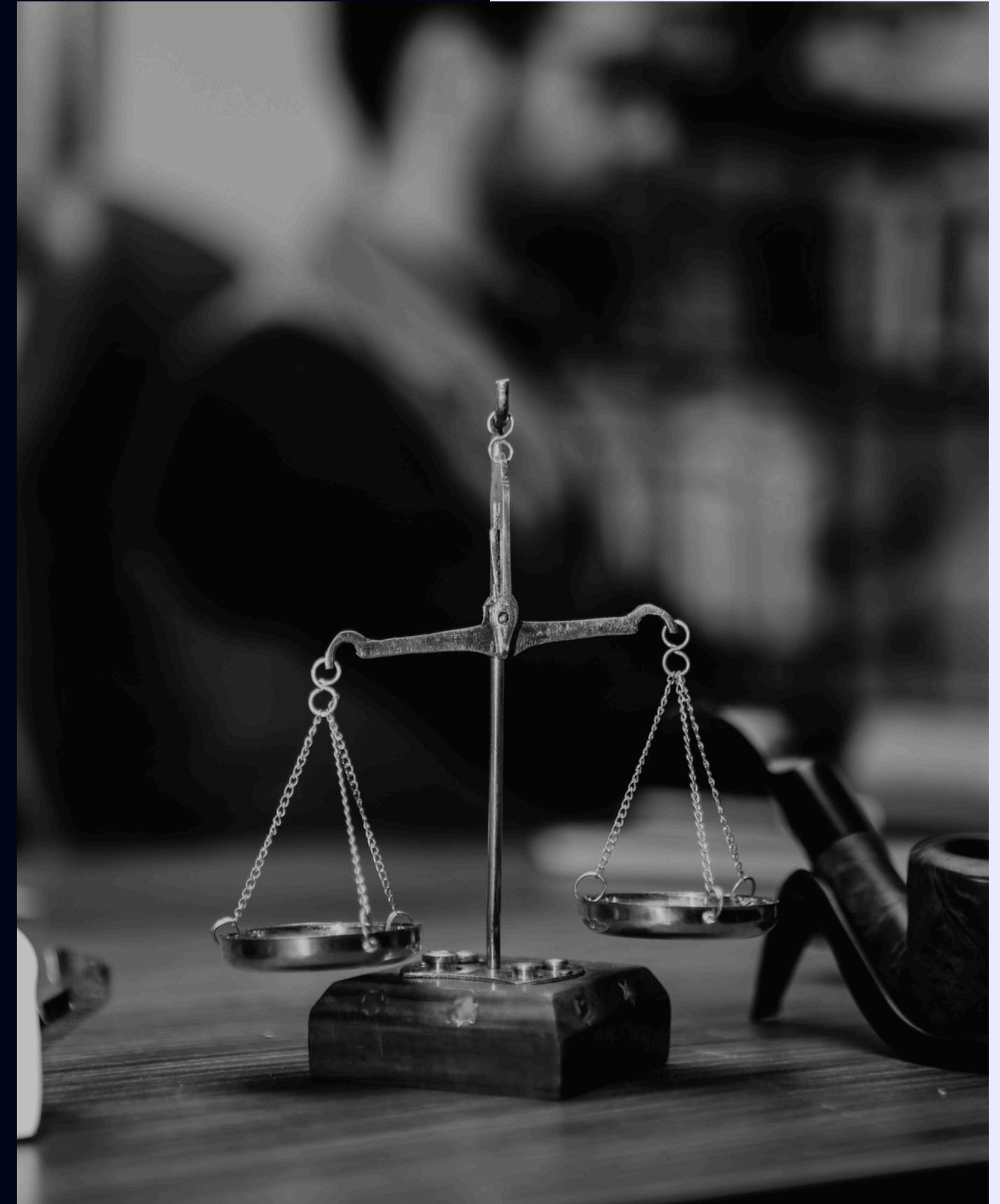


INDIAN PENAL CODE TO BHARATIYA NYAYA SANHITA

BHARATIYA NYAYA SANHITA HIGHLIGHTS

DISCLAIMER: WATER AND SHARK REFERS TO GLOBAL ORGANIZATION, AND MAY REFER TO ONE OR MORE MEMBER FIRM OF WATER AND SHARK INTERNATIONAL INC. (WASID). THE VIEWS OR OPINIONS REPRESENTED IN THIS PRESENTATION BELONG TO THE INDIVIDUALS ONLY, THESE DO NOT REFLECT THE VIEWS OF THE FIRM. THE VIEWS AND OPINIONS EXPRESSED IN THE PRESENTATION SHOULD NOT BE CONSTRUED AS A PROFESSIONAL ADVICE UNLESS EXPLICITLY STATED.





