



VERDICTUM.IN
DELHI HIGH COURT BAR ASSOCIATION

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Date: 04.01.2024

To

1. Sh. Narendra Modi, the Hon'ble Prime Minister
2. Sh. Amit Shah, the Hon'ble Home Minister
Government of India
New Delhi-110001

Respected Sir(s),

This is to acclaim, applaud and commend the initiatives & endeavours of our Parliament-which has marked a departure from the colonial-era legal framework and has legislated three transformative legislations namely *the Bharatiya Nyaya Sanhita (BNS)*, *the Bharatiya Nagarik Suraksha Sanhita (BNSS)* and *the Bharatiya Sakshya Adhinyam (BSA)*. In the existing legislations viz., the Indian Penal Code, 1860, the Code of Criminal Procedure Act, 1898 and the Indian Evidence Act, 1872, there were spaces for improvement considering the changes in our socio-economic situation. So, there was a necessity to bring-in legislations, which would be close to perfection and echo the Indian values accommodating our morals & ethics.

Our Parliament, on 21st December, 2023 has passed the *supra* legislations, and the said legislations received the assent of the Honorable President of India on 25th December, 2023. It is an optimistic and affirmative stride in the right direction and we all expect that the same would come into force at the earliest.

We have minutely studied the said legislations; and to highlight a few: 21 new offences are added in the BNS including the punishment for 'Mob lynching'. In 41 offences, the punishments are enhanced, and in 82 offences, the fine is hiked. For 25 offences, the minimum sentence is prescribed and the remarkable aspect of 'community service' is prescribed as a punishment for six offences. The in-depth study and research while framing the said legislation is reflected from the fact that 19 sections are deleted from the existing Indian Penal Code. Similarly, in the BNSS, the timeline is given under 35 sections. As many as nine new sections, 40 new sub-sections, 44 new explanations are added and 14 sections are deleted. Last but not the least, in the BSA, 24 sections are changed, two new sections and six new sub-sections are added and six sections are deleted. Thus, these figures speak for itself as to how phenomenal the changes have been!

A bare perusal of the legislations would showcase, that there is a paradigm shift from "*accused-centric*" approach to a "*victim-centric*" approach. Technology and scientific knowledge are remarkably used and the significant one is the



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'Online tendering evidence by witnesses' including the doctors. These will ensure speedy justice and will give a valedictory to *tareek-pe-tareek* courts! The delay in filing charge-sheets is also given due attention. As per the new mechanism, 60/90 days are given for filing of the chargesheet and for further investigation, 90 more days are given. Meaning *thereby*, the maximum timeline for filing the chargesheet is only 180 days. Similarly, timelines are prescribed for taking cognizance i.e., 14 days. 60 days for framing of charge, and importantly, the new law prescribes for trial in *absentia* of the accused. It will mark a new beginning and address the concerns-where the accused run away from the criminal justice system -which causes exorbitant and unnecessary delay. Similarly, the judicial officers are given a timeline for rendering judgments and awarding sentences. After the final hearing, a learned judicial officer has to pass a judgment within 45 days and award a sentence within 7 days from the date of judgment.

The inclusion of punishment for the offence of 'Mob-lynching' and striking down the offence of 'Sedition' is unprecedented, and it caters to the need of the hour. We have recently seen how NGOs and other individuals plead for mercy on behalf of the accused/s. The said approach is nipped in its bud by stating that the mercy petition can only be filed by an accused himself or herself; and not by any other person / organisation.

A criminal justice system should be such, which should address the contemporary issues and should with stand the changes of time. Given the foresightedness which is exhibited while framing these legislations, we are confident that these three legislations will with stand the test of time. We are very hopeful that the agencies will now work strictly as per the new statutes, when enforced and will not delay the investigation or circumvent the same.

We congratulate the Hon'ble Prime Minister, Hon'ble Home Minister and our lawmakers for bringing-in these new laws. The legislative intent and endeavors are highly appreciated!

Thanking you,

Sandeep Sharma
Hony. Secretary



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OPEN LETTER

Bar Council of Punjab & Haryana believes that governments play a crucial role in ensuring the safety and well-being of their citizens. In recent times, there has been a growing recognition of the necessity to update outdated colonial-era laws to meet the evolving challenges of the contemporary world. The implementation of three new laws - Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhinyam is a commendable step towards fostering a more just and efficient legal system. BCPH believes that the three new laws will be progressive due to the following reasons: -

1. Addressing Technological Advancements:

The advent of technology has transformed the nature of criminal activities. The government's initiative to replace colonial-era laws acknowledges the need to address cybercrimes, digital fraud, and other offenses facilitated by modern technology. By doing so, authorities can better protect citizens from emerging threats in the digital age.

2. Enhancing Human Rights Protection:

Colonial-era laws often carry a legacy of outdated and repressive measures. The introduction of new criminal laws allows for a more nuanced and human rights-centric approach. This shift ensures that legal frameworks align with contemporary values, offering greater protection for individual rights and freedoms.

