

# New Criminal Laws in India

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## Abstract

*India has completely overhauled its criminal justice system with three new criminal laws that coming into effect on 01 Jul 2024. The Bharatiya Nyaya Sanhita has replaced the Indian Penal Code; The Bharatiya Nagrik Suraksha Sanhita has replaced the Code of Criminal Procedure, and the Bharatiya Sakshya Adhinyam has replaced the Indian Evidence Act. The criminal justice system in India after Independence has not delivered satisfactory results because of certain inherent shortcomings including substandard investigation and prosecution, large pendency of criminal cases, and delay in disposal of cases. The military legal system of India will need to be updated to align with the new criminal investigation and trial procedures. This necessitates a complete overhaul of the military law in India and bringing out a common code for the three services based on our constitutional values. This integration promotes uniformity in legal standards and practices, creating a more unified and efficient legal framework for national security operations.*

## Introduction

The Parliament of India has replaced the three existing laws, namely the Indian Penal Code (IPC), 1860, the Code of Criminal Procedure (CrPC), 1973, and the Indian Evidence Act (IEA), 1872 by three new progressive and modern pieces of legislation, namely the *Bharatiya Nyaya Sanhita* (BNS), 2023, *Bharatiya Nagarik Suraksha Sanhita* (BNSS), 2023 and *Bharatiya Sakshya Adhinyam*

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(BSA), 2023 respectively. The new laws aim at providing speedy justice to the citizens of the country and will strengthen the judicial and court management system. The new criminal laws have come into force from 01 Jul 2024.

The government has announced that while the British colonial rulers implemented these laws with an intent to inflict punishment on Indian subjects, the new laws aim to render justice to citizens by overhauling the punishment and procedures applicable for the investigation and prosecution of crimes. A brief discussion of new laws and their ramifications for the armed forces are as follows:

The recent overhaul of India's criminal justice system, embodied in the BNS, BNSS, and BSA, necessitates significant changes to the military justice system. These new laws, which apply universally, including in court-martial trials, require a comprehensive update of the military legal framework to align with civilian judicial reforms. This integration ensures consistency in legal standards and practices, fostering a more cohesive and effective legal environment for national security operations.

### **The Bharatiya Nyaya Sanhita**

Consisting of 358 sections this is a streamlined version of the IPC, which originally consists of 511 sections. In the BNS, 20 new crimes have been added, while sentences have been increased for 33 crimes. Additionally, fine amounts have been increased, and mandatory minimum punishment have been increased for 83 crimes. New offences such as terrorism, mobile lynching, organised crime, gang rape, false promise of marriage, etc., have been introduced. The BNS also enhances punishment for crimes against women and children and replaces the offence of sedition with 'Acts endangering India's sovereignty, unity, and integrity'. The BNS has made sexual offences 'Gender Neutral' for the victim and the perpetrator. Both boys and girls can now be procured for sexual exploitation. The word 'Minor Girl' in IPC Section 366A has been replaced with the word 'Child' in BNS Section 96 to cover both male and female children below the age of 18 years and the offence of procurement has been made punishable.

## **Terrorism**

In order to tackle 'Organised Crime' and 'Terrorist Acts', these crimes have been added in the BNS with deterrent punishments.<sup>1</sup> The BNS punishes terrorist acts that are intending or likely to threaten India's unity, integrity, sovereignty, security, or economic security, or acts intended or likely to strike terror among the people. The new law prescribes the death penalty or life imprisonment for a terrorist act resulting in death. Sections 111 and 113 of the BNS also punish membership in any organised crime syndicate or terrorist organisation, harbouring or concealing any person who has committed an organised crime or terrorist act, and possession of any property derived or obtained from the commission of an organised crime or terrorist act.

## **Sedition**

The IPC Section 124A which dealt with the offence of sedition has been replaced by Section 152 of the BNS. The BNS does not refer to it as 'Sedition' and defines the offence as 'Acts endangering the sovereignty, unity and integrity of India'. It penalises the following:

- Exciting or attempting to excite secession, armed rebellion, or subversive activities,
- Encouraging feelings of separatist activities, or
- Endangering the sovereignty or unity, and integrity of India. These offences may involve exchange of words or signs, electronic communication, or use of financial means.

## **Reformative Measures for First-Time Offenders**

Multiple considerations have been introduced through several sections of the BNS for first-time offenders. They are to be given reduced punishment (one-fourth and one-sixth of stipulated punishment) in plea bargaining; and first-time under-trial offender is given statutory bail after completion of one-third of the maximum punishment prescribed. For the first time, 'Community Service' has been introduced as one of the punishments under BNS Section 4.<sup>2</sup> It has been specifically provided for six petty offences. non-appearance in response to a proclamation, attempt to commit suicide to compel or restraint the exercise of lawful power of

public servant, petty theft on the return of stolen money, misconduct in public by a drunken person, and defamation, among others. It introduces the reformatory approach in the punishment scheme which is aimed towards achieving *Nyaya* (justice) in the society.