INTRODUCTION

The Indian Penal Code (IPC) is the **principal law on criminal offences** in India. Enacted in 1860 during the British colonial period, it is the main legal document that defines various criminal offenses and prescribes **punishments for individuals found guilty of committing those offenses**.

Offences covered include those affecting:

- (i) **human body** such as assault and murder, (ii) **property** such as extortion and theft,
- (iii) **public order** such as unlawful assembly and rioting,
- (iv) **public** health, safety, decency, morality, and religion,
- (iv) **defamation**, and (v) offences against the **state**.

Over the years, the IPC has been amended to add new offences, amend existing ones and change the quantum of punishment.

The Bharatiya Nyaya Sanhita, 2023 (BNS) first introduced in Lok Sabha on August 11, 2023 replaces the British-era IPC completely.

The BNS **largely retains** the provisions of the IPC, adds some new offences, removes offences that have been struck down by courts, and **increases penalties** for several offences.





WHAT WAS THE NEED?

INDIAN PENAL CODE TO BHARATIYA NYAYA SANHITA

- Addressing **Colonial Legacy**:
 - Shedding 160-year-old colonial baggage.
 - Aligning criminal law with Indian values and ethos.
- **Modernizing** Outdated Provisions:
 - Updating archaic language and concepts.
 - Reflecting contemporary social realities and technological advancements.
- Tackling **Emerging Crimes**:
 - Combating terrorism, organized crime, and cybercrime more effectively.
 - Addressing new forms of social and economic offenses.
- Emphasis on victim protection, compensation, and rehabilitation.



- The BNS aims to **simplify process** as IPC was criticised for complexity and inconsistency with 511 sections and 26 chapters, resulting in overlapping and poorly defined offenses, causing confusion in its application.
- Promoting **Gender Justice and Equality**:
 - Removing discriminatory provisions.
 - Ensuring gender-neutral laws and addressing specific crimes against women and marginalized groups.
- Harmonizing with **International Standards**.
- **Aiming for simpler language and structure** for better understanding and implementation.



TIMELINE OF BHARATIYA NYAYA SANHITA BILL



सत्यमेव जयते

11 AUGUST 2023

Minister of Home Affairs, introduced the Bill Lok Sabha.

12 DECEMBER 2023

Bharatiya Nyaya Sanhita bill, 2023 was withdrawn and Bharatiya Nyaya (Second) Sanhita bill, 2023 was after further consideration and recommendation for amendments

20 DECEMBER 2023

Bill passed in Lok Sabha

21 DECEMBER 2023

Bill passed in Rajya Sabha

25 DECEMBER 2023

Bill received the assent of the President of India



CHANGES

INDIAN PENAL CODE TO BHARATIYA NYAYA SANHITA

- BNS contains **358 sections in 20 chapters** while IPC has **511 sections in 23 chapters**.
- **20 new offences** have been **added** in the Bharatiya Nyaya Sanhita (BNS)
- **19 provisions** that existed in IPC have been **deleted**
- In **33 offences** the **punishment** of imprisonment has been **increased**
- In **83 offences** the **punishment** of fine has been **enhanced**
- In **23 offences** the **mandatory minimum punishment** has been **introduced**
- In **six offences** the **punishment of 'community service'** has been **introduced**



INDIAN PENAL CODE TO BHARATIYA NYAYA SANHITA

MAIN FEATURES OF BHARATIYA NYAYA SANHITA





COMMUNITY SERVICE

The BNS proposes community service as an **alternative punishment for minor and petty offenses**.

Community service as a punishment is introduced for the **first time in India** and is a form of **non-custodial or alternative sentencing**.

whereby individuals convicted of certain offenses are **required to perform a specified number of hours of unpaid work in the community**.

Instead of serving time in jail or paying fines, offenders contribute their time and efforts to benefit the community. This as a form of punishment exists in many countries.

Community service is seen as a way to **rehabilitate offenders and reintegrate them into society through positive engagement**.



The new law extends this punishment to offences such as:

- (i) **theft of** property worth **less than Rs. 5,000**,
- (ii) **attempt to commit suicide** with the intent to restrain a public servant, and
- (iii) **appearing in a public place intoxicated** and **causing annoyance**.

Although community service is added as a form of punishment.

The scope of community service is unclear as it is not defined as of what community service will entail and how it will be administered.

Effective implementation and monitoring of community service programs require well-developed infrastructure and resources.



ORGANISED CRIME

Organised crime has been added as an offence.

It **includes** crimes such as **kidnapping, extortion and cyber-crime** committed on **behalf of a crime syndicate**.

Organized crime typically **involves large, structured criminal enterprises** engaged in sophisticated, high-profit activities.

The emphasis on **group activity distinguishes organized crime from individual instances** of the listed offenses. Membership in a gang or participation in joint criminal acts with others becomes a defining element.

