



THE NEW CRIMINAL LAWS: HERALDING A NEW ERA IN CRIMINAL LAW JURISPRUDENCE

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ABSTRACT

Replacement of the old and archaic 150-year-old criminal laws with the new criminal laws is a watershed moment for Indian criminal law jurisprudence. Laws need to keep pace with the changing needs of society and the old laws needed transformation to align with contemporary statutes, incorporate judicial pronouncements and incorporate technological advancements. The arduous exercise was undertaken in order to decolonise and indianize the laws, remove redundant provisions, introduce new provisions to deal with newer kinds of crimes, introduce new rules of evidence to deal with technological challenges and streamline investigations and trials to ensure smooth and quick justice delivery. This article traces the development of criminal laws in India while critically highlighting the areas where we could have done better.

Keywords: *Organised Crime, Decolonisation, Victim Friendly, Time lines, BNS, BNSS, BSA.*

I. Introduction to Crime and Criminal Behaviour

The subject of crime is as old as mankind itself but it is impossible to define the term ‘crime’ with perfection owing to its varying content. Russel, in his book on Crimes, says “To define crime is a task which has so far not been satisfactorily accomplished by any writer. In fact, criminal offences are basically the creation of criminal policy adopted from time to time by those sections of the community who are powerful or astute enough to safeguard their own security and comfort by causing sovereign power in the state to repress conduct which they feel may endanger their position.”¹ The word crime owes its origin to the Greek word ‘*Krima*’ which means offence against the community, rather than a private or a moral wrong.² Some writers trace its origin to the Latin root ‘*Cerno*’ meaning to decide, resolve or determine. Whether a given act or omission constitutes a crime does not depend on the nature of that act

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¹ J.W.Cecil Turner, *Russel on Crimes* (12th ed Stevens, London,1964).

² Bakaoukas Michael, “The Conceptualization of ‘Crime’ in Classical Greek Antiquity: From the ancient Greek ‘Crime’ (*Krima*) as an intellectual error to the Christian ‘Crime’ (*Crimen*) as a moral sin.” ERCES (European and International research group on Crime, Social Philosophy and Ethics), 2005.

or omission. It depends on the nature of legal consequences that may follow it.³ An act or omission is a crime if it is capable of being followed by criminal proceedings.⁴

Different civilizations have different notions as to what constitutes criminal behaviour and sometimes their notions may change with time. Some acts which were previously regarded as pious or rightful might be later regarded as crimes if the law declares them to be so. For example the social practices of Dowry and *Sati pratha* in India, which were earlier considered to be praiseworthy have now been declared as crimes by the Dowry Prohibition Act, 1961 and The commission of Sati (Prevention) Act, 1987, in view of the monstrous and socially damaging proportions assumed by these practices. Similarly social discrimination on Caste basis, Child marriages, *Devdasi* system and many other practices earlier considered unobjectionable are now criminal acts punishable under the law⁵.

Criminal laws

Laws are a potent tool to regulate human behaviour in civilised societies. Acts that are capable of causing public harm or creating an alarm and scare in the society are dealt with seriously and categorised as Crimes. The three major legislative enactments on Criminal Law in India are the *Bharatiya Nyaya Sanhita, 2023*; the *Bharatiya Nagarik Suraksha Sanhita, 2023* and the *Bharatiya Sakshya Adhiniyam, 2023*. Law on crimes is divided into substantive and procedural legislations. The *Bharatiya Nyaya Sanhita, 2023* has replaced the Indian Penal Code, 1860 as the substantive enactment on criminal law in India which prescribes the definitions of substantive crimes such as theft, murder, forgery etc. It lays down the essential ingredients of every crime and also provides the punishment for the same. Unless all the requirements necessary to constitute a crime under the BNS are fulfilled, no person can be held guilty of a crime. It lays down the conditions required for imposition of criminal liability as well as the conditions required for exemption from criminal liability. The procedural law prescribes the procedure for setting the criminal justice machinery in action and has provisions relating to registration of criminal cases, investigations, arrest of accused persons, bail, framing of charges, conduct of trial, plea bargaining, compounding of offences, execution of death penalty, appeals etc. The *Sakshay Adhiniyam* supports the principal substantive and procedural

³ *Seaman v. Burley* (1896) 2 QB, P.346.

⁴ Glanville Williams, *Learning the Law* 3 (11th ed, Stevens, London, 1982).

⁵ See the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; The Prohibition of Child Marriage Act, 2006; Karnataka Devadasis (Prohibition of Dedication) Act, 1982.

laws by laying down rules relating to collection, relevance and admissibility of evidences, examination of witnesses and other matters significant to the criminal case.

