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# REVAMPING THE BRITISH ERA LAWS: IPC, CRPC AND EVIDENCE ACT

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## **Introduction**

The Bharatiya Nyaya Sanhita Bill, 2023 defines crimes and prescribes punishments for them. It also includes provisions for the protection of victims of crime and for the speedy trial of cases. The Bharatiya Nagarik Suraksha Sanhita Bill, 2023 deals with the procedures for investigation and trial of criminal cases. It also includes provisions for the protection of witnesses and for the speedy disposal of cases. The Bharatiya Sakshya Bill, 2023 deals with the admissibility of evidence in criminal trials.

The three bills have been referred to the Parliamentary Standing Committee on Home Affairs for scrutiny and recommendations. The Committee is expected to submit its report within three months. The introduction of these bills is a significant step towards the modernization of India's criminal justice system. The bills aim to address the challenges faced by the system, such as delays in trials, low conviction rates, and lack of protection for victims. The bills also seek to make the system more responsive to the needs of the people and to ensure that justice is delivered fairly and expeditiously. The three bills have been met with mixed reactions. Some people have welcomed the move to replace the colonial-era laws, while others have expressed concerns about the potential impact of the changes. The Parliamentary Standing Committee will have to carefully consider all of these concerns before making its recommendations.

The introduction of these bills is a major development in India's criminal justice system. It remains to be seen how the bills will be implemented and what impact they will have. However, the bills represent a commitment by the government to reform the system and to ensure that justice is delivered to all.

The introduction of new legislation Bharatiya Nyaya Sanhita (BNS) Bill, 2023, Bharatiya Nagarik Suraksha Sanhita (BNSS) Bill, 2023 and Bharatiya Sakshya (BS) Bill, 2023 that will replace the Indian Penal Code, 1860, Criminal Procedure Act, 1898, and the Indian Evidence Act, 1872 respectively and said the changes were done to provide speedy justice and creating a legal system that keeps contemporary needs and aspirations of the people. The three acts passed by the Central Government contain a number of modifications that contribute to India's effective and efficient system. The British-developed Criminal Law system will now be superseded by the three newly-created acts, which will be abolished.

Let's examine the three actions that the legislation has enacted separately. The widest and most significant criminal law procedure, the CrPC. It will be replaced by the Bharatiya Nagarik Suraksha Sanhita (BNSS) Bill, 2023.

**Some of the salient features of the Act are:**

<b>Features</b>	<b>BNSS BILL</b>	<b>CrPC</b>
<b>Custody period</b>	15 days (Section 187)	90 days (Section 167)
<b>Trial in absentia</b>	Yes (Section 228)	No (Section 204)
<b>Use of technology</b>	Yes (Section 229)	No specific provisions
<b>Safeguards for accused persons</b>	More comprehensive	Less comprehensive
<b>Community justice</b>	Yes	No provisions

<b>Bail</b>	More strict	Less strict
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- **Section 2(1)(a)** "audio-video electronic" means shall include use of any communication device for the purposes of video conferencing, recording of processes of identification, search and seizure or evidence, transmission of electronic communication and for such other purposes and by such other means as the State Government may, by rules provide;"

That the central government had introduced the term into the procedural laws of the nation with audio-video electronic means which shall include any communication device. That the said government has also introduced **Section 2(a)(f)** "electronic communication" means the communication of any written, verbal, pictorial information or video content transmitted (whether from one person to another, from one device to another or from a person to a device or from a device to a person) by means of an electronic device including but not limited to—a telephone, a mobile or cellular phone, or other wireless telecommunication device, or a computer, or audio-video players and cameras or any other electronic device or electronic form as may be specified by notification, by the Central Government.

**ARREST**

<b>S.NO</b>	<b>Feature</b>	<b>BNSS Bill,2023</b>	<b>CrPC</b>
<b>1.</b>	Power of arrest	Only a police officer can arrest a person (Section 186)	A police officer or a public servant can arrest a person (Section 41)
<b>2.</b>	Procedure for arrest	The police officer must inform the person arrested of	The police officer is not required to inform the person arrested of the grounds for

		the grounds for arrest and the right to remain silent	arrest or the right to remain silent
3.	Right to bail	The person arrested has the right to be released on bail, subject to certain conditions	The person arrested has the right to be released on bail, subject to the discretion of the police officer (Section 43)
4.	Protection of arrested person	The arrested person must be produced before a magistrate within 24 hours of arrest.	The arrested person must be produced before a magistrate within 24 hours of arrest, unless the police officer has obtained an order from the magistrate for further detention.

With the introduction of electronic means communication with the changing and advancing world it will result into easy and speedy disposal of cases. That there also has been a new introduction and change in Section 41 of CrPC which has been added into the new bill with Section 35, **When police may arrest without warrant.**

- **Section 35(7):** *No arrest shall be made without prior permission of the officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for less than three years and such person is infirm or is above sixty years of age.*

That with a new era and digitalization the central government also laid under **Section 37: Designated Police Officer (b)** *to designate a police officer in every district and in every police station, not below the rank of Assistant Sub-Inspector of Police who shall be responsible for maintaining the information about the names and addresses of the persons arrested, nature of the*

*offence with which charged, which shall be prominently displayed in any manner including in digital mode in every police station and at the district headquarters.*

That Central Government has also added the sub section to Arrest How made and according to **Section 43 (3)**: The police officer may, keeping in view the nature and gravity of the offence, use handcuff while effecting the arrest of a person who is a habitual, repeat offender who escaped from custody, who has committed offence of organised crime, offence of terrorist act, drug related crime, or offence of illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency notes, human trafficking, sexual offences against children, offences against the State, including acts endangering sovereignty, unity and integrity of India or economic offences.

