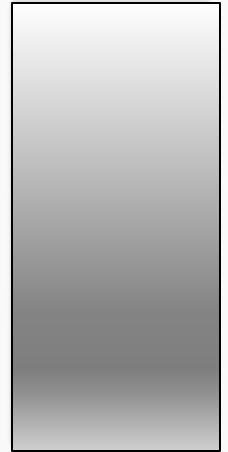


LEGALITE ADVISORS

**IMPORTANT LEGAL UPDATES - BHARTIYA NYAYA
SANHITA, 2023**





The Bharatiya Nyaya Sanhita, 2023

Hon'ble President of India. Smt. Droupadi Murmu, on Monday, December 25, 2023, in a historic move, gave her assent to the 3 (three) new criminal justice bills that were passed by Parliament last week during the winter session. The Indian Penal Code has been replaced by '**The Bharatiya Nyaya Sanhita, 2023**' while The Code of Criminal Procedure by '**The Bhartiya Nagarik Suraksha Sanhita, 2023**' and lastly the Indian Evidence Act has been substituted with '**The Bhartiya Sakshya Bill, 2023**'.

Part 1 – The key highlights of the 'The Bharatiya Nyaya Sanhita, 2023' ("**BNS**").

- The BNS is a significant legislative development which replaced the *erstwhile* colonial era legislation - The Indian Penal Code, 1860 ("**IPC**") effective December 25, 2023.
- The BNS has 358 (three hundred and fifty eight) sections, as opposed to the IPC which had 511 (five hundred and eleven) sections.
- 19 (nineteen) sections of the IPC have been repealed by the BNS, and 20 (twenty) new offences have been added (including offences relating to organised crime, acts of terrorism, punishments for mob lynching, and death penalty for gang rape of minor).
- The BNS adds community service as a part of punishment for few crimes. By way of an example - Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to one thousand rupees, or with both or with community service.
- The BNS removes sedition as an offence. However, the chapter on "Offences against the State" does capture aspects of the previous sedition law including a new offence for acts endangering the sovereignty, unity and integrity of India.
- The BNS *vide* section 111 adds 'Organised Crime' as an offence. Organised Crime includes 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 amongst other offences. "Organised crime syndicate" means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity;" for the purposes of this section.
- The BNS *vide* section 113 introduces a definition for 'Terrorist Act' for the first time. The offence is defined as '*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*' in any manner stated therein.
- Section 103 (2) states that murder by a group of five or more persons on grounds of certain identity markers such as caste, language or personal belief will be an offence with penalty life imprisonment or death, and with a fine. In common parlance this is often referred to as mob lynching.
- The BNS omits Section 377 of the IPC, in line with the Supreme Court judgement of 2018 striking down the same. This decriminalizes offences which relate to unnatural sex against the order of nature.
- The BNS confirms the 2018 Supreme Court judgement on adultery. The same is not a criminal offence under the BNS. However, the BNS retains section 498 of the IPC (section

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The Bharatiya Nyaya Sanhita, 2023

- 84 of the BNS) which penalises a man for enticing the wife of another man so that she may have intercourse with any person.
- Section 309 of IPC which prescribed punishment for attempt to commit suicide, has been deleted under the BNS.
 - Changing the age from 16 (sixteen) years to 18 (eighteen) years expands the scope of the provision of 'Gang rape on women' to include those offenders who commit gangrape on women between 16 (sixteen) years to 18 (eighteen) years of age. Additionally, this offence is now punishable with the death penalty. This also explains why section 376 DB of the IPC (which prescribed the punishment for gangrape of a woman under twelve years of age) has now been deleted, as the offences under that provision are now included within the scope of Section 70(2) of the BNS.
 - Colonial remnants like 'British calendar', 'justice of the peace', etc. have been deleted.
 - The definition of 'gender' under section 2(10) of the BNS, includes a transgender person.
 - The archaic expressions like 'lunatic', 'insane' and 'idiot' have been done away with in the BNS.

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