Historical background and development of the New Criminal Laws

Prior to 1860 there was no uniformity in the Indian provincial laws in dealing with criminal matters. Pundits and Kazis were consulted on legal issues depending upon the religion of the parties involved. There was widespread confusion and uncertainty regarding laws and this led to arbitrary decisions by the courts. In 1833, Lord Macaulay moved the House of Commons to codify the entire bulk of criminal law in India. This led to the constitution of the First Indian Law Commission in 1834. After the expiry of its term the Second Law Commission was constituted with the same members in 1845 and they drafted an exhaustive code after much deliberations and revisions. The Bill which they finally submitted to the Legislative Council in 1856 was passed on October 6th, 1860 as the Indian Penal Code, 1860 (Act XLV of 1860) and became operational from January 1st 1862. To ensure the proper implementation of the substantive laws, two sets of procedural laws were enacted. One for the presidency towns and other for the provinces. Indian Evidence Act which was enacted in 1872 was amended several times during the 152 years of its existence to modernise it as per the changing needs of time. The procedural laws were consolidated into a single Code of Criminal Procedure on 22nd march 1898. It was amended a few times but after gaining independence from the Britishers, the law commission suggested significant reforms in our criminal justice machinery and the old CrPC was replaced by a new Code of criminal procedure in 1973. The objective was to constitutionalise our procedures But, interest of significant stakeholders was overlooked as the law failed to recognize that punishment to accused doesn't necessarily translate into justice for the victim. An accused does not cease to be human, the moment he is arrested. The law did not make provisions for protection of rights of accused persons, arrested persons or under trials. There was no provision for compensation for victims or protection of witnesses. Judiciary did step in from time to time to pass guidelines⁶ and the legislature also undertook significant amendments but there was a dire necessity to overhaul the century old laws.

Initially the Indian Penal Code consisted of 23 chapters and 511 Sections, but with the passage of time many sections were added and deleted in order to amend the code according to the changing needs of time and society. Three new chapters were added. Chapter V-A consisting of two sections 120A and 120B dealing with the offence of Criminal conspiracy was added in

⁶ See *DK Basu v. State of West Bengal*, (1997) 1 SCC 416; *Chairman Railway board v. Chandrima Das*, AIR 2000SC 988; *Neelam Katara v. UOI* 2003 SCC online Del 952

1913 by The Indian Criminal Law Amendment Act, 1913 (8 of 1913). Chapter IX-A was inserted in 1920 to lay down law regarding Election offences by The Indian Elections Offences and Inquiries Act, 1920 (39 of 1920). This chapter consists of total nine sections from 171A to 171I. In 1983 another chapter XX-A consisting of a single section 498A was inserted in the IPC by The Criminal Law (Second Amendment) Act, 1983 (46 of 1983), to deal with offences involving cruelty against a married woman by husband or the relatives of husband. In addition to these 40 more sections (52A, 53A, 55A, 108A, 121A, 124A, 138A, 153A, 153AA, 153B, 174A, 195A, 216A, 216B, 225A, 225B, 228A, 229A, 263D, 294A, 295D, 304A, 304B, 363A, 364A, 366A, 366B, 376A, 376B, 376C, 376D, 376DA, 376DB, 376DC, 477A, 489A, 489B, 489C, 489D, 489E) were added and 21 sections (Sections 13, 15, 16, 56, 58, 59, 61, 62, 138A, 161, 162, 163, 164, 165, 165A, 216B, 303, 478, 480, 490 and 492) were deleted from time to time. The years 1983, 2013 and 2018 witnessed major overhaul in law relating to sexual offences. In 1983, Mathura case sparked a series of protests ultimately leading to changes in rape laws, introduction of custodial rapes as a separate category and also acknowledging the right to non disclosure of identity of rape victims. In 2013 the definition of rape was enlarged to include all forms of penetrative violations of human anatomy and four new types of sexual offences were introduced in the form of sexual harassment, disrobing, voyeurism and stalking. The 2018 amendment prescribed harsher penalties for rapes of minors. The evidence act was also amended from time to time to deal with challenges faced by prosecution agencies in prosecuting crimes occurring in private such as in cases of rape, or where witnesses would be reluctant to testify such as in cases of dowry deaths or abetment of suicides. Thus presumptions were added in the evidence law which reversed the onus of proof on the accused party. From time to time major amendments in the area of criminal laws were undertaken in light of suggestions given by the Santhanam committee, the Malimath committee, and Justice Verma Committee to deal with problems plaguing the modern day society, but an overhaul was overdue. In 2020, the Ministry of Home Affairs constituted a committee headed by Prof. (Dr.) Ranbir Singh, the then Vice Chancellor of National Law University (NLU), Delhi to review the three codes of criminal law and recommend reforms in the criminal laws of the country in a principled, effective and efficient manner so as to ensure the safety and security of the individual, the community and the nation and prioritise the constitutional values of justice, dignity and the inherent worth of the individual. Subsequently a committee of legal experts and policy makers drafted three new bills to replace the three old criminal laws. The three bills titled, the *Bharatiya Nyaya Sanhita* (BNS) alongwith the BNSS and BSA were introduced in the Lok Sabha on August 11, 2023 to replace the IPC, CrPC and