That the term video graph is now being replaced with audio-electronic means i.e under section 54 of the BNSS Bill, 2023 **Using electronic modes of communication for identification of accused [Section 54]**

That the person arrested is to be produced before the magistrate as mentioned in the CrPC is now being added to **Section 58: Person arrested not to be detained more than twenty-four hours:** No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, *whether having jurisdiction or not.*

That with the insertion of jurisdiction it protects the rights of person so arrested that now the arrested person can be presented before any magistrate whether having jurisdiction or not, helps in protection of rights.

**That there also has been insertion of Receiving of summons through electronic means- Section 63.** Every summons issued by a Court under this Sanhita shall be, (i) in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court; **or (ii) in an encrypted**

**or any other form of electronic communication and shall bear the image of the seal of the Court.**

That the central government has also given the protection to Armed forces under **Section 151(2) Protection against prosecution for acts done under sections 148, 149 and 150** in the provision which are:

*Provided that no case shall be registered under sub-section (1) of section 174 against any officer or member of the armed forces for any act done by him in obedience of any order which he was bound to obey in the discharge of his official duties, without making a preliminary enquiry into the matter:*

*Provided further that no officer or member of the armed forces of the Union or any police officer of a State shall be arrested for anything done or purported to be done by him in obedience of any order which he was bound to obey in the discharge of his official duties, except after obtaining the consent of the Central Government or the State Government.*

**That it is pertinent to mention that under Chapter -11 of CrPC, Preventive Detentive action by Police is also mentioned and according to Section 172(2) of BNSS Bill, 2023** A police officer may detain or remove any person resisting, refusing, ignoring or disregarding to conform to any direction given by him under sub-section (1) and may either take such person before a Judicial Magistrate or, in petty cases, release him when the occasion is past.

### **INITIATION OF PROCEEDINGS**

That for initiating the proceedings under BNSS Bill, 2023 under **Section 173(1)** Information can be given orally or via electronic communication after taking on record has to be signed within three days by informant and also provides for e-filing of zero FIR. That also if for any information of cognizable offence, which is made punishable between 3-7 years, the police officer with prior permission of the DSP rank officer conducts a prima enquiry within 14 days and conducts investigation only if prima facie case exists - **section 173 (3)**.

That according to **Section 210 (3)** A Magistrate can take cognizance of a complaint against a public servant arising from the discharge of his duties subject to receiving a report on facts from his superiors about the incident and after the assertions made by the servant about the situation that led to the incident so alleged.

**SEARCH AND SEIZURE**

<b>S.no</b>	<b>Features</b>	<b>BNSS Bill</b>	<b>CrPC</b>
1.	Power to search	Only a police officer can search a person or property	A police officer or a public servant can search a person or property
2.	Procedure for search	The police officer must obtain a warrant from a magistrate before searching a person or property	The police officer can search a person or property without a warrant in certain cases
3.	Videography of search	Videography of the search is compulsory	Videography of the search is not compulsory
4.	Protection of seized articles	Seized articles must be kept in a secure place and must be produced before a magistrate within 24 hours	Seized articles must be kept in a secure place and must be produced before a magistrate within 15 days

Search and seizure are crucial investigative tools in criminal law that empower law enforcement authorities to gather evidence, prevent the destruction of evidence, and ensure the safety of the public. The BNSS BILL,2023 in India contains provisions that regulate and guide the process of search and seizure.

Search refers to the process of examining a person, place, or object with the purpose of discovering evidence or contraband related to a crime. The BNSS BILL,2023 provides provisions for authorized searches that balance the rights of individuals with the needs of effective law enforcement.

Seizure involves the taking possession of items, objects, or documents found during a search that are relevant to the investigation. Seized items can serve as evidence in court proceedings.

The government has made replacements, changes additions to Search and Seizure which are mentioned herein below:

- **Section 265 (1)**, According to this section now the Statements of witnesses can be recorded through electronic medium.
- **Proviso to section 316**: The BNSS bill,2023 provides for the time limit of statement by accused which can be through electronic medium signed by the accused within 72 hours.

Also, for information on offences punishable for more than 7 years, a specified police officer will have to ensure forensics expert visits the crime scene to collect forensic evidence and also videography the entire process on any electronic device.

- **Section 176 (3)**: If an expert or forensic facility is not available for some specific offence, the State Government shall utilise the facility of some other state.
- **Section 183 (6)**: In cases of rape, the statement of the victim should be recorded by a woman magistrate as far as practicable, and if none in the jurisdiction only then by a male magistrate in the presence of another female.

For offences punishable with 10 years and above, a statement has to be recorded by Magistrate in the case of disabled person, a statement can be recorded via electronic form preferably cell phone

- **Section 184(6)**: Report by a medical practitioner is to be forwarded to investigating officer within 7 days.



- **Provision to section 185(2):** Search conducted to be recorded preferably through mobile phone.