### **Bharatiya Nagrik Suraksha Sanhita: Replacement for the Code of Criminal Procedure**

The new law is designed to ensure faster justice and address modern forms of crime. The total number of sections has been increased from 484 to 531. The need for audio and video provisions has been added at 35 places. Judgments are now required within 45 days of the trial's completion, and charges must be framed within 60 days of the first hearing. Timelines for the completion of trials and the pronouncement of judgments by courts have been provided. Trials can proceed in the absence of an accused declared a proclaimed offender, and judgments can be pronounced against such an accused.

Any person can now file a Zero First Information Report (FIR) at any police station, regardless of jurisdiction. An FIR can be lodged under Section 173 orally or by electronic means. Complainant can visit any police station to report a crime; the case must be transferred to the police station with jurisdiction within five days. An FIR can be registered even if a complaint is submitted via WhatsApp or e-mail. But the complainant will have to visit the police station within 72 hours afterwards. For certain offences against women, a female police officer is to lodge the FIR.

Investigators have to use a mobile app to record audio and video evidence while probing a case. Any search, enquiry, and arrest must be recorded and streamed Live on the Integrated Criminal Justice System portal. Videos can be saved on e-Saksh app. For cases with punishment involving jail terms exceeding 10 years, complainant and witnesses will have to give statement to judicial magistrates; earlier, this was mandatory only for rape and Protection of Children from Sexual Offences cases. Forensic experts will have to inspect crime scenes for any case punishable by a prison term of seven years or more. previously, there were no obligations on the part of police investigators to share probe updates with complainants; however, complainants must now be given regular updates on investigations, seizures, arrests, and searches.

## **Trial in Absentia**

The BNSS has introduced new provisions for conducting trial in absentia for certain kinds of accused.<sup>3</sup> It refers to conducting a criminal trial without the presence of the accused person in court. Under Section 355 of the BNSS, the judge or magistrate may conduct a trial of an accused in their absence if it is deemed that the personal attendance of the accused is not necessary in the interests of justice or if the accused persistently disturbs the proceedings in court. The BNSS allows trials in absentia of proclaimed offenders under specific conditions. Section 356 of the BNSS mandates the court to proceed with the trial in absentia when a person declared as a proclaimed offender has absconded to evade trial, and there is no immediate prospect of arresting him. It also specifies a mandatory waiting period of 90 days from the date of framing of the charge before commencing the trial. The BNSS states that the voluntary absence of the accused after the trial has commenced shall not prevent the continuation of the trial, including the pronouncement of the judgment, even if the accused is arrested or appears at the conclusion of the trial.

## **Plea Bargaining**

In Section 290 of the BNSS, plea bargaining<sup>4</sup> has been made time-bound and application can be made within 30 days from the date of framing of charge. Further, Section 293 of BNSS provides that where the accused is first-time offender and has not been convicted of any offence in the past, the court may sentence such an accused person to one-fourth or one-sixth of the punishment prescribed for such offence. The maximum period for which an undertrial prisoner can be detained has been prescribed in the Section 479 of BNSS. It has been provided that where a person is a first-time offender (who has never been convicted of any offence in the past), he shall be released on bond by the court; if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law. Further, it shall be the duty of the Superintendent of Jail to make an application to the Court in this regard.

## **Bharatiya Sakshya Adhiniyam**

This has replaced the IEA in that the total provisions have been increased from 167 to 170. Technological advancements have been integrated into the new law, incorporating several modern aids, including forensic techniques, for police investigations, court trials, and closing loopholes that previously delayed justice. Technology integration includes forensic investigations for offences punishable by seven years or more, with forensic experts required to visit crime scenes and record processes. All proceedings, including trials and inquiries, are to be conducted electronically. All electronic communications, including social media and voice over internet protocol are now admissible as evidence. The BSA classifies electronic records as primary evidence, enabling investigators to use information stored in electronic devices during trials.<sup>5</sup> Additional facts, to which Court shall take judicial notice include laws having extraterritorial operation, international treaties, agreement or convention with country or countries by India, or decisions made by India at international associations or other bodies; and the seals of Courts of Admiralty and Maritime Jurisdiction etc.

## **Impact on Military Justice System**

The recent overhaul of India's criminal justice system, embodied in the BNS, BNSS, and BSA, demands significant changes to legal procedures that affect the military justice system. These new laws, which apply universally, including trials in a court-martial, necessitate a comprehensive update of the military legal framework to align with civilian judicial reforms. This integration ensures consistency in legal standards and practices, fostering a more cohesive and effective legal environment for national security operations. The incorporation of technological advancements in evidence collection and trial processes under the BSA and BNSS will modernize military procedures, enhancing transparency and efficiency in handling sensitive information and evidence critical to maintaining national security. The armed forces must incorporate provisions of 'Plea Bargaining' in the military justice system, a practice being followed in a number of militaries worldwide.

