



REPLACEMENT OF CRIMINAL LAWS – GOVERNANCE – GS II MAINS

Q. The Bharatiya Nyaya (Second) Sanhita, 2023 Bill represents a significant overhaul of India's penal system, addressing contemporary issues and societal changes. Discuss (15 marks, 250 words)

News: *Parliament proceedings / Lok Sabha passes Bills to replace British-era criminal laws*

What's in the news?

- The Lok Sabha passed three amended Bills that seek to repeal and replace criminal laws which date back to colonial times.
- This criminal law reform brings terrorism offences into a general crime law for the first time, drops the crime of sedition, and makes mob lynching punishable by death.

Key takeaways:

- The **Bharatiya Nyaya (Second) Sanhita Bill (BNSS)** will replace the Indian Penal Code, 1860; the **Bharatiya Sakshya (Second) Bill (BSS)** will replace the Indian Evidence Act, 1872; and the **Bharatiya Nagarik Suraksha (Second) Sanhita Bill (BNSSS)** will replace the Code of Criminal Procedure, 1898.
- All three were discussed and passed with a voice-vote, in the absence of the majority of Opposition members from INDIA bloc parties, as 97 of them have been suspended during this session.

Need for Reforms:

1. Colonial legacy:

- From 1860 to 2023, the country's criminal justice system functioned as per the laws made by the British.
- The laws were drafted during colonial times and contain archaic language and concepts that might not accurately reflect current social norms, values.



2. Advances in Technology:

- The rapid advancement of technology has introduced new dimensions to crime, evidence, and investigation.

3. Simplification and Streamlining:

- The laws have become complex over time, leading to confusion among legal practitioners, law enforcement agencies, and the general public.
- Simplifying and streamlining the legal framework can enhance transparency and understanding.

4. Evidence Collection and Presentation:

- The Indian Evidence Act was enacted before the advent of modern forensic science and technological tools.

5. Various reports highlighted the need for reforms in criminal laws:

- The department-related Parliamentary Standing Committee on Home Affairs in its 146th report had recommended that there is a need for a comprehensive review of the criminal justice system of the country.
- It was also pointed out that the Parliamentary Standing Committee in its 111th and 128th reports had also highlighted the need for reforms in criminal laws.

Key Provisions of Bharatiya Nyaya (Second) Sanhita, 2023:

1. Definition of 'Terrorist Act':

- The Bharatiya Nyaya Sanhita (BNS) introduces a distinct offense for 'Terrorist Act', covering acts that pose a threat to India's unity, integrity, sovereignty, security, economic security, or spread terror among any group.

2. Changes to 'Sedition':

- The offense of 'sedition' is eliminated, and BNS penalizes acts endangering the unity and integrity of India, replacing 'Rajdroh' with 'deshdroh'. The focus is on protecting citizens' right to criticize the government while discouraging acts against the nation.

3. 'Mob Lynching' as a Separate Offense:

- BNS introduces 'Mob Lynching' as a distinct offense, carrying a maximum penalty of death.

4. Introduction of 'Community Service' as Punishment:

- Certain minor offenses now offer 'Community Service' as an alternative punishment to imprisonment.

5. Compulsory Collection of Forensic Evidence:

- Provisions ensure the mandatory collection of forensic evidence during enhancing prosecution strength.



6. Mandatory Audio-Video Recording of Victim Statements:

- Victims statements in sexual violence cases must be recorded through audio- video means for a comprehensive record.

Key Provisions of Bharatiya Nagarik Suraksha (Second) Sanhita, 2023:

1. Appointment of Independent Director of Prosecution:

- Each district will have an independent Director of Prosecution to decide on appeals independently, irrespective of police or prosecution recommendations.

2. Accountability of Police:

- Provisions are introduced to establish police accountability, fostering a more responsible law enforcement system.

3. Victim-Centric Justice:

- Adjustments in the legal framework prioritize justice that considers the needs and rights of the victims.