IEA. It was examined by the Standing Committee on Home Affairs. The committee submitted its report on November 10, 2023. The *Bharatiya Nyaya (Second) Sanhita, 2023* (Bill no. 173 of 2023) was introduced on December 12, 2023 after the earlier Bill was withdrawn. On 20th Dec the BNS (second) Bill was passed by Lok Sabha by majority voice vote and the very next day i.e. on 21st December, 2023 by the Rajya Sabha in similar fashion. On 25th Dec, 2023 the Bill received the assent of the President and became operational from July 1st 2024.

II. Changes in Titles

These new laws have replaced the archaic criminal laws that were enacted by our colonial masters in the 19th century for their subjects. The laws have Hindi titles and use ‘Bharat’ in their titles. The Constitution of India declares, “India, that is Bharat, shall be a union of states”⁷. India does not have a single designated national language however, Hindi has been designated as the official language.⁸ Article 351 also issues directs the Union of India to take steps for promotion and spread of the Hindi language. Bharat is a term that finds mention in most of Indian languages, whereas India was a name given to us by outsiders such as ancient Persians, Greek and later Britishers. Bharat is our native term and proclaims our deliberate move to embrace our indigenous heritage, emphasizing upon the historical and cultural magnificence of our civilization while discarding the colonial era titles. This move is also significant at a time when Bharat is consolidating its position as a global leader on the international plane.

The titles also reflect a conscious attempt to shed the colonial mindset. The objective behind the old substantive criminal law was to punish those who dared to transgress the norms established by these imperial rulers, hence the title Indian Penal Code. The new law has been enacted by our democratically elected leaders for their own people, hence the focus has shifted from ‘penal’ to ‘nyaya’. The objective is to ensure justice and therefore we have prescribed punishments depending upon the gravity of crimes. For petty offences committed by first time offenders, the law introduces community service as a kind of punishment.

The Code of Criminal Procedure which was the procedural law merely laid down the procedure to be followed for apprehending, trying and punishing those offenders. The new law proclaims that the objective is protection of our people hence the title ‘*Bharatiya Nagrik Suraksha Sanhita*’ By providing stricter timelines, clarifying procedures for arrest and bail and

⁷ Constitution of India, art. 1.

⁸ *Id.*, art. 343(1).

leveraging technology for better investigations, the new procedural law gives out a clear message that the guilty will not be spared and at the same time affirms that the innocent have nothing to fear. This citizen centric approach will serve to inspire faith of our people in the criminal justice system.

III. Structural changes in the laws

From 511 sections spread across 23 chapters under the Indian Penal Code, 1860, we have reduced the number of sections to 358 spread across 20 chapters under the *Bharatiya Nyaya Sanhita*, 2023. In CrPC we had 484 sections in 37 chapters. BNSS has increased the procedural provisions to 531 sections across 39 chapters. The least changes have been effected under the evidence laws where the 167 sections under 11 chapters of Indian Evidence Act, 1872 have been replaced by 170 sections under 12 chapters under the *Bharatiya Sakshya Adhinyam*, 2023.

In BNS, many new types of crimes have been added, jail terms and fines have been increased in 116 sections while mandatory minimum punishments have now been prescribed for 23 offences. Community service has been introduced as a new type of punishment in six crimes.

BNSS has added 92 new sections, subsections and clauses, deleted 14 sections and modified 117 others. Timelines have been specified at 35 places and audio-video electronic means are required at 35 places. BSA has a total of 15 new insertions in the form of sections, sub-sections, explanations and provisos; 24 provisions have been modified and there are ten deletions of sections and explanations.

The laws have been better structured, thus making it easier for people to understand. Law is meant for people and should be in easy language. Now all definitions have been updated and included in one place. They have also been arranged alphabetically for convenience. The chapterization scheme has also been updated to reflect the changing priorities of the State.

