

BHARATIYA NYAYA SANHITA, 2023

(OFFENCES AND PENALTIES)

A C O M M E N T A R Y

With
Special Features

- Date of Enforcement Notification
- Key Highlights of Bharatiya Nyaya Sanhita, 2023
- Comparative Tables of sections old versus new
and new versus old
- Table of new provisions introduced in new Act
- Table of provisions of IPC, 1860 omitted in new Act
- Corresponding law under each section of new Act
- Articles and comments of legal experts

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NYAYA SANHITA, 2023
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A C O M M E N T A R Y

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Preface

The newly enacted Bharatiya Nyaya Sanhita, 2023 (BNS for short) has repealed and replaced the Indian Penal Code, 1860. Numerous amendments were made in the IPC from time to time to keep pace with the times. However, the basic framework being with the mindset of a ruler trying to maximise exploitation of the people and significant developments taking place since independence sociologically and scientifically, the provisions of the IPC increasingly required a thorough overhaul so as to achieve goals set by the Constitution and fulfil the aspirations of the people. Suggestions of 18 States, 6 Union Territories, the Supreme Court, 16 High Courts, 5 Judicial Academies, 22 Law Universities, 142 Members of Parliament, around 270 MLAs and the public on the new laws have been taken into consideration. Consultations were held for four years.

The BNS now has 356 sections in place of the earlier 511 sections (in the IPC), changing 175 sections, adding 8 new sections and repealing 22 sections. Importantly, all the definitions spread over 34 sections in IPC have been consolidated into one section. The terms “child” and “transgender” have been introduced in the BNS, 20 new offences (including those against environmental pollution, human trafficking, organised crime and terrorism—the last two drawing heavily from MCOCA and UAPA) have been added and 19 provisions of the IPC omitted. The punishment of imprisonment has been increased for 33 offences, and fines have been increased for 83 offences. A mandatory minimum punishment has been introduced for 23 offences. This is a small but right step in handling “disparity” and “inconsistency in sentencing”. A sentence of community service has been introduced for six offences. However, its nature, duration, etc. are not yet clear. The expression “unsound mind” has been replaced by “mental illness”. Section 4(b) introduces the punishment of “imprisonment for life, that is to say, imprisonment for the remainder of a person’s natural

life”. This provision follows the Supreme Court judgment in *Swamy Shraddananda (2) v. State of Karnataka*¹ affirmed by *Union of India v. V. Sriharan*².

The offences of “adultery” (Section 497 IPC) and “unnatural sex” (Section 377 IPC), among the 19 provisions, have been omitted in the wake of the Supreme Court judgments in *Joseph Shine v. Union of India*³ and *Navtej Singh Johar v. Union of India*⁴ respectively.

In this book a comparative table showing correspondence of provisions of the old law with that of the new law has been provided. In the text, each provision is placed in juxtaposition of the old provision. Where there is no change, the rulings of the court will hold good and the gist of the judgments of the last 10 years is given as these present the current law position. Where there is a modification or change in the provision, the case rulings on the old provision are presented as above to the extent applicable and impact of the change discussed. In case of an entirely new provision, the need, scope and ambit as also possible future impact thereof on the public at large is discussed.

Attempt has been made to make this book user friendly, compact and handy taking care that it does not become a bulky compendium. For ease of case references, cases decided by the Supreme Court only have been cited and referred.

Patna

—DR J.K. VERMA

1. (2008) 13 SCC 767; (2009) 3 SCC (Cri) 113.
2. (2016) 7 SCC 1; (2016) 2 SCC (Cri) 695.
3. (2019) 3 SCC 39; (2019) 2 SCC (Cri) 84.
4. (2018) 10 SCC 1; (2019) 1 SCC (Cri) 1.

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