### **CUSTODY AND BAIL**

<b>S.no</b>	<b>Features</b>	<b>BNSS Bill</b>	<b>CrPc</b>
1.	Maximum police custody period	15 days	90 days
2.	Extension of police custody period	Can be extended by a magistrate for a further 15 days	Can be extended by a magistrate for a further 90 days
3.	Bail	More strict	Less strict
4.	Grounds for denying bail	There are 12 grounds for denying bail under the BNSS Bill.	There are 6 grounds for denying bail under the CrPC
5.	Right to be released on bail after 90 days of custody	Yes	No
6.	Bail bond	The person released on bail must deposit a sum of money as bail	The person released on bail is not required to deposit a sum of money as bail

For the chapters and to enshrine the procedure of law for Custody and Bail, The central Government allows Magistrate to grant police custody for a period of 15 days in whole or in parts.

This can be granted at any time within the initial 40 or 60-day period for detention out of the 60 or 90-day limit permitted before filing of charge sheet - **Section 187(2)** which reads as **Procedure when investigation cannot be completed in twenty-four hours states that**

*(2) The Judicial Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration the status of the accused person as to whether he is not released on bail or his bail has not been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Judicial Magistrate having such jurisdiction.*

*Provided further that no person shall be detained otherwise than in police station under police custody or in prison under Judicial custody or place declared as prison by the Central Government or the State Government.*

Another change that has been laid down by the legislative is that as per **Section 193(3) (ii)** Police is duty bound to inform about the progress of investigation within 90 days to the victim or complainant –

*(ii) The police officer shall, within a period of ninety days, inform the progress of the investigation by any means including electronic communication to the informant or the victim.*

The Report of police officer on completion of investigation can be conducted during the trial period, with permission of court, which shall be completed within 90 days which may be extended by court - **Proviso to section 193(9)**

*Provided that further investigation during the trial may be permitted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may extend with the permission of the Court.*

That as per Section 218 of the BNSS Bill, 2023 when an offence is being conducted under **Section 218** Prosecution of Judges and public servants, the Decision of sanction to be taken within a period of 120 days from request of sanction in case of prosecution of judges and public servants. In case no decision is taken, then the same will be deemed to have been accorded - **Proviso to section 218**

*Provided further that such Government shall take a decision within a period of one hundred and twenty days from the date of the receipt of the request for sanction and in case it fails to do so, the sanction shall be deemed to have been accorded by such Government.*

That while the examination of complainant the magistrate who has jurisdiction while taking an cognizance of offence shall note that no cognizance of complaint shall be taken by the Magistrate without giving the accused an opportunity of being heard - **Section 223**

*Provided that no cognizance of an offence under this section shall be taken by the Magistrate without giving the accused an opportunity of being heard.*

## **BAIL**

Under the BNSS Bill, 2023 an advanced definition of Bail is mentioned under **Section 479** which states that Bail defined as "release of a person accused of an offence from the custody of law upon certain conditions imposed by an officer or court including execution by such person of a bond or a bail bond"

According to **Section 481, Maximum period for which under trial prisoner can be detained** is mentioned and which is as follows:-

Detention for a period up to one half of maximum period of imprisonment

- First time offender - one third of maximum imprisonment;
- If accused in multiple cases, no bail;
- Superintendent of Jail on completion of the one half or third (as per case) shall make an application in court to proceed for release of such person on bail.

That the court has also increased the number of years from 16 to 18 years for granting of Bail in non-bailable offences under **Section 482**

*Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of eighteen years or is a woman or is sick or infirm:*

That it also mentioned that in cases of Anticipatory bail the Central Government has removed the factors which the court shall take into consideration while granting anticipatory bail under section 438 of CrPC, and that now the person whosoever is in apprehension of arrest for a non -bailable offence now after the application to any High Court or Court of Session shall be granted with the Anticipatory Bail under **Section 484 of the BNSS Bill, 2023** if the court may deem think fit.

**TRIAL**

In the realm of criminal law, the trial process plays a critical role in the pursuit of justice. The **BNSS Bill, 2023** in India provides the procedural framework for conducting criminal trials, ensuring that the rights of both the accused and the society at large are respected and upheld. Let's delve into the key aspects of a trial under the **BNSS Bill, 2023**.

S.no	Features	BNSS Bill	CrPc
1.	Maximum period of trial	2 years	6 months

2.	Trial in absentia	Yes	No
3.	Speedy trial	The court must ensure a speedy trial	There is no specific provision for speedy trial
4.	Trial by jury	No	Yes

Under the BNSS Bill, 2023 some the new sections and provisions that have been added in to the act are listed below to conduct the Trial:

- **Section 232:** Case triable by sessions judge to be committed to him and accused to be provided all documents within 90 days not later than 180 days (with permission)

- **Section 250:** Accused may file a discharge application within 60 days from date of committal in session court; and within 60 days from framing of charge before Magistrate - **Section 262**

- **Section 251:** the charges to be framed within 60 days from the first hearing on charge. Accused may be informed of the charges through electronic mode.

- **Section 254:** Evidence of police officer, public servant can be taken through audio-video electronic mode.

- **Section 269(7):** if a prosecution witness could not be cross-examined despite all efforts for reasons beyond control, the witness will be considered not examined for not being available.

