 and the said Code is still continuing in the country with some amendments made thereto from time to time⁴. It is a law which defines the right and responsibilities in civil law and crimes and punishment in criminal law. Categories⁵ of offences covered under it include those affecting: (i) the human body such as assault and murder (ii) of offences against property such as extortion and theft (iii) public order such as unlawful assembly and rioting (iv) public health, safety, decency, morality, and religion (v) defamation (vii) offences against the state, among others.

The existing laws, stemming from the colonial era, no longer represented the present day dynamics and aspirations of Indian society. The existing laws have often been criticised for being outdated and not in tune with present needs.

The Bharatiya Nyaya Sanhita, 2023 was introduced by the Union Home Minister; Shri Amit Shah on 11 August 2023 in the Lok Sabha and the Chairman, Rajya Sabha referred the Bill on 18 August 2023 along with other two Bills to the Department-related Parliamentary Standing Committee on Home Affairs for its

³ PIB Press Release <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1947941>

⁴ Statement of Objects and Reasons (P.103 of the Bill) <https://sansad.in/ls/legislation/bills>
[https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001744/M022133/ET/1521103200HistoryIPC-MHRD\(1.pdf](https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001744/M022133/ET/1521103200HistoryIPC-MHRD(1.pdf)

⁵ <https://www.legalserviceindia.com/legal/article-4435-offences-under-indian-penal-code-an-overview.html>

consideration and report. The Committee after deliberations submitted its [Report](#) to Rajya Sabha on 10 November 2023 with many observations and recommendations. The recommendations made by the Committee were considered by the Government and it was decided to withdraw the Bill pending in Lok Sabha and introduce a new Bill, the *The Bharatiya Nyaya (Second) Sanhita, 2023* incorporating therein those recommendations made by the Committee that have been accepted by the Government.

The *Bharatiya Nyaya (Second) Sanhita, 2023* seeks to change the nature of the law towards providing justice rather than punishment and would be a step forward to remove traces of colonial mind-set⁶. In this context, the Government of India introduced the *Bharatiya Nyaya (Second) Sanhita, 2023* Bill to replace the colonial era Indian Penal Code of 1860.

Objectives of the ‘The Bharatiya Nyaya (Second) Sanhita, 2023

The Bill seeks to achieve the following objectives⁷

- The Government considered it expedient and necessary to review the existing criminal laws with an aim to strengthen law and order and also focus on simplifying legal procedure so that ease of living is ensured to the common man.
- The Government also considered to make existing laws relevant to the contemporary situation and providing speedy justice to common man. Accordingly, various stake holders were consulted keeping in mind contemporary needs and aspirations of the people and with a view to create legal structure which is citizen centric and to secure life and liberty of the citizens.
- To streamline provisions relating to offences and penalties, it is now proposed to enact a new law by repealing the Indian Penal Code.

⁶https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/15/188/246_2023_12_15.pdf?source=rajyasabha

⁷ Statement of Objects and Reasons https://www.livelaw.in/pdf_upload/the-bharatiya-nyaya-sanhita-2023-485731.pdf

- It is proposed to provide first time community service as one of the punishments for petty offences.
- The offences against women and children, murder and offences against the State have been given precedence. Some offences have been made gender neutral.
- In order to deal effectively with the problem of organized crimes and terrorist activities, new offences of terrorist acts and organised crime have been added in the Bill with deterrent punishments.
- A new offence on acts of armed rebellion, subversive activities, separatist activities or endangering sovereignty or unity and integrity of India has also been added. The fines and punishments for various offences have also been suitably enhanced.

Some of the Newly Added Clauses/sections in the Bill⁸

1. '*Transgender*' has been defined in accordance with the Transgender Persons (Protection of Rights) Act, 2019 under Clause 2(10) of the proposed Sanhita.
2. '*Community Service*' has been introduced as one of punishments under clause 4(f). The proposed law prescribes this punishment for petty offences: like non-appearance in response to a proclamation [Clause 209], 'attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty' [Clause 226], petty theft on return of theft money, misconduct in public by a drunken person [Clause 355], defamation, [Clause 356] etc.
3. Abetment by a person outside India has been made an offence under Clause 48 to allow prosecution of person located in foreign country.
4. There was no provision to prosecute a person who employ or engage a child for the purpose of committing offences. A new Clause 95 has been added to make; hiring, employing, engaging or using a child for committing offences

⁸ 246th Report of Department-Related Parliamentary Standing Committee on Home Affairs Committee (Secretary Home Affairs Presentation to the Committee) P.5-6
(https://sansad.in/getFile/rsnew/Committee_site/Committee_File/ReportFile/15/188/246_2023_12_15.pdf?source=rajyasabha)

including sexual exploitation or pornography offence as if such person himself has committed the offence.