4. Zero FIR Registration:

- Victims can approach any police station, and the FIR will be transferred to the relevant station within 24 hours.

5. Restrictions on State's Withdrawal of Cases:

- Courts cannot allow the State to withdraw cases without hearing the victims.

6. Timely Information to Victims:

- Victims must be served copies of the police report and informed about the investigation's progress within 90 days.

7. Electronic Mode for Inquiries and Trials:

- All inquiries and trials can be conducted in electronic mode, modernizing legal procedures.

Key Provisions of Bharatiya Sakshya (Second) Bill (BSB), 2023:

1. Reorganization of Offenses:

- Offenses against the human body, women, and children are reorganized at the beginning of the BNS, with specific provisions for each category.

2. Age Limit for Consensual Sex:

- The age limit for consensual sex with a wife is increased from 15 to 18 years.

3. 'Hit and Run' Provisions:

- Punishment for 'Hit and Run' is up to 10 years imprisonment, with reduced punishment if the offender aids the victim after the accident.



4. Exemption for Doctors from Death by Negligence:

- Doctors are exempted from the offense of death by negligence, addressing a request from the Indian Medical Association.

5. Introduction of 'Snatching' as a Separate Offense:

- 'Snatching' is now recognized as a distinct offense.

6. Stringent Punishment for 'Grievous Hurt':

- A separate provision is introduced for cases where the victim becomes brain dead due to 'grievous hurt', prescribing more stringent punishment.

7. Provisions Related to FIR, Chargesheet, and Trial:

- The BNSS introduces timeframes for FIR registration, preliminary investigation, further investigation, taking cognizance of chargesheets, and other trial-related processes.

8. Trial in Absentia:

- If the accused does not appear within 90 days, trials can proceed in absentia.

9. Release of Undertrials:

- First-time offenders may be released if undertrial detention reaches one-third of the sentence; in other cases, half of the period.

10. Mercy Petition Against Death Penalty:

- Only convicts can file mercy petitions against death penalties; NGOs or third parties cannot file mercy petitions.

11. E-FIR:

- Provisions are introduced for electronic registration of FIR, benefiting individuals hesitant to approach police stations, especially in cases of sexual violence.

12. Video Recording During Search Procedures:

- Video recording is made compulsory during search procedures.

13. Forensic Science Laboratory Team Visit:

- A forensic science laboratory team visit is made compulsory at crime scenes to ensure proper evidence collection.

14. Witness Protection Scheme:

- A new witness protection scheme is introduced, with each state required to notify it.

15. Sale of Seized Property:

- Courts can permit the sale of seized material objects and vehicles within 30 days, with video-photographic evidence.

16. Inclusion of Electronic Evidence:

- Smartphone, laptop, messages, website, and locational evidence are included in the definition of proof.



17. Uniform Hierarchy of Criminal Courts:

- The hierarchy of criminal courts is made uniform across the country, eliminating the classification of metropolitan Magistrates.

Significance of the Reform Bills:

1. Modernization:

- Replaces outdated laws - Indian Penal Code 1860, Code of Criminal Procedure 1973, and Indian Evidence Act 1872.

2. National Security Focus:

- Defines 'Terrorist Act' separately, addressing threats to unity, integrity, and sovereignty.

3. Freedom of Expression:

- Amends 'Sedition' laws, protecting citizens' right to criticize the government.

4. Social Concerns:

- Introduces 'Mob Lynching' as a distinct offense, addressing societal issues.

5. Humanitarian Approach:

- Offers 'Community Service' as an alternative to imprisonment for minor offenses.

6. Forensic Advancements:

- Compulsory collection of forensic evidence enhances prosecution capabilities.

7. Victim-Centric Measures:

- Independent Director of Prosecution, mandatory audio-video recording of victim statements.

8. Police Accountability:

- Fixes police accountability, promoting transparency in law enforcement.

9. Legal Accessibility:

- Allows Zero FIR registration, enabling victims to approach any police station.