Under IPC, 1860 the crime of abetment was covered under chapter V titled 'Of Abetment' consisting of sections 107-120; Criminal Conspiracy⁹ was covered under Chapter VA consisting of Sections 120A and 120B; and attempt was covered under Chapter XXIII consisting of a single provision, Section 511. BNS, 2023 has clubbed all inchoate crimes in one single chapter, Chapter IV titled "Of Abetment, Criminal Conspiracy and Attempt"

⁹ Inserted by Act 8 of 1913

extending from Sections 45 to Section 62. The extraterritorial jurisdiction of BNS extends to abetment outside India of crimes committed within India.¹⁰

A new chapter titled, 'offences against woman and child' has been introduced in the Bharatiya Nyaya Sanhita in which all offences against women and children and related provisions have been placed together, and this chapter has been placed before the chapter related to crimes against State or even human body to reflect the State's commitment towards safeguarding the most vulnerable segment of our society i.e. women and children. Two significant additions in this chapter are in the form of Sections 69 and 95.

IV. Paradigm Shift

The new laws taken together have adopted a progressive stance. Instead of focusing only on punishment, the main goal is to ensure justice to all stakeholders. Our reformatory approach towards offenders makes room for restorative principles of justice in the new laws by introducing community service as a kind of punishment in some petty offences or for first time. We have retained the deterrence element by continuing with death penalty in certain heinous offences. From 1860 to 2023 the Indian Penal Code has been amended several times in the course of its 163 years and many provisions have been added and deleted from the same. Punishments such as penal servitude (Repealed by Criminal Justice Act, 1948) and Transportation for life (Repealed by Criminal Laws (Amendment) Act, 26 of 1955) were effaced from our statutes. Whipping was also abolished as a punishment in the year 1955. The punishments prescribed under our laws had become outdated and there was a need to introduce newer forms of punishment bearing in mind the object of punishment being punitive as well as reformatory. "The punitive strategy of our penal code did not sufficiently reflect the modern trends in correctional treatment and personalized sentencing. When accused persons are of tender age then even in a murder case it is not desirable to send them beyond the high prison walls and forget all about their correction and eventual reformation".¹¹

There was a need to individualize punishments keeping in mind the peculiar background and circumstances of each criminal that prompt him to commit crimes. The social, economic, educational and psychological problems of every individual should be considered and appropriate punishments should be awarded to the accused. It is the duty of judges to consider

¹⁰ S. 48: Abetment outside India for Offence in India

¹¹ *Shivaji v. State of Maharashtra*, AIR 1973 SC 2622

the totality of factors bearing on the offence and the offender and fix a punishment which will promote effectively the punitive objective of the law-deterrence and rehabilitation. In *Inder Singh v. State*¹², the Supreme Court directed the State Government to ensure that young accused are not given any degrading work and to be given the benefit of liberal parole every year if their behavior shows responsibility and trustworthiness. The court also directed the Sessions Judge to make jail visits to ensure compliance with these directions.

In the case of *Ashok Kumar v. State (Delhi Administration)*¹³, the accused in 1971 while he was a 19 years old college student, tried his hand at stealing a scooter. He was arrested but bailed out and while on bail was accused of committing a car theft. Both these cases were tried and he was found guilty. Allowing his appeals on the question of sentence the court observed “The long protracted litigation from 1971 onwards is some deterrent for a young man in his 20s. The youthful age of the offender is a factor which deserves consideration. A long period of incarceration may brutalize a boy and blunt his finer sensibilities so that the incarceration may perhaps be more criminal than the one at the point of entry. The offender having served a term of nearly six months must have realized that the game of crime does not pay”.

Over the years, Community service came to be increasingly recognized as an alternative to imprisonment in petty offences. Clause 27 of the IPC (Amendment) Bill, 1978, had suggested the insertion of a new section 74A exclusively to deal with punishment of community service. It specified that convict will have to perform the service without any remuneration. The All India Committee on Jail reforms also gave suggestions to improve conditions inside the prisons, and also about finding alternatives to incarceration.

In 2023 we introduced “community service” as a type of punishment under Section 4(f) of the BNS, but, it is not defined in BNS. However, Community service may be understood as work which the court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.¹⁴ This is a form of non-custodial, restorative justice and an attempt at re-socialising the convict and has been introduced by BNS in the following cases-

- i. Non-appearance in response to a proclamation¹⁵ under Section 84, BNSS

¹² AIR 1978 SC 1091

¹³ AIR 1980 SC 636

¹⁴ Explanation to Section 23(3) of BNSS, 2023.

¹⁵ BNS, sec. 209.

- ii. Involvement of public servant in illegal trade¹⁶
- iii. Attempt to commit suicide to compel or restraint exercise of lawful power of public servant¹⁷
- iv. Theft¹⁸
- v. Misconduct in public by a drunken person¹⁹
- vi. Defamation²⁰

The introduction of ‘Community Service’ under clause 4(f) of the BNS is a welcome step. This is a very commendable effort and a reformatory approach to tackle delinquents. Its introduction as a punishment was appreciated by all stakeholders as it shall not only reduce the burden on the prison infrastructure by reducing the number of prison inmates but also improve the management of prisons in the country. However, the term and nature of ‘community service’ has not been specified, and judges will have to devise means of ensuring that the punishment of community service is tailored as per the requirement of each case so as to serve the ends of justice while also reforming and reintegrating the offender.