5. A new provision has been inserted in clause 103(2) relating to murder: *“when a group of five or more persons acting in concert commit a 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, and shall also be liable to fine.”*
6. As the instances of hit and run cases are on the rise, a new provision under clause 106 (2) has been made.
7. To curb the rise in instances of organized crime and subversive activities against the country, clause 111 has been inserted in the new law which prescribes punishments for various offences of organized crime.
8. A clause 113 has been added in the proposed law to provide for punishments in respect of acts of terrorism.
9. A new offence relating to act of endangering sovereignty, unity and integrity of India has been added under clause 152 in the new law.

Some of the main provisions of the Bill are as under:

Title	Clause	Provisions
Gender	Clause 2 (10)	<p>“gender”.—the pronoun “he” and its derivatives are used of any person, whether male, female or transgender.</p> <p><i>Explanation.</i>—“transgender” shall have the meaning assigned to it in Clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019; [section 40 of 2019]</p>
Information Technology Act, 2000	Clause 2 (39)	words and expressions used but not defined in this Sanhita but defined in the Information Technology Act, 2000 and the Bharatiya Nagarik Suraksha Sanhita, 2023 shall have the meanings respectively assigned to them in that Act and Sanhita
Act of a child above seven and under twelve of	Clause 21	Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Immature understanding		
Act of a person of unsound mind.	Clause 22	Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.
Act not intended to cause death, done by Consent in good faith for person's benefit.	Clause 26	Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.
Abetment in India of Offences outside India	Clause 47	<p>A person abets an offence within the meaning of this Sanhita who, in India, abets the commission of any act without and beyond India which would constitute an offence if committed in India.</p> <p><i>Illustration.</i></p> <p>A, in India, instigates B, a foreigner in country X, to commit a murder in that country, A is guilty of abetting murder.</p>
Abetment outside India for offence in India.	Clause 48	<p>A person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence if committed in India.</p> <p><i>Illustration.</i></p> <p>A, in country X, instigates B, to commit a murder in India, A is guilty of abetting murder.</p>
Punishment for rape in certain cases.	Clause 65 (1)	<p>Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:</p> <p>Provided further that any fine imposed under this subsection shall be paid to the victim.</p>

Punishment for rape in certain cases.	Clause 65 (2)	<p>Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:</p> <p>Provided further that any fine imposed under this section shall be paid to the victim.</p>
Sexual Intercourse by employing deceitful means, etc	Clause 69	<p>Whoever, by deceitful means or by making making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.</p> <p><i>Explanation.</i>—"deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.</p>
Gang rape	Clause 70(2)	<p>Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:</p> <p>Provided further that any fine imposed under this sub-section shall be paid to the victim.</p>
Printing or publishing any matter relating to Court proceedings	Clause 73	<p>Whoever prints or publishes any matter in relation to any proceeding before a Court with respect to an offence referred to in section 72 without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.</p>

without permission.		<i>Explanation.</i> —The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.
Husband or relative of husband of a woman subjecting her to cruelty.	Clause 85	Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
Cruelty defined.	Clause 86	For the purposes of section 85, “cruelty” means— (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.
Hiring, employing or engaging a child to Commit an offence.	Clause 95	Whoever hires employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself. <i>Explanation.</i> —Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section
Punishment for murder	Clause 103 (2)	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, and shall also be liable to fine.
Causing death by negligence	Clause 106	(1)Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

		<p>(2) Whoever causes death of any person by rash and negligent driving of vehicle not amounting to culpable homicide, and escapes without reporting it to a police officer or a Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine.</p>
Organised crime.	Clause 111	<p>(1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offences, cyber-crimes, trafficking, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom by any person or a groups of persons acting in concert, singly or jointly, either as a member of an organized 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 in direct material benefit including a financial benefit, shall constitute organized crime.</p>
Terrorist act.	Clause 113(1)	<p>1) Whoever does any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or with the intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—</p> <p>(a) by using bombs, dynamite or other explosive substance or inflammable substance or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substance (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause,—</p> <p>(i) death of, or injury to, any person or persons; or</p> <p>(ii) loss of, or damage to, or destruction of, property; or</p> <p>(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or</p> <p>(iv) damage to, the monetary stability of India by way of production or smuggling or circulation of counterfeit Indian paper currency, coin or of any other material; or</p> <p>(v) damage or destruction of any property in India or</p>

		<p>in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of other agencies; or</p> <p>(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or</p> <p>(c) detains, kidnaps or abducts any person and threatening to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act, commit a terrorist act.</p>
Terrorist act	Clause 113 (7)	<p>(7) Whoever knowingly possesses any property derived or obtained from commission of any terrorist act or acquired through the commission of any terrorist act shall be punished with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.</p> <p><i>Explanation.</i>—For the removal of doubts, it is hereby declared that the officer not below the rank of Superintendent of Police shall decide whether to register the case under this section or under the Unlawful Activities (Prevention) Act, 1967.</p>
Acts endangering sovereignty unity and Integrity of India.	Clause 152	<p>Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such acts shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine.</p>

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