- **Section 336:** Public servant, expert to be examined for a document prepared by them for evidence. If such a person is transferred, retired, or died; cannot be found or is incapable of giving deposition; or securing presence will cause delay in trial, then successor officer can be examined.

- **Proviso to section 346(1):** To overcome the unwanted adjournments the Central Government has rightly provided that even if beyond circumstances, no more than 2 adjournments can be

granted.

- **Section 349:** That Magistrate can call upon on order for any person to give samples of voice or signatures without having been arrested.

**-Section 356, Inquiry trial or judgment in absentia of proclaimed offender.**

When a proclaimed offender has absconded to evade trial and there is no immediate prospect of arresting him, it shall be deemed to operate as a waiver of the right of such person to be present and tried in person.

The court shall proceed with the trial as if he was present - subject to conditions:

- After 90 days of framing charges
- Consecutive warrants of arrest within the interval of at least thirty days;
- Publication in daily newspaper circulating in last known address about trial;
- inform his relative or friend, if any;
- affix information about trial starting on house last known.

That the Trial to be recorded and saved and voluntary absence of accused shall not prevent continuing the trial including judgment even if he is arrested or appears at the conclusion of such trial. No appeal shall lie against conviction by absconding person after the expiry of three years from the date of the judgment.

**JUDGEMENT**

A judgment under the **BNSS Bill, 2023** represents the final decision of a court after a trial. It outlines the court's findings on the guilt or innocence of the accused and, if applicable, the sentence to be imposed. Let's explore the key aspects of a judgment under the **BNSS Bill, 2023**:

1. **Timeline for the pronouncement of Judgement:** As per **Section 258** Judgement of

acquittal or conviction to be given within 30 days of reserving for trial which may be extended to 60 days with reasons.

*258. (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case, as soon as possible, within a period of thirty days from the date of completion of arguments, which may for specific reasons extend to a period of sixty days.*

2. **Judgement: Section 392** says judgment to be pronounced in open court after trial not later than 45 days of the giving notice to parties. and Judgment is to be uploaded on the portal within 7 days.

*392. (1) The judgment in every trial in any Criminal Court or original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time not later than forty-five days of which notice shall be given to the parties or their advocates*

### **WITNESS PROTECTION SCHEME**

The Witness Protection Scheme is a mechanism designed to provide protection, security, and support to witnesses who are involved in criminal cases and may be at risk due to their cooperation with law enforcement agencies or their involvement in the judicial process. Witnesses often play a crucial role in the criminal justice system by providing testimony and evidence that can help secure convictions and ensure justice is served. However, their willingness to come forward can put them at risk of intimidation, harassment, or even physical harm from those implicated in the case. Thus, one of the key features in BNSS Bill, 2023 is introduction of **Section 398 Witness protection scheme** which powers State government to notify a witness protection scheme for the State with a view to ensure protection of the witnesses.

### **MERCY PETITIONS, COMMUTING SENTENCES**

A mercy petition is a formal request made by a person convicted of a crime, typically to a higher

authority, seeking clemency or leniency in their sentence. This process allows individuals who have been sentenced to various forms of punishment, such as imprisonment or even the death penalty, to appeal for a reduction or commutation of their sentence on humanitarian or other grounds.

The concept of mercy petitions is particularly relevant in legal systems where there is a provision for the executive branch of government, often the head of state or a governor, to grant pardons, reprieves, respites, or remissions to individuals who have been convicted by the judiciary. This is seen as a way to balance the principle of justice with compassion, especially when circumstances may warrant a reconsideration of the severity of the punishment.

Under the BNSS Bill,2023 the Central Government has introduced the concept of **Mercy petitions Section 473, Mercy Petition in death sentence cases**, which states that:

- A capital punishment convict or his legal heir may file a mercy petition before President or Governor within 30 Days after Jail superintendent informs.
- Petition first before Governor, and post rejection within 60 days to President.
- Jail superintendent should also send mercy petitions of co-convicts to the central or state for consideration.
- The Central Government shall send its recommendations (after receiving them from State and jail) to the President within 60 days.
- The President may dispose of mercy petitions of all convicts together.
- The order will be communicated to the State home dept and jail authorities within 48 hours.
- No appeal shall lie in any Court and no court can enquire into it.

The central government under **Section 475, BNSS BILL,2023** has also replaced the **Power to commute sentence** and has laid down as follows:



- Death sentence to life imprisonment
- Life imprisonment to 7 years imprisonment
- 7-10 years imprisonment to 3 years imprisonment
- Rigorous imprisonment to Simple imprisonment
- Simple imprisonment up to 3 years to fine

That an Explanation is inserted in **Section 516**. Date of computing limitation is the date of filing of the complaint or it is the date of recording information.

*Explanation.—For the purpose of computing the period of limitation, the relevant date shall be the date of filing complaint under section 223 or the date of recording of information under section 173*

Lastly, with the dynamic changing environment the BNSS Bill,2023 provides for **Section 532** wherein all trials, inquires and proceedings under this Code may be held in electronic mode.