These organizations often operate across borders, have hierarchies, and **employ advanced strategies to evade law enforcement**.



The BNS aims to address limitations of the IPC in dealing with organized crime, which often relies on proving specific individual roles within loosely organized groups.

The BNS's broader definition, increased penalties, and specific new offenses offer a more effective framework to tackle the complex structures and operations of organized crime syndicates.

Attempting or committing organised crime will be punishable with:

- (i) death or life imprisonment and a fine of Rs 10 lakh, if it results in death of a person, or
- (ii) imprisonment between five years and life, and a fine of at least five lakh rupees.

Organized crime **was previously under state jurisdiction**. Adding it as a national offense addresses the potential occurrence across all states, including those without specific laws. However, **this could result in duplication for states with existing special legislation** on organized crime.





PETTY ORGANISED CRIME

Different from Organised crime, Petty organised crime is also an offence now, Petty organized crime **refers to smaller-scale criminal activities** orchestrated by **less complex groups or individuals**, often within local communities.

It **includes: vehicle theft, pick-pocketing**, selling of public examination question papers, any other similar criminal act.

Organized crime and petty organized crime differ primarily in scale, complexity, and the nature of criminal activities involved.

It also **emphasizes the importance of targeting the organized crime networks** behind these activities, not just individual offenders.



To qualify as petty organised crime, such offences **must be committed by members of a group or gang.**

The offense carries a penalty of one to seven years of imprisonment and a fine.

This creates a distinction between individual offenders and those acting as part of a gang. For instance, theft is punishable by up to three years of imprisonment, but if committed by a gang, the penalty ranges from one to seven years of imprisonment.





TERRORISM

Addition of terrorism/terrorist act as an offence. Terrorism includes an act that intends to:

- (i) **threaten the unity, integrity, security or economic security of the country, or**
- (ii) **strike terror in the people** or any section of people in India.

Punishment for attempting or committing terrorism includes:

- (i) death or life imprisonment, and a fine, if it results in death of a person, or
- (ii) imprisonment between five years and life, and a fine.

Under the BNS, cases of terrorism will be tried in Sessions Courts.

Although terrorism was not covered under IPC, it **was already there in special laws** under the Unlawful Activities (Prevention) Act, 1967 (UAPA) which **can cause overlap** causing additional compliance burden and costs.





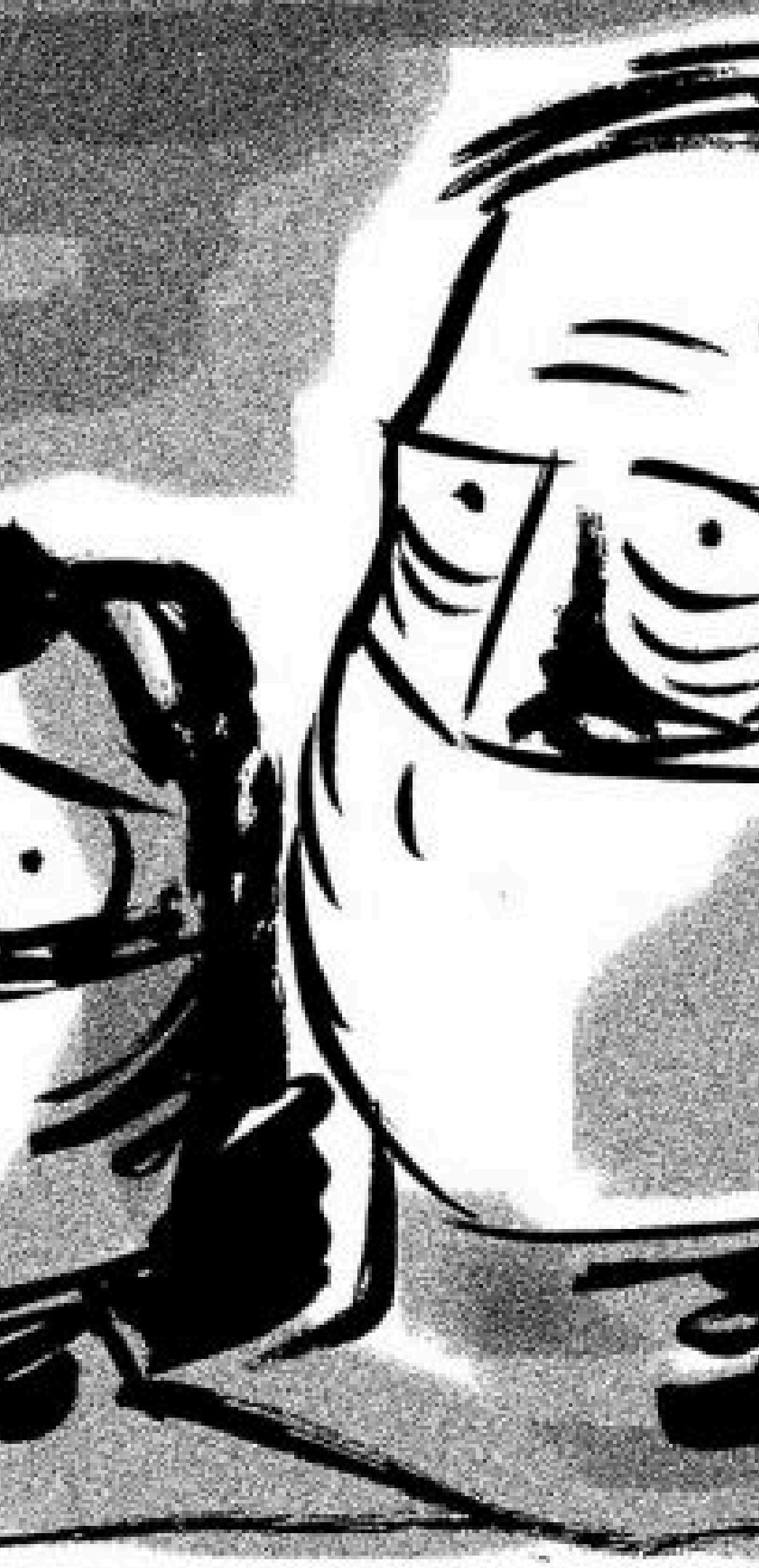
Sedition is no longer an offence which was previously covered in IPC Section 124A.