## **Implications for National Security**

The BNS fortifies the legal arsenal against terrorism, addressing threats to the unity, integrity, sovereignty, and economic security of India. The BNS introduces robust measures to combat terrorism and organised crime, broadening the definition of terrorism and instituting severe penalties. The laws explicitly include terrorism as an offence and also cover related acts such as being part of a terrorist organisation, training for terrorism, and handling money from terrorist acts. The law encompasses acts that result in “Damage or destruction of any property in a foreign country, used for defence of India or used in connection with the functioning of the Government of India”, thereby, recognising the global threat of international terrorism. This strengthened legal framework is crucial for national security, providing a more effective legal basis to address threats to India’s sovereignty and integrity. By tackling new forms of organised crime and terrorist activities with stringent measures, these laws contribute to a more secure environment. The new law also deals strictly with acts endangering the sovereignty, unity and integrity of India under Section 152 of BNS; however, allows comments on actions of the government with a view to obtaining their alterations by lawful means.

## **National Security Considerations**

The necessity for reforming the military legal system to align with the new criminal laws is clear. This reform is vital to ensure that military personnel are both compliant with modern legal standards and capable of effectively upholding national security. Training and adaptation to these new laws will be crucial for maintaining operational effectiveness in internal both as international armed conflicts. Furthermore, the introduction of community service as a punishment and the expansion of evidence admissibility under the new laws aim to prevent misuse and ensure justice, which in turn supports, the overarching goal of maintaining order and security. The legal protections for military personnel regarding arrests and duties performed in official capacities are essential for preserving morale and operational efficiency, ensuring that military actions remain legally justified and transparent.

## Conclusion

The new laws represent a transition from the colonial legacies towards a system based on the principle of access to justice by all. They have several new provisions, synchronised with modern-day realities and contemporary technologies. It is necessary that the relevant persons in the three services are trained to make them aware of the positive and advanced changes, to equip them with the basic knowledge and understanding of various new provisions. Our military legal system is also archaic, many key elements in the military justice system are controversial from a constitutional standpoint. The government must appoint an expert committee to bring about systemic reforms in the military justice system in India. In view of the new criminal laws, there is a need to thoroughly revise the Army Act, the Air Force Act and the Navy Act; amalgamate them, and create out a new common code for the Armed Forces. It could be named as, *Bhartiya Sashastra Sena Adhiniyam*.

The necessity for reforming the military legal system to align with the new criminal laws is clear. This reform is vital to ensure that military personnel are compliant with modern legal standards and capable of effectively upholding national security. The legal protections for military personnel, along with the introduction of community service as a punishment and the expansion of evidence admissibility, aim to prevent misuse and ensure justice, ultimately supporting the overarching goal of maintaining order and security.

## Endnotes

<sup>1</sup> The BNS Section 113 outlines various acts that constitute terrorism, including the use of explosives, lethal weapons, chemicals or any hazardous substances. The scope covers acts causing death, injury, damage to property, disruption of essential supplies, and more. Punishment for attempting or committing terrorism includes: (i) death or life imprisonment and a fine, if it results in death of a person, or (ii) imprisonment between five years and life, and a fine.

<sup>2</sup> The IPC has prescribed five types of punishments: (1) Death; (2) Imprisonment for life; (3) Imprisonment—rigorous and straightforward; (4) Forfeiture of property; and (5) Fine. However, the BNS has introduced a significant change, adding a sixth form of punishment—community service—under s. 4(f). Community service as a punishment has been widely adopted in Western legal systems and has been successfully



integrated into their sentencing frameworks. These systems have demonstrated that community service can be an effective alternative to incarceration, especially for non-violent offenders. However, the law enforcement agencies and administrative bodies in India, lack clear guidelines on monitoring and enforcing community service sentences. This ambiguity extends to identifying responsible parties for overseeing and ensuring compliance with court-mandated community service.

<sup>3</sup> *Trial in-absentia* approach is predicated on the notion that the wilful evasion of the accused constitutes a waiver of the right of their presence to constitute a fair trial. Due to the alarming infringement upon personal liberty and fundamental principles of natural justice, trial in-absentia has often been reserved for the gravest of offences across jurisdictions worldwide.

<sup>4</sup> A plea bargain is an agreement in criminal law proceedings, whereby the government provides a concession to the accused in awarding a sentence in exchange for a plea of guilt.

<sup>5</sup> Under the Bharatiya Sakshya Adhiniyam, 2023, Section 57, the ambit of Primary Evidence has been expanded to include the following: (i) Digital electronic record created or stored simultaneously or sequentially in multiple files, each file is primary evidence. (ii) Electronic record produced from proper custody if not disputed. (iii) Video recording simultaneously stored, broadcasted and transmitted to another device. Each of its stored recordings is primary evidence. (iv) Electronic record automatically stored in a multiple storage space in a computer resource. Each automated storage is primary evidence. Explanations 4 to 7 of the BSA s. 57 refer.