*All trials, inquires and proceedings under this Code, including— (i) summons and warrant, issuance, service and execution thereof; (ii) holding of inquiry; (iii) examination of complainant and witnesses; (iv) trial before a Court of Session, trial in warrant cases, trial in summons-cases, summary trials and plea bargaining; (v) recording of evidence in inquiries and trials; (vi) trials before High Courts; (vii) all appellate proceedings and such other proceedings, may be held in electronic mode, by use of electronic communication or use of audio-video electronic means.*

## **BHARATIYA NYAYA SANHITA (BNS) BILL 2023**

Formerly known as **INDIAN PENAL CODE, 1860**

The Centre has tabled the 'Bharatiya Nyaya Sanhita' (BNS) Bill 2023 in the Parliament. The bill seeks to replace the country's colonial-era Indian Penal Code (IPC), proposing a number of changes in the existing provisions. The proposed changes including provisions related to defamation, offence against women and attempt to commit suicide. Let's see the changes one by one:

<b>S.no</b>	<b>PROVISION</b>	<b>IPC</b>	<b>BNS BILL,2023</b>
1.	Sedition	Section 124A	Repealed
2.	Defamation	Section 499	Simple imprisonment of up to 2 years, or with fine, or with both or with community service
3.	Attempt to commit suicide	Section 309	Simple imprisonment of up to 1 year or with fine or with both or with community service, if committed with the intent to compel or restrain any public servant from discharging his official duty
4.	Mob lynching	Not defined	Maximum punishment of death
5.	Rape of minors	Section 376	Maximum punishment of death
6.	Sexual exploitation of women	Not defined	Made a crime, with punishment of up to 10 years imprisonment
7.	Adultery	Section 497	Omitted

8.	Unnatural sexual offences against men	Section 377	Omitted
9.	Cybercrime	Not defined	New offences introduced, with maximum punishment of life imprisonment
10.	Terrorism	--	New offences introduced, with maximum punishment of death
11.	Environmental pollution	Not defined	New offences introduced, with maximum punishment of imprisonment for up to 10 years
12.	Hate speech	Not defined	Made a crime, with punishment of up to 3 years imprisonment
13.	Contempt of court	Section 294	New provisions introduced to make it easier to punish contempt of court
14.	Child marriage	Section 363	Maximum punishment increased from imprisonment for up to 10 years to imprisonment for up to 20 years
15.	Dowry death	Section 304B	Maximum punishment increased from imprisonment for up to 10 years to imprisonment for up to 20 years
16.	Female feticide	Section 313	Maximum punishment increased from imprisonment for up to 3 years to imprisonment for up to 7 years

17.	Trafficking of persons	Section 370	New provisions introduced to make it easier to prosecute traffickers and protect victims
18.	Protection of women from domestic violence	Not defined	New law introduced to provide comprehensive protection to women from domestic violence

### **DEFINITIONS, LIABILITY AND FINE**

**Section 2(9) “gender”**: The pronoun “he” and its derivatives are used of any person, whether male, female or transgender.

Explanation: “transgender” shall have the meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019;

**Section 2(19) “mental illness”** shall have the meaning assigned to it in clause (a) of section 2 of the Mental Healthcare Act, 2017;

**Section 2(39)**: Under this section the Central government has rightly given meaning to the words and expression with Information technology Act,2023 and has laid down the same under this section;

*words and expressions used but not defined in this Sanhita but defined in the Information Technology Act, 2000 and the Bhartiya Nagarik Suraksha Sanhita, 2023 and shall have the meanings respectively assigned to them in that Act Sanhita.*

One of the key highlights of the BNSBill,2023 is that insertion of Community service under Section 4 – Punishments is done as to which the offender shall be liable under the provisions of the act for providing community services. -**Section 4(f)**.

Also, the change has been seen under **Section 8 Amount of fine, liability in default of payment**

**of fine, etc.,** wherein the community services is included as a punishment which shall be liable for the term not exceeding:

(a) two months when the amount of the fine shall not exceed five thousand rupees; and

(b) four months when the amount of the fine shall not exceed ten thousand rupees, and for any term not exceeding one year in any other case.

The amount under BNS bill has been raised to 5000 and 10,000 respectively.

### **PUNISHMENTS**

- The act of Mental illness has been given a special status under **Section 22, Act of a person of mental illness of BNS Bill,2023** which states that-

*Nothing is an offence which is done by a person who, at the time of doing it, by reason of mental illness, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.*

- Under BNS Bill,2023 another new introduction of section has been there which is **Section 48, Abetment outside India for offence in India-**

*48. A person abets an offence within the meaning of this Sanhita who, without and beyond India, abets the commission of any act in India which would constitute an offence if committed in India.*

Also, under **Section 57** of the bill the punishment for Abetting commission of offence by public or by more than ten persons has been changed to 7 years and with fine.