V. Changes in definitions

The Indian Penal Code did not define the term ‘child’. It used the term ‘minor’ that had separate connotations for boys as well as girls.²¹ The definition of “child” has been introduced in BNS to align with other statutory enactments. Section 2(12) of the Juvenile Justice (care and protection of children) Act, 2015 defines “Child” a person who has not completed eighteen years of age. Section 2 (1)(d) of the Protection of Children from Sexual Offences Act provides “child” means any person below the age of eighteen years. Under BNS, 2023 ‘child’ is a gender neutral term that applies uniformly to all persons who are below eighteen years of age, irrespective of their gender.

Taking note of technological advancements the term document under Section 2 (8) of the BNS is not restricted to paper records and includes ‘electronic and digital records’. Section 2(1)(d) of the *Bharatiya Sakshya Adhiniyam*, 2023 states that 'document' means any matter expressed

¹⁶ *Id.*, sec 202.

¹⁷ *Id.*, sec.226.

¹⁸ *Id.*, proviso to sec. 303.

¹⁹ *Id.*, sec.355.

²⁰ *Id.*, sec.35.

²¹ Under IPC a girl below 18 years could be kidnapped from lawful guardianship whereas for boys they could be kidnapped only till they attained 16 years of age. See Section 361 of the Indian Penal Code, 1860.

or described upon any substance by means of letters, figures or marks, or by more than one of those means intended to be used, or which may be used, for the purpose of recording that matter and includes electronic and digital records. This also corresponds with Section 2(1)(t) of the Information Technology Act, 2000 which defines the expression "electronic record" as to mean data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche."

Similarly, taking note of changing dimensions of property and associated crimes the definition of movable property has also been amended.²² Now definition of 'movable property' omits the word "are intended to include corporeal" before the word "property" which was there in the definition of movable property in section 22 of IPC. Therefore, movable property includes property of every description other than immovable property whether such property is in corporeal (tangible physical) form or not.

This new definition of movable property under BNS will include intangible assets like patents, copyrights, etc., also as well as actionable claims. In view of expanded definition of movable property, theft will include theft of intangible assets, theft of data, theft through card skimming, online theft through hacking bank accounts or cloning the mobile etc.

Another change is relating to the term 'calender'. Under the BNS, Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the Gregorian calendar.²³ This change, while, has no legal implications has been done so as to efface all traces of the colonial legacy by removing all terms related to the colonial empire such as british queen, or british calender . A year is the time period in which the revolution of the earth round the sun is completed, viz., 365 days, 5 hours, 48 minutes and 51.6 seconds. For ordinary purposes the average length of a year is taken to be 365 days. But every fourth year the extra hours are taken into account and the fourth year consists of 366 days and hence called the leap year. Commonly a year is divided into 12 months of irregular lengths. 11 of the months have either 30 or 31 days while one month (February) has 28 days and 29 days in a leap year. The Gregorian Calendar is the most widely used calendar in the world today. The term 'British' calender used in IPC has been replaced with 'Gregorian' in a bid to decolonise our substantive criminal law.

VI. Gender inclusivity and partial gender neutrality

²² Section 2(21) of BNS

²³ Section 2 (20) BNS

In a historical step, the BNS has included transgenders as persons. Section 2 (10) of the *Bharatiya Nyaya Sanhita, 2023* defines the term ‘Gender’. It lays down that, “The pronoun “he” and its derivatives are used of any person, whether male, female or transgender”.

The explanation appended to this section clarifies that ‘transgender’ shall have the same meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019 (40 Of 2019)

In 2019, this act was enacted to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto. According to Section 2 (k) of the Transgender Persons (Protection of Rights) Act, 2019, “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as *kinner*, *hijra*, *aravani* and *jogta*.

Earlier law did not acknowledge the separate identity of transgenders as persons. The significance of identity was highlighted in *National Legal Services Authority v. Union of India and others*²⁴, wherein Radhakrishnan, J., after referring to catena of judgments and certain International Covenants, opined that “gender identity is one of the most fundamental aspects of life which refers to a person’s intrinsic sense of being male, female or transgender or transsexual person. A person’s sex is usually assigned at birth, but a relatively small group of persons may be born with bodies which incorporate both or certain aspects of both male and female physiology”. The learned Judge further observed that “at times, genital anatomy problems may arise in certain persons in the sense that their innate perception of themselves is not in conformity with the sex assigned to them at birth and may include pre-and post-operative transsexual persons and also persons who do not choose to undergo or do not have access to operation and also include persons who cannot undergo successful operation.” Sikri, J., in his concurring opinion, dwelling upon the rights of transgenders, laid down that “gender identification is an essential component which is required for enjoying civil rights by the community. It is only with this recognition that many rights attached to the sexual recognition as —third gender would be available to the said community more meaningfully viz. the right to vote, the right to own property, the right to marry, the right to claim a formal identity through

²⁴ (2014) 5 SCC 438 .

a passport and a ration card, a driver's licence, the right to education, employment, health and so on"²⁵ In this case transgenders have been recognized as a third gender apart from male and female and have been given certain rights.