3. Streamlining Legal Processes:

Outdated laws can lead to cumbersome legal procedures and delays in justice. The government's move to replace colonial-era statutes with more streamlined, efficient legislation reflects a commitment to a legal system that is responsive to the needs of society. This can result in quicker trials, reducing the backlog of cases and ensuring timely justice.

4. Promoting Social Justice:

Colonial-era laws may reflect biases and prejudices of a bygone era. The introduction of new criminal laws presents an opportunity to rectify historical injustices and promote a more equitable legal system. By reassessing and updating legislation, the government can work towards dismantling discriminatory practices and fostering social harmony.

5. International Compliance and Cooperation:

In a globalized world, countries are interconnected in various ways, including legal frameworks. The adoption of modern criminal laws aligns a nation with international standards and facilitates cooperation in addressing transnational crimes. This enhances the country's standing in the global community and fosters collaborative efforts to combat cross-border criminal activities.

Bar Council of Punjab & Haryana is certain that government's well intentioned decision to replace colonial-era criminal laws is a positive step towards building a legal system that is relevant, efficient, and just. By acknowledging the changing dynamics of society and embracing modern legal principles i.e. time bound investigation, coherent attachment of property and proceeds, video recording, greater punishment for certain offences, community service clauses, IT-discovery friendly provisions etc, now authorities can better safeguard the rights of citizens, address emerging challenges, and contribute to a fair and progressive legal landscape. The nuances, if any always remain open to discussion, and the legal fraternity of this region remains willing to assist governments to ensure effective legal framework, with an aim to better serve our citizens.



(RAJ KUMAR CHAUHAAN)
Honorary Secretary
Bar Council Punjab & Haryana.



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NEW PENAL LAWS HAVE BHARAT'S SOUL AND SPIRIT; LEGAL FRATERNITY WELCOMES THE INITIATIVE AND PLEDGES TO MAKE IT A SUCCESS.

New Delhi, January 4: Many a colonial-era law had been hanging around like an albatross around the neck of Indian legal fraternity even 75 years after Independence.

Now, soul and spirit of the Bharath have been infused into the key criminal laws Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Sanhita that would replace the archaic and outdated Indian Penal Code, Code of Criminal Procedure and the Evidence Act.

I take this opportunity first to thank the leadership and resolve of Prime Minister Shri Narendra Modji and Union Home Minister Shri Amit Shah.

The overhaul of these prime criminal laws was long overdue, as many of their provisions had outgrown their purposes and in fact were incongruent to the times and objectives for which they had been legislated. The new laws with the soul and spirit of the new Bharat will, therefore, bring a sea-change in our criminal justice delivery system.

The implementation of provisions addressing current challenges, such as classification of mob lynchings as a distinct crime, including hate crimes on the basis of race, caste or community, gender, language or place of origin, implementing and supporting victims will be indispensable. Providing police and judicial staff with sensitivity training would help ensure that these cases are handled impartially and with respect for the trauma of victims.

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The lawyers also welcome the government's decision to reintroduce adultery as a sex-neutral offence, which is in line with the principle of 'equality' and 'non-discrimination'. We also welcome the improvements in FIR registration by police officers irrespective of the place of the offence and also the time-bound disposal of cases, thus strengthening not only the legal system but also bringing back the faith of citizens of our country.

The Union Government's zero-tolerance policy towards terrorism is well defined as the new laws have specific and appropriate provisions so that no terrorist can evade punishment.

In the erstwhile and now-repealed criminal laws, primacy was given only for protection of the Treasury and the British Crown. But, in the new laws, which define Bharat, crimes against women and children, matters affecting the human body, security of the country's borders, criminalities related to the Army, Navy and Air Force, electoral crimes, tampering with coins, currency notes and government stamps etc. have all been accorded their due primacy and importance.

The new changes encourage the use of forensic practices and methodology in investigations and the use of audio-visual setups and processes in search and seizures to improve evidence procurement and the legal process in general. Excessive reliance on forensic evidence also requires safeguards against abuse. Investigative abilities and the victim protection schemes and arrangements remain paramount.

The Parliamentary Standing Committee has ensured control and clarification of legal matters, codes and the importance of continued dialogue and judicial review. The legal fraternity encourages continuous discussion and dialogue on possible ambiguities, and help people who face police detention for more than 15 days beyond the prescribed limit.

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We believe the legislative process is a continuous enterprise and this New Bharat under the capable and competent leadership of our Prime Minister and the Home Minister encourages the government to remain open to constructive suggestions and changes that strive to strengthen the legal framework.

The entire lawyer fraternity across the Bharat gratefully acknowledges and recognizes the beneficial aspects of the recast penal laws, and pledges its unstinted support and cooperation to make this historic effort of the union government a success.

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