- One of the grave criminal act in society is **Rape** and now under the bill Rape is governed by the **Section 63**, for which the age limit of wife is changed from 15years to **18 years** which is an exception to Rape can be seen as follows-

*Provided that a woman who does not physically resist to the act of*

*penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. Exception.1—A medical procedure or intervention shall not constitute rape. Exception.2—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.*

- Another section which the bill provides for is of **Sexual intercourse by employing deceitful means, etc.** under **Section 69** which states that-

*69. Whoever, by deceitful means or making by promise to marry to 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.*

*Explanation.— “deceitful means” shall include the false promise of employment or promotion, inducement or marrying after suppressing identity*

- The section of **Gang rape** is also added with a subsection, **Section 70(2)** which provides as follows:

*(2) Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and with fine, or with death:*

*Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:*

*Provided further that any fine imposed under this sub-section shall be*

*paid to the victim.*

- The bill has also taken into consideration and has made an act punishable for any person whosoever hires, employs or engages a child into committing an offence shall be punishable-

**Section 93: Hiring, employing or engaging a child to commit an offence.**

*93. Whoever hires, employs or engages any person below the age of eighteen years to commit an offence shall be punished with imprisonment of either description or fine provided for that offence as if the offence has been committed by such person himself.*

*Explanation.—Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section.*

- Under BNS Bill there has been insertion of **Section 101(2), Punishment for murder.**

*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 or imprisonment for a term which shall not be less than seven years, and shall also be liable to fine*

- **Section 104, Causing death by negligence** is added with a new sub section which read as follows and is punished with imprisonment of 10 years and fine-

*(2) Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide and escapes from the scene of incident or fails to report the incident to a Police officer or Magistrate soon after the incident, shall be punished with imprisonment of either description of a term which may extend to ten years, and shall also be liable to fine*

- **Organised crime. Section 109.** The BNS Bill has come up with the introduction of Organised Crime under Section 109 and states that, any continuing acting which is

unlawful in nature and harming the society shall be punishable with Death, imprisonment and fine. The section is read as follows:

*109. (1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offences, cyber-crimes having severe consequences, trafficking in people, drugs, illicit goods or services and weapons, human trafficking racket for prostitution or ransom by the effort of groups of individuals acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, corruption or related activities or other unlawful means to obtain direct or indirect, material benefit including a financial benefit, shall constitute organised crime.*

*Explanation.—For the purposes of this sub-section,—*

- (i) “benefit” includes property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute;*
- (ii) “organised crime syndicate” means a criminal organisation or group of three or more persons who, acting either singly or collectively in concert, as a syndicate, gang, mafia, or (crime) ring indulging in commission of one or more serious offences or involved in gang criminality, racketeering, and syndicated organised crime;*
- (iii) “continuing unlawful activity” means an activity prohibited by law, which is a cognizable offence undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence;*



(iv) “economic offences” include criminal breach of trust; forgery, counterfeiting of currency and valuable securities, financial scams, running Ponzi schemes, mass-marketing fraud or multi-level marketing schemes with a view to defraud the people at large for obtaining the monetary benefits or large scale organised betting in any form, offences of money laundering and hawala transactions.

(2) Whoever, attempts to commit or commits an offence of organised crime shall,—

(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to fine which shall not be less than rupees ten lakhs;

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs.

(3) Whoever, conspires or organises the commission of an organised crime, or assists, facilitates or otherwise engages in any act preparatory to an organised crime, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs.

(4) Any person who is a member of an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs.

(5) Whoever, intentionally harbours or conceals or attempts to harbour or conceal any person who has committed the offence of an organised crime or any member of an organised crime syndicate or believes that his act will encourage or assist the doing of such crime shall be punishable with

*imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees five lakhs:*

*Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.*

*(6) Whoever, holds any property derived, or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than rupees two lakhs.*

*(7) If any person on behalf of a member of an organised crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years and shall also be liable to fine which shall not be less than rupees one lakh and such property shall also be liable for attachment and forfeiture.*

*Explanation.— For the purposes of this section, “proceeds of any organised crime” means all kind of properties which have been derived or obtained from commission of any organised crime or have acquired through funds traceable to any organised crime and shall include cash, irrespective of person in whose name such proceeds are standing or in whose possession they are found.*

**- Section 110, Petty organised crime or organised crime in general,** The BNS bill has also introduced the concept of petty which means small organized crime or crime in general which creates feeling of insecurity among the citizens of this nation shall be punished with imprisonment for a term of 1 year but which may extend to 7 years and shall also liable to fine.

110. (1) Any crime that causes general feelings of insecurity among citizens relating to theft of vehicle or theft from vehicle, domestic and business theft, trick theft, cargo crime, theft (attempt to theft, theft of personal property), organised pick pocketing, snatching, theft through shoplifting or card skimming and Automated Teller Machine thefts or procuring money in unlawful manner in public transport system or illegal selling of tickets and selling of public examination question papers and such other common forms of organised crime committed by organised criminal groups or gangs, shall constitute petty organised crimes and shall include the said crimes when committed by mobile organised crime groups or gangs that create network of contacts, anchor points, and logistical support among themselves to carry out number of offences in region over a period before moving on.

(2) Whoever commits or attempts to commit any petty organised crime, under sub-section (1) shall be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine.

- **Section 111, of the BNS Bill, 2023** talks about **Offence of terrorist act**, which states that whoever performs any terrorist act under the provision of this section shall be liable to punishment for imprisonment of life or death, without parole and shall also be liable for fine.