The **IPC defines sedition as bringing or attempting to bring hatred, contempt, or exciting disaffection towards the government.**

The Supreme Court has put the offence of sedition on hold until a Constitution bench examines it, while BNS removes this as an offence. Instead, it introduces a new provision (**Act endangering sovereignty, unity and integrity of India**) that penalizes acts such as:

- (i) exciting or attempting to excite secession, armed rebellion, or subversive activities
- (ii) encouraging feelings of separatist activities, or
- (iii) endangering the sovereignty, unity, and integrity of India.

These offences may involve exchange of words or signs, electronic communication, or use of financial means.



The new provision may be seen as retaining elements of the offense of sedition while expanding the scope of acts perceived as threatening India's unity and integrity.

Punishment provided in this provision is imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

Undefined terms like 'subversive activities' create ambiguity, leaving it unclear which actions qualify, leading to potential issues, which can be used for political gains.





MOB LYNCHING

Experts have in the past said that in the backdrop of mob lynching cases, there must be a defined provision in the IPC to deal with such crimes as IPC does not have a separate provision for murder by a mob because of which police register a case of murder under 302 (murder in the Indian Penal Code)

In BNS addition of Mob Lynching as an offence defined as **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 similar ground.**

BNS does not mention "mob lynching" specifically. Instead the offence deals with cases when a "group" of five or more individuals commits murder based on factors such as race, caste, community, or personal belief.

Punishment for such crime is provided as each member of such group shall be punished with **Death or with imprisonment for life**, and shall also be liable to **fine**.





SEXUAL OFFENCE AGAINST WOMEN

The IPC criminalises acts such as rape, voyeurism, stalking and insulting the modesty of a woman. The BNS retains these provisions along with new addition of "**Sexual intercourse by employing deceitful means, etc**".

Criminalization of sexual intercourse under deceitful means or false promises is introduced.

Offense defined as engaging in sexual intercourse with a woman after deceitfully **promising marriage without genuine intention**.

The act **does not qualify as rape, but** it constitutes **a separate offense**.

"Deceitful means" is broadly defined to include **inducement for employment or promotion and marrying by concealing one's identity**.

Punishment for such offence will be **imprisonment** of either description for a term which may extend to **ten years** and shall **also be liable to fine**.

It is to be noted that such provisions can also be misused to threaten individuals for marriage.

CONCLUSION

In conclusion, while the BNS presents a commendable effort to modernize India's penal system and expedite the justice process, careful attention is needed to refine certain aspects.

The consolidation and simplification of provisions demonstrate an intention to enhance clarity and efficiency, and the proposed heightened penalties for serious offenses are positioned as potential deterrents.

However, vigilance is essential, particularly regarding new additions related to offenses against the state and public tranquility, to avoid any unintended ambiguity or misinterpretation.

It also has some flaws as to no definition provided for Community Service, no proper step towards gender neutrality in rape and sexual assault since section 377 had been struck down by the supreme court no provision has been provided for safeguarding men and animals. BNS also includes contains obsolete illustration and references in the bill.

Overall, the BNS represents a progressive step towards reforming the criminal justice framework, yet it requires meticulous scrutiny for both phraseology and intent, ensuring a balance between contemporary needs and the preservation of fundamental principles.



THANK YOU

Any Questions?