The 246th Report of the Parliamentary Standing Committee on Home Affairs noted the widening of the 'gender' definition in the BNS. Considering the fact that the population of transgender persons is 4,87,803 (as per the Census 2011), the Committee appreciated that the scope of gender under clause 2(9) has been expanded by the Government to make it more inclusive. This change gives effect to the rights of transgender persons recognised by the Supreme Court in the *Navtej Singh Johar v. Union of India* case, 2018."²⁶

Crimes of voyeurism and stalking have been made partially gender neutral in the sense that the perpetrator can be any person whereas the victim can only be a woman. The term 'man' has been replaced with 'whoever' so that the perpetrator may be a man, a woman or even a trans person.

The term, 'Child' has also been defined in a gender neutral manner to mean any person below the age of eighteen years. This would now include boys, girls as well as trans children under its protection.

Under Section 3 (3) of the BNS²⁷, property in the possession of a person's spouse, clerk or servant, on account of that person, is deemed to be in that person's possession. This sub-section replaces the term 'wife' used under Section 27 of the IPC with the gender neutral term 'spouse'. Similarly for harbouring of offenders and deserters now the exemption from criminal liability earlier accorded to only wives²⁸ has been extended to both spouses.²⁹

Earlier summons could be served in the absence of the person summoned upon some other adult male member of his family. Now, the law had deleted the term 'male' and summons may be served on any adult member, whether male or female, of the family.³⁰

VII. Introduction of new crimes

²⁵ *Ibid.*

²⁶ Para 3.3.5 of the report.

²⁷ S. 3(3) When property is in the possession of a person's spouse, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Sanhita.

²⁸ Exception to Section 136 IPC

²⁹ BNS, sec. 164

³⁰ Section 66 BNSS

While redundant provisions such as related to thug,³¹ adultery³² or carnal intercourse against the order of nature³³ have been struck down, the new laws have introduced some newer types of crimes to deal with rising crime graph of our country.

Section 69 of BNS introduces a new provision wherein an accused who exploits a woman and fraudulently obtains her consent for sexual intercourse by promising her marriage, job or promotion in return, is punishable. It provides that whoever, by deceitful means or making by promise to marry a woman without any intention of fulfilling the same, and 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.

Section 95 of BNS has been introduced with a view to minimise chances of children being lured, threatened or by any means being sucked into the vortex of criminal life. There are several reasons why children fall easy prey to such people who use them to commit crimes. It could be the lure of easy money, luxurious life, substance abuse, parental neglect or lenient provisions under the Juvenile Justice Act, 2015 under which a child, unless accused of a heinous crime, is not to be detained beyond three years and after that too his records are to be erased to prevent any kind of stigma.

Section 103(2) of BNS provides 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, and shall also be liable to fine.

This is in line with the Supreme Court of India recommendations in *Tehseen S Poonawalla v. Union of India case*³⁴. Section 103(2) of the BNS introduces joint liability within the language of the statutory provision itself subject to the condition that there should be a minimum of five persons. For group with less than five, common intention may be invoked by the prosecution. Section 103 provides punishment for murder. To bring the case within sub-section (2) of section 103, the act in addition to being committed in concert by five or more persons should amount to murder as defined under Section 101 of the BNS. Further, in order to invoke liability under this sub-section the accused should have committed the crime on grounds of race, caste,

³¹ Section 310 IPC

³² Section 397 IPC

³³ Section 377 IPC

³⁴ (2018)9 SCC 501

community, sex, personal beliefs, language etc. Thus, cases of honour killings, hate crimes and mob lynchings would be covered herein.