111. (1) A person is said to have committed a terrorist act if he commits any act in India or in any foreign country with the intention to threaten the unity, integrity and security of India, to intimidate the general public or a segment thereof, or to disturb public order by doing an act,—

(i) using bombs, dynamite or any other explosive substance or inflammable material or firearms or other lethal weapons or poison or noxious gases or other chemicals or any other substance (whether biological or otherwise) hazardous in nature in such a manner so as to create an atmosphere or spread

*a message of fear, to cause death or serious bodily harm to any person, or endangers a person's life;*

*(ii) to cause damage or loss due to damage or destruction of property or disruption of any supplies or services essential to the life of the community, destruction of a Government or public facility, public place or private property;*

*(iii) to cause extensive interference with, damage or destruction to critical infrastructure;*

*(iv) to provoke or influence by intimidation the Government or its organisation, in such a manner so as to cause or likely to cause death or injury to any public functionary or any person or an act of detaining any person and threatening to kill or injure such person in order to compel the Government to do or abstain from doing any act, or destabilise or destroy the political, economic, or social structures of the country, or create a public emergency or undermine public safety;*

*(v) included within the scope of any of the Treaties listed in the Second Schedule to the Unlawful Activities (Prevention) Act, 1967.*

*(2) Whoever, attempts to commit or commits an offence of terrorist act shall,—*

*(i) if such offence has resulted in the death of any person, be punishable with death or imprisonment for life without the benefit of parole, and shall also be liable to fine which shall not be less than rupees ten lakhs;*

*(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than rupees five lakhs.*

*(3) Whoever, conspires, organises or causes to be organised any organisation, association or a group of persons for terrorist acts, or assists, facilitates or*

*otherwise conspires to engage in any act preparatory to any terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than rupees five lakhs.*

*(4) Any person, who is a member of terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than rupees five lakhs.*

*(5) Whoever, intentionally harbours or conceals or attempts to harbour or conceal any person who has committed an offence of any terrorist act shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than rupees five lakh: Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.*

*(6) Whoever, holds any property directly or indirectly, derived or obtained from commission of terrorist act or proceeds of terrorism, or acquired through the terrorist fund, or possesses, provides, collects or uses property or funds or makes available property, funds or financial service or other related services, by any means, to be used, in full or in part to.*

- **Section 115 (3), Voluntarily causing grievous hurt:** The punishment of Grievous hurt is added with two new sub section and the gravity of punishment is extended. The BNS Bill,2023 has made stringent laws for the benefit of society which as follows:

*(3) Whoever commits an offence under sub-section (1) and in the course of such commission causes any hurt to a person which causes that person to be in permanent disability or in persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but*

*which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life.*

*(4) When grievous hurt of a person is caused by a group of five or more persons on the ground of his, race, caste, sex, place of birth, language, personal belief or any other ground, each member of such group shall be guilty of the offence of causing grievous hurt, and shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

- **Section 150 Acts endangering sovereignty unity and integrity of India:** Section 124-A of the Indian Penal Code (IPC) deals with the crime of sedition and imposes a punishment of life in prison or a term of imprisonment that may extend to three years, as well as a fine that may be added. Acts compromising India's sovereignty, unity, or integrity are included by provision 150 of the BNS Bill's chapter on offenses against the State. With the BNS bill, 2023 the sovereignty, unity and integration of India is protected and now whoever commits any offence which is harming the sovereignty, unity or integration shall be punishable under the BNS bill, 2023 as follows:

*Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine.*

*Explanation.—Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section.*

Also, under **Section 195 (d) Imputations, assertions prejudicial to national**

**integration.** Protection regarding the sovereignty is given which states that whoever makes or publishes false or misleading information jeopardising the sovereignty unity and integrity or security of India, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

**-Section 224 Attempt to commit suicide to compel or restraint exercise of lawful power:** From a sentence of up to one year or with fine or both under section 309 of IPC, section 224 of the BNS Bill covers suicide proposing,

*224. Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both or with community service.*

**- Snatching, 302.** In the previous Indian Penal Code, 1860 there was no provision that safeguard snatching and which now is punishable with an offence under Section 302 of the BNS bill, 2023, which is read as follows:

*(1) 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 moveable property.*

*(2) Whoever commits snatching, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.*

**- Section 303 Theft in a dwelling house, or means of transportation or place of worship, etc.** The change of provisions of theft is seen in the BNS Bill, 2023 which has been made more exhaustive and is not only limited to dwelling house or custody of property and now extend to-

*Whoever commits theft—*

*(b) of any means of transport used for the transport of goods or*

*passengers; or*

*(c) of any article or goods from any means of transport used for the transport of goods or passengers; or*

*(d) of idol or icon in any place of worship; or*

*(e) of any property of the Government or of a local authority*

**- Section 339 (3) Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 336.** The new subsection has been added to offence forgery punishable under Section 336 of this bill reads as follows:

*(3) Whoever possesses any seal, plate or other instrument knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.*

*(4) Whoever fraudulently or dishonestly uses as genuine any seal, plate or other instrument knowing or having reason to believe the same to be counterfeit, shall be punished in the same manner as if he had made or counterfeited such seal, plate or other instrument.*

## **BHARTIYA SAKSHYA BILL**

Formerly known as **EVIDENCE ACT, 1872**

The Indian Evidence Bill 2023 is a new law introduced in India to amend the rules of evidence in the country. This law was presented in the Lok Sabha on August 11, 2023, and was passed by the Rajya Sabha on August 16, 2023. The law will come into effect on September 15, 2023.