10. Timely Justice:

- Timeframes for FIR registration, investigations, and trials expedite the legal process.

11. Women and Children Protection:

- Prioritizes offenses against women and children, with specific provisions.

12. Technological Integration:

- Includes electronic evidence, electronic FIR registration, and video recording during search procedures.



13. Witness Protection:

- Introduces a Witness Protection Scheme for the safety and cooperation of witnesses.

14. Efficient Asset Management:

- Allows the sale of seized property within a stipulated timeframe.

15. Uniform Legal Hierarchy:

- Ensures uniformity in the hierarchy of criminal courts nationwide.

Concerns:

1. New definition of sedition:

- The new bill punishes acts endangering sovereignty, unity and integrity of India.
- It gives the police unchecked powers of arrest.

2. Vague:

- The manner in which the offences are drafted continue to perpetuate the problem of vague criminal law provisions that worsen the risk of arbitrary arrests.
- The bills should have revisited the offences relating to religion and blasphemy.

3. Borrowed legislations:

- Some of the new offences are borrowed from existing legislations on organised crime and the UAPA without clarifying the reasons for such borrowing.

4. Criminalise speech:

- Offences including sedition and obscenity require reconsideration.

5. Marital rape:

- It has not been criminalised despite India having tough laws to prevent sexual violence against women.

6. Modesty:

- The terminology of "modesty" employed in the code for the offence of "outraging the modesty of a woman" should be taken out.

7. Bail adjudication:

- The new Bills do very little to resolve the manner in which bail is adjudicated and accessed.

8. Torture in investigation:

- Without appropriate changes in the evidence legislation on recovery evidence based on statements to the police, the institutional reality of torture will continue.

9. Death penalty to mob lynching:

- Sentencing a mob to death doesn't seem like appropriate punishment.



10. Retains outdated laws:

- The bills removed the reference to thugs and punishment for it as it is based on Victorian morality, but have retained more than 80% of 160 year old IPC.

11. Institutional challenge:

- The bills propose that every crime scene must undergo forensic investigation.
- Collection and analysis of forensic evidence along with the manner in which they are used in courts remain unaddressed.

12. Issue with the committee:

- A committee was constituted in 2020 to undertake public consultations and recommendations.
- It was a male dominated committee with lack of adequate representation.
- The real information on the methodology adopted to process and analyse the submissions that were received is unavailable.

13. Police custody:

- The period during which an arrested person can be sent to police custody has been expanded from 15 days to over 60 or 90 day period depending on the offence.

14. International practices:

- Countries like Singapore, Malaysia, Sri Lanka and Bhutan are still using the colonial penal code.
- Singapore recently made amendments to update it and introduce present-day requirements.

WAY FORWARD:

1. Inclusive Consultation:

- Initiate a broader consultation process involving all the stakeholders including the general public to accommodate diverse perspectives before implementing any reforms.

2. Human Rights Safeguards:

- To explicitly incorporate human rights principles and safeguards clearly define and narrow down vague terms to prevent potential misuse.

3. Coherent Legal Framework:

- Ensure consistency and coherence across the proposed bills and other existing laws.

4. Technology Integration:

- Enhance the use of technology in the criminal justice process, including digitized evidence collection, online proceedings, and video-recorded statements for quicker trials, reduced backlog, and enhanced transparency.



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5. Capacity Building:

- Invest in training, recruitment, and infrastructure to bolster the capacity of law enforcement agencies, judiciary, and legal aid services. Adequate resources will lead to more efficient and fair administration of justice.

6. Restorative Justice:

- Embrace restorative justice principles that focus on reconciliation, restitution, and rehabilitation to address the root causes of crime, reduce recidivism, and provide closure to victims.

7. Public Awareness:

- Awareness campaigns to educate the public about their rights and responsibilities within the criminal justice system to improve police-public relations.

The BNS Bill represents a significant overhaul of India's penal system, addressing contemporary issues and societal changes.