BNS increases the punishment for causing death by negligence from a maximum of two years to a maximum of five years.³⁵ This change reflects a stricter approach to cases of negligence resulting in death. Also, medical negligence has been made a punishable crime.³⁶ In case of registered medical practitioner if negligent act is done while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

We are increasingly witnessing a rise in the crimes committed by groups in an organized manner like smuggling; trafficking of drugs, humans; money laundering, cyber crimes etc. Generally people who are part of some organized crime syndicate plan and engage in systematically committing various activities in furtherance of some criminal objective. So, people associate for carrying out any criminal activities and in accordance with a bigger plan and execute the parts assigned to them at different times or different places towards achievement of the common goal. The IPC did not have any section dealing with organised crime by such crime syndicates/gangs. Organised Crime was dealt with by state laws like Maharashtra Control of Organised Crime Act, 1999 (MCOCA,1999). BNS has introduced provisions dealing with organised crime³⁷ as well as petty organized³⁸ crime as specific crimes to deal with such crimes.

Another provision has been introduced in the form of Section 113 to deal with Terrorist acts. Terrorism is the biggest threat to humans in India as well as across the world. Acts of terrorism include threats of terrorism; assassinations; kidnappings; hijackings; bomb scares and bombings; cyberattacks (computer-based); and the use of chemical, biological, nuclear and radiological weapons. It targets innocents and there is general fear or alarm amongst people. Reasons might be ethnic, religious, ideological beliefs, political causes or any thing else

Terrorism compels states to take strong repressive actions which might sometimes border onto illegal or unconstitutional. This creates negative impression amongst people and governments lose popular support as they get convinced that their state has failed to control terrorism or worse that the state is compelling people to become terrorists by employing unlawful tactics.

³⁵ See Section 106(1) BNS, 2023.

³⁶ See S. 106 (1) BNS Causing death by negligence.

³⁷ BNS, sec. 111.

³⁸ *Id.*, sec.112.

So the State is projected in a negative light. We had UAPA (and the erstwhile TADA and POTA) as a special legislation. Now, BNS also a specific provision to deal with terrorist acts.

Unlike IPC, sedition³⁹ is no longer an offence under BNS. Instead, offence under BNS is treason which is covered in section 152 of BNS as acts endangering sovereignty, unity and integrity of India.

Section 304 of BNS introduces snatching as distinct crime. IPC did not treat snatching as offence distinct from theft under section 379 of IPC. Under BNS, “theft is “snatching” if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any movable property. Punishment for snatching has been prescribed as imprisonment of either description for a term which may extend to three years, and shall also be liable to fine”

Further the law acknowledges the changing dimensions of crime and provides that if offender commits snatching as a lone wolf (operating by himself solo and not part of gang/group), he will be punishable under this section and if he commits “snatching”(chain snatching, mobile snatching etc.) as a member of a gang or group, then the offence of snatching would be punishable under section 112 as petty organized crime.

Attempt to commit suicide⁴⁰ under the Indian Penal Code had been impliedly decriminalized by virtue of the Mental Health Care Act, 2017 but, attempting suicide has been re-introduced as a crime under BNS, but only when such an act is done to prevent public servant from performing his duty⁴¹. Age of marital rape exemption⁴² has been increased to 18 years to conform to the Supreme Court judgment in the case of *Independent thought v. Union of India*⁴³. Stigmatizing terms such as lunatic, idiot- have been removed. Terms referring to colonial era such as British calendar, queen, British India have been removed in order to decolonize our substantive law on crimes and make it more suited to the Indian ethos.

VIII. Some significant changes in the procedural law

The Bharatiya Nagarik Suraksha Sanhita, 2023 has replaced the Code of Criminal Procedure, 1973. The reasons behind this change is to ensure fast and efficient justice delivery. Towards this end provisions have been introduced to secure release of those undertrials, on personal

³⁹ Section 124A IPC

⁴⁰ Section 309 IPC

⁴¹ Section 226 BNS

⁴² *Id.*, exception 2 to Section 63.

⁴³ AIR 2017 SC 4904

bond, who have spent half of maximum prescribed sentence in custody. The new sanhita aims to reduce complexity by streamlining legal procedures and reduce pendency by prescribing fixed timelines have been set for procedures ranging from investigations, medical examinations, conduct of trials, to pronouncement of judgments. In order to improve the conviction rate, the quality of investigations has to be enhanced and towards that end we need to use technology at relevant places. Wherever required, trials, inquiries and proceedings may be conducted electronically though video-conferencing. Also, in-absentia trials⁴⁴ may be conducted for proclaimed offenders evading trials. Utilization of forensic has been mandated for offences punishable with imprisonment of seven years and above⁴⁵. The law encourages usage of technology and forensics in crime investigations, through registration of e- FIR's⁴⁶ etc. Jurisdictional formalities have been eased by introducing the concept of Zero FIR⁴⁷. In petty offences, summary trials have been made mandatory⁴⁸.

