

Guide on New Criminal Law Bills in India

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Indian's New Criminal Law Bills

In a landmark move, Union Home Minister Amit Shah introduced three revised Bills on December 12, aiming to replace archaic British-era criminal laws that have governed India for decades. The proposed legislation includes the Bharatiya Nyaya (Second) Sanhita Bill, 2023; Bharatiya Nagarik Suraksha (Second) Sanhita, 2023; and Bharatiya Sakshya (Second) Bill, 2023. These Bills not only seek to modernize but also to address critical issues such as terrorism, crimes against women, and procedural aspects within the Indian legal framework.

Bharatiya Nyaya (Second) Sanhita Bill, 2023

Redefining Terrorism

The Bill aligns the definition of a 'Terrorist Act' with the Unlawful Activities (Prevention) Act, 1967 (UAPA), emphasizing acts that threaten the nation's unity, integrity, security, economic security, or sovereignty. Notably, the revised definition includes the production, smuggling, or circulation of counterfeit Indian currency, expanding the scope beyond previous limitations. Introduction of provisions for recruiting and training individuals for terrorist acts mirrors sections 18A and 18B of the UAPA. A significant change empowers a police officer to decide whether prosecution should proceed under the UAPA or the new Bill, providing flexibility in handling terrorism cases.

Cruelty Redefined

One significant addition in the revised Bill pertains to the definition of "cruelty" against women by their husbands and relatives. Addressing the grave issue, the newly introduced Section 86 outlines 'cruelty' as willful conduct likely to drive a woman to commit suicide or cause grave injury or danger to life, limb, or health (whether mental or physical).

It also includes harassment of a woman to coerce her or any related person to meet any unlawful demand for property or valuable security. While this provision is a crucial step in addressing gender-based offenses, it largely mirrors the definitions found in Section 498A of the IPC and Section 84 in the original Bill.



Unauthorized Publication of Court Proceedings

Another noteworthy addition is the introduction of Section 73, penalizing the unauthorized publication of court proceedings related to rape or sexual assault cases. Offenders may face a two-year jail sentence and a fine. The provision is clear in its intent, with an explanation specifying that reports on High Court or Supreme Court judgments would not constitute an offense under this provision.

Progressive Terminology

In a commendable move towards modernity, the revised Bill replaces regressive terminology related to mental health. The earlier version had replaced terms like lunacy, mental retardation, and unsoundness of mind with 'mental illness.' Additionally, the term 'intellectual disability' has been included alongside 'unsoundness of mind' in Section 367, particularly focusing on competence to stand trial.

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*"Security is always excessive until it's not enough."
- Robbie Sinclair*

Addressing Mob Lynching

Recognizing the severity of mob lynching, the original Bill categorized it as a separate offense for the first time. However, criticism arose due to the prescribed minimum sentence of seven years, deemed insufficient compared to murder charges. In response, the revised Bill eliminates the minimum punishment of seven years, aligning the penalty for mob lynching with that of murder.

Adultery and Section 377 - Unresolved Recommendations:

Two crucial recommendations from the panel, urging a gender-neutral provision for adultery and criminalizing non-consensual sex between various gender identities, were not incorporated into the revised Bill. Despite the Supreme Court's decriminalization of adultery in 2018, the panel argued for gender-neutral criminalization to preserve the sanctity of marriage. The absence of these provisions raises questions about legal remedies for victims of sexual offenses in specific scenarios, leaving men and transgender persons without clear legal recourse.

Redefining 'Petty Organized Crime':

The original Bill's vague definition of 'petty organized crime' drew criticism for lacking clarity and procedural safeguards. The revised Bill addresses this concern with a more precise definition. It identifies individuals, either singly or jointly within a group or gang, committing acts like theft, snatching, cheating, unauthorized selling of tickets, unauthorized betting or gambling, and other similar criminal activities. The inclusion of an explicit explanation further clarifies the scope, covering various forms of theft, including trick theft, shoplifting, and theft of Automated Teller Machines (ATMs).

Bharatiya Nagarik Suraksha (Second) Sanhita, 2023

The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, has undergone significant revisions following recommendations from an expert panel. These amendments, aimed at refining the legal framework governing criminal justice, address several crucial aspects of law enforcement and judicial procedures.

One notable provision introduced in the revised bill is the concept of 'community service' as a form of punishment for minor offenses. Defined under Section 23, community service entails unpaid work ordered by the court for the benefit of the community, serving as an alternative to traditional penalties for offenses such as public intoxication and defamation.

Another significant amendment pertains to the use of handcuffs during arrests. While the original bill allowed handcuff usage for a broader range of offenses, the revised version restricts it to select heinous crimes like rape and murder. Additionally, the authority to use handcuffs has been extended to include the period before court proceedings, enhancing safety measures for law enforcement personnel. The revised bill also addresses the integration of audio-visual technology in court proceedings. While certain proceedings mentioned in the earlier draft have been excluded, provisions for specific aspects such as charge reading and witness examination through audio-visual means have been introduced, reflecting the adaptation to technological advancements in the legal domain.

However, concerns have been raised regarding the provision for police custody beyond the initial 15 days of arrest. Despite recommendations for clarity and safeguards against potential misuse, the revised bill maintains the provision, potentially exposing individuals, especially those from marginalized backgrounds, to prolonged custodial violence.

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“The only security lies in individual personal honesty, the law cannot make people honest.”

– Albert E. Bowen

Another area of contention involves preventive detention powers granted to the police under Section 172. The ambiguity surrounding the duration of detention has been addressed in the revised bill, mandating that detained individuals must be produced before a magistrate or released within 24 hours in petty cases, thus curbing potential abuses of power.

These amendments underscore the ongoing efforts to balance the objectives of justice and human rights within the legal framework of Bharatiya Nagarik Suraksha (Second) Sanhita, 2023. While addressing certain shortcomings and aligning with technological advancements, the revisions also highlight the need for vigilance in safeguarding the rights of individuals within the criminal justice system.

Bharatiya Sakshya (Second) Bill, 2023

The Bharatiya Sakshya (Second) Bill, 2023, introduced significant changes in the handling of electronic evidence in judicial processes. Initially, Section 61 of the Bill equated electronic records with paper records in legal effect, without necessitating a certificate as per the corresponding Section 65B of the Indian Evidence Act. This stance has been revised, now mandating that electronic records' admissibility will hinge on compliance with Section 63.

This alteration reflects a cautious approach towards electronic evidence, balancing technological integration with legal authenticity and reliability. However, concerns have been raised by legal experts regarding broader implications of this bill and two other revised bills, particularly in terms of overcriminalization and the expansion of police powers, which they believe could lead to increased state control.

A critical issue highlighted pertains to the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, and its provisions for police custody. The bill's stipulation extends the maximum duration of police custody from the existing limit of 15 days to potentially 60 or 90 days, depending on the offense's nature.

This extension is seen as a considerable amplification of police authority, raising serious concerns about the potential for police abuse, the safety of individuals in custody, and the integrity of evidence obtained under prolonged detention. Critics argue that such a provision could lead to increased instances of coerced or fabricated evidence, as well as heightened risks of human rights violations within the criminal justice system.

In summary, the proposed Bills mark a significant step towards modernizing India's legal framework, addressing critical issues, and incorporating technological advancements. The success of these legislative changes will depend on their implementation, ensuring a balance between security measures and safeguarding civil liberties.



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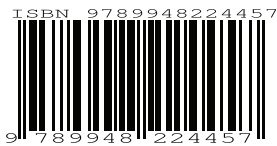
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ISBN 978 - 9948 - 22 - 445 - 7



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