Some key points of the Indian Evidence Bill 2023 are as follows:

1. The law will recognize electronic evidence as admissible evidence.



2. The law will also accept evidence in the form of video recordings, audio recordings, or photographs.
3. The law will establish procedures for obtaining and preserving evidence in a more efficient and accurate manner.
4. The law will establish rules to better understand and present evidence.

## **EXPLANATION**

The Bhartiya Sakshya Bill of 2023 represents a significant and pivotal step towards the transformation of the rules governing evidence presentation within the Indian legal framework. This legislation is meticulously crafted with the aim of revolutionizing the manner in which evidence is procured, preserved, and ultimately presented in court proceedings. By introducing comprehensive and modernized procedures, this bill seeks to usher in a new era of convenience, accuracy, and comprehensibility in the judicial process.

One of the most pronounced enhancements that this legislation brings forth is its recognition of electronic evidence as a legitimate and credible form of proof. In an age dominated by technological advancements, this provision acknowledges the evolving nature of information and communication, ensuring that evidence derived from digital platforms, such as emails, texts, and digital documents, is accorded the same weight and validity as traditional forms of evidence. This forward-looking approach acknowledges the importance of adapting legal norms to the digital age, eliminating previous disparities and ensuring a more equitable treatment of evidence.

Furthermore, the Bhartiya Sakshya Bill of 2023 also addresses the limitations of its predecessor by expressly including various forms of evidence presentation. The inclusion of video recordings, audio recordings, and photographs as admissible evidence underscores the importance of multiple mediums in capturing the intricacies of events, ensuring a more comprehensive and holistic understanding of the matters at hand. By encompassing a wider array of evidentiary options, this legislation enables litigants to present a more nuanced and accurate account of events, thus promoting a fairer dispensation of justice.

Perhaps the most noteworthy feature of this bill lies in its establishment of streamlined procedures for the collection, preservation, and presentation of evidence. The previous framework often lacked a standardized approach, leading to inconsistencies and inefficiencies in the legal process. This legislation seeks to rectify these issues by providing clear guidelines and protocols for evidence collection and preservation. This not only enhances the integrity of the evidence but also contributes to a more seamless and efficient courtroom experience.

- **Acceptance of electronic evidence:** The Bharatiya Sakshya Bill 2023 will recognize electronic evidence, such as emails, text messages, and social media posts, as admissible in court. This is a significant change from the Indian Evidence Act, which only recognizes traditional forms of evidence, such as documents and witnesses.
- **Establishment of a digital evidence repository:** The Bharatiya Sakshya Bill 2023 will establish a digital evidence repository to store and manage electronic evidence. This will help to ensure that electronic evidence is preserved and accessible for use in court.
- **Rules for the admissibility of electronic evidence:** The Bharatiya Sakshya Bill 2023 will set out rules for the admissibility of electronic evidence. These rules will address issues such as the authenticity of electronic evidence and the burden of proof.
- **Protection of privacy:** The Bharatiya Sakshya Bill 2023 will include provisions to protect the privacy of individuals whose electronic data is being used as evidence. These provisions will ensure that individuals' privacy is not violated in the course of gathering or using electronic evidence.
- **Training for judges and lawyers:** The Bharatiya Sakshya Bill 2023 will require judges and lawyers to be trained in the use of electronic evidence. This training will help to ensure that judges and lawyers are able to understand and properly evaluate electronic evidence.

Moreover, the Bhartiya Sakshya Bill of 2023 underscores its commitment to promoting a better understanding of evidence through the implementation of well-defined rules. These rules serve as a guiding light for legal practitioners, ensuring that evidence is not only presented effectively but also comprehensibly. By establishing a structured framework for evidence presentation, this

legislation minimizes confusion and ambiguity, enabling judges, juries, and legal professionals to grasp the significance and implications of presented evidence more readily.

In conclusion, the Bhartiya Sakshya Bill of 2023 represents a transformative legal milestone that is poised to revolutionize the landscape of evidence presentation and adjudication in India. By embracing electronic evidence, expanding the scope of admissible materials, and establishing refined procedures and rules, this legislation creates a foundation for a more equitable, efficient, and transparent legal system. As it takes effect, it is expected to pave the way for a more advanced and just era of jurisprudence in the country.

Thus, the changes and bills passed by the Legislators has been formulated with the purpose of repealing the old British laws which were in existence. The 3 bills proposed are to repeal the Criminal laws, acts of IPC,1860, CrPC,1973 and Evidence act 1872. These 3 bills are yet to be passed to become an act, and soon shall be seen regulating the criminal laws of India. The bills are still in their early stages and have not yet been passed into law. However, they have the potential to make significant changes to the way that criminal cases are investigated, prosecuted, and adjudicated in India. The bills have been met with mixed reactions. Some people believe that the bills are too progressive and could make it difficult for the police to investigate crimes. Others believe that the bills are necessary to protect the rights of the accused. It is likely that the bills will be further debated before they are passed into law. Overall, the three bills passed by legislation to replace the CrPC, Evidence Act, and IPC are a significant step forward in the reform of the criminal justice system in India. The bills introduce a number of new provisions that are designed to improve the efficiency and fairness of the system, while also protecting the rights of the accused. It remains to be seen how the bills will be implemented and whether they will achieve their intended goals. The bills proposes to be up to date with the changing and dynamic nature of society and incorporation of digitization has been adopted with stringent laws to make the justice system of India more efficient and effective.