There have been significant changes in powers of police relating to Arrest⁴⁹. In case of offences punishable with imprisonment upto 7 years decision has to be taken whether to arrest or not and reasons have to be recorded for both⁵⁰, whereas for offences punishable with imprisonment more than 7 years while they may decide whether to arrest or not, but recording of reasons for arrest is not mandatory⁵¹. Under Section. 35(3) Where the decision is against arrest then they must issue notice for appearance and such person shall be duty bound to appear.⁵² If such person fails to appear he may be arrested under S. 35 (6). If the person appears, he shall not be arrested. But, where arrest is required, he may be arrested after recording reasons. Further permission of police officer of rank of DSP or above is required in cases of arrest where offence is punishable with less than 3 years of imprisonment.⁵³To safeguard the rights of accused persons now the law mandates the display of arrest information in every police station and district headquarters⁵⁴. This shall help to minimize chances of custodial violence against arrested persons.

⁴⁴ Section 356 BNSS

⁴⁵ *Id.*, sec. 176 (3).

⁴⁶ *Id.*, sec. 173 (1).

⁴⁷ *ibid*

⁴⁸ Section 283-288 BNSS

⁴⁹ *Id.*, sec 35 (Section 41 CrPC)

⁵⁰ *Id.*, sec. 35 (1)(b).

⁵¹ *Id.*, sec. 35(1)(c).

⁵² *Id.*, sec. 35(4).

⁵³ *Id.*, sec. 35(7).

⁵⁴ *Id.*, sec. 37 (b).

Now victim has been accorded more visibility and say in the criminal system. The new laws mandate that victims have to be supplied copies of FIR's⁵⁵ and they have to be kept updated about progress of investigation. Further in cases where punishment is seven years or more, victim has to be heard before state decides to withdraw prosecution⁵⁶. Witness protection scheme has also been introduced in the Statute⁵⁷ (S. 368 BNSS)

IX. Notable developments in the evidence law

The Indian Evidence Act, 1872 did not address the technological advancements and there was a requirement of a law to fulfil the contemporary needs and aspirations of our people. Under the new law, evidence includes any information given electronically which would permit appearance of witnesses, accused, experts and victims through electronic means⁵⁸. Now electronic or digital records are admissible as evidence having the same legal effect, validity and enforceability as any other document⁵⁹. Standardized formats for certificates essential for validation of electronic evidences have streamlined admissibility of electronic records⁶⁰. *Bharatiya Sakshya Adhiniyam* has expanded the scope of secondary evidence to include copies made from original by mechanical processes. It introduces more precise and uniform rules of practice of courts in dealing with facts and circumstances of case by means of evidence. Some obsolete provisions have been dropped such as presumption regarding telegraphic messages⁶¹, presumption as to document admissible in England without proof of seal or signature⁶², or proof of cessation of territory⁶³ and power of juror or assessors to put questions⁶⁴.

X. Conclusion

Although the laws have been revised to align with contemporary legislations and incorporate certain significant judicial pronouncements, there are certain areas that seem to have been overlooked. For example adultery under Section 497 of the IPC was repealed to give effect to Supreme Court judgment in *Joseph Shine v. Union of India*,⁶⁵ but section 498 has been retained as section 84. This section deals with 'enticing or taking away or detaining with criminal intent

⁵⁵ *Id.*, sec.173 (2).

⁵⁶ *Id.*, sec.360.

⁵⁷ *Id.*, sec. 368.

⁵⁹ BSA, sec. 57

⁶⁰ See Schedule A

⁶¹ BSA, sec.88.

⁶² *Id.*, sec. 82.

⁶³ *Id.*, sec. 113.

⁶⁴ *Id.*, sec. 166.

⁶⁵ AIR 2018 SC 4898

a married woman', and treats even adult women as the chattel of her husband. Her agency is of no consequence in exonerating the accused and this provision applies only to women. What about husbands who are enticed or detained with criminal intent? The grounds on which Section 497 was struck down apply to section 498 too.

Another concern is the total removal of Section 377, while Supreme court had merely watered it down to exclude consensual homosexuality from ambit of criminality⁶⁶. By total removal, animals and adult men have been stripped of the legal protection against penetrative sexual assaults. The legislature also missed the opportunity to revise the regressive and subjective phrase 'outraging the modesty'. We could have replaced it with the more objective 'non-penetrative sexual assault'. The provisions relating to miscarriage⁶⁷ could also have been revised in light of the provisions of The Medical Termination of Pregnancy Act, 1971.

To quote the Greek philosopher Heraclitus, "the only constant in life is change". Society changes and laws need to keep pace with the changing times. These three laws have been drafted keeping in mind the contemporary needs and aspirations of our people. Needless to say, the changes introduced are commendable but in the absence of adequate infrastructure and trained manpower, it would be some time before we can witness the true impact of these new criminal laws.

⁶⁶ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321

⁶⁷ BNS, sec.88.