

THE BHARATIYA NYAYA SANHITA, 2023

[Act No. 45 of 2023, dt. 25-12-2023]

An Act to consolidate and amend the provisions relating to offences and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. Short title, commencement and application

(1) This Act may be called the Bharatiya Nyaya Sanhita, 2023.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Sanhita.

(3) Every person shall be liable to punishment under this Sanhita and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India.

(4) Any person liable, by any law for the time being in force in India, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Sanhita for any act committed beyond India in the same manner as if such act had been committed within India.

(5) The provisions of this Sanhita shall also apply to any offence committed by—

- (a) any citizen of India in any place without and beyond India;
- (b) any person on any ship or aircraft registered in India wherever it may be;
- (c) any person in any place without and beyond India committing offence targeting a computer resource located in India.

Explanation : In this section, the word “offence” includes every act committed outside India which, if committed in India, would be punishable under this Sanhita.

Illustration

A, who is a citizen of India, commits a murder in any place without and beyond India. He can be tried and convicted of murder in any place in India in which he may be found.

(6) Nothing in this Sanhita shall affect the provisions of any Act for punishing mutiny and desertion of officers, soldiers, sailors or airmen in the service of the Government of India or the provisions of any special or local law.

COMMENTARY

Section 1(1) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 1 of the Indian Penal Code, 1860. This sub-section has been redrafted completely wherein the term 'Code' has been replaced with the term 'Sanhita' and the phrase, 'and shall extend to the whole of India' is omitted. Also, the word 'shall' is replaced with 'may'. In IPC, the extent of code operation was also given, which is absent in BNS.

Section 1(2) is a new sub-section and enables the Central Government to notify the date from which this Sanhita will come into force. The Bharatiya Nyaya Sanhita was published in the Gazette of India, Extra., Pt. II, sec. I, No. 53, on 25th December, 2023. It came into force w.e.f. 1st July, 2024. However, the provision of Section 106(2) is yet to be notified.

Section 1(3) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 2 of the Indian Penal Code, 1860. There is no change in this provision except the term 'Code' which has been replaced by the term 'Sanhita' and the removal of marginal note.

Section 1(4) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 3 of the Indian Penal Code, 1860. This sub-section has been rephrased as the term 'Indian Law' and have been substituted with 'by any law for the time being in force in India'.

Section 1(5) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 4 of the Indian Penal Code, 1860. This sub-section has been rephrased, where the explanation (b) of Section 4 which defined the term 'computer resource' in IPC has been omitted from the BNS.

Reason of above said amendment

As under section 2(39), it is provided that words and expressions used but not defined in this Sanhita but defined in the Information Technology Act, 2000 and the BNSS, 2023 shall have the meaning respectively assigned to them in that Act and Sanhita.

Hence, the meaning of computer resource shall be the same as defined in the Information Technology Act, 2000.

Intra-territorial Jurisdiction

Section 1(3) of the Sanhita deals with the intra-territorial operation. It pertains to the offences committed within India and stipulates that each individual shall be subject to punishment under the Sanhita for any act or omission that is in violation of any of the provisions of the Sanhita and occurs within the territory of the India. This sub-section establishes the principle of criminal liability based on the place of occurrence of the offence.

Concept of "Every Person" u/s 1(3) of the BNS

The phrase "every person" means the law applies to all individuals, regardless of citizenship, nationality, race, religion, caste, gender, creed or status resulting making liable every person for an offence committed within India. The phrase "every person" has a wider connotation. It includes:

- ✓ Citizens and non-citizens
- ✓ Residents and visitors
- ✓ Government officials
- ✓ Foreigners present in India.

However, it does not include juridical persons like company, firms, society as it cannot be indicted and charged for offences, such as theft, dacoit, rape, murder etc., as these offences may only be committed by a human being. However, on the basis of vicarious liability, juridical person may also be liable for criminal acts or omissions.

A foreigner entering India, by adopting the allegiance and protection of Indian laws, is equally liable for committing an offence under this Sanhita as an Indian resident. A foreigner who commits an offence outside India that has consequences within Indian territory is liable under the Bharatiya Nyaya Sanhita, 2023 for the said offence. Criminal culpability for an offence is established by the laws of the country where the offence is committed, not by the laws of the country of the offender.

Territory of India

In the context of our country, a territory is an area of land, sea, or space, belonging or connected to India. For the purposes of the application of its laws, the territory of India would encompass not only its land, internal waters, such as rivers, lakes, and canals, but also that portion of the sea that borders and washes its coast, which is commonly referred to as its maritime territory. The territorial waters of India extend into the sea at a distance of 12 maritime miles from the base line.

Mobarik Ali v. State of Bombay, AIR 1957 SC 857

Living in Karachi, a Pakistani national misled the Bombay complainant via letters, phone calls, and telegrams. Later on, the complainant was forced to send over Rs. 5,00,000 to the accused's agent in Bombay so that rice could be sent from Karachi to India in line with agreement terms. Still, rice was never supplied. Following extradition processes, the accused was arrested while in England and sent to Bombay. Later on, he was charged and found guilty for violating Indian Penal Code section 420 on cheating (Now section 318(4) of the BNS). The Supreme Court maintained the conviction and decided the offence was committed in Bombay even though the accused was not physically present at the material time within the territory of India.

Sub-section (4) of section 1 of the Bharatiya Nyaya Sanhita, 2023 corresponds to the provision of punishment of offences committed beyond, but which by law may be tried within, India mentioned under section 3 of the Indian Penal Code, 1860. The sub-section has been redrafted as the terms 'Indian Law' have been substituted by the phrase 'by any law for the time being in force in India.'

Sub-section (5) of section 1 of the Bharatiya Nyaya Sanhita, 2023 corresponds to the provision of "Extension of Code to extra-territorial offences" mentioned under section 4 of the Indian Penal Code, 1860. The sub-section has been redrafted wherein the explanation (b) of section 4 which defined 'computer resource' under Indian Penal Code, 1860 has been omitted from the Bharatiya Nyaya Sanhita, 2023.

Exemption from criminal prosecution

According to section 1(3), “every person” is liable for crime under the Sanhita for an offense; however, there are certain exemptions to this basic principle of criminal liability, which are founded on considerations of convenience, convention, or agreements between nations. The law grants immunity from criminal prosecution to high-ranking officials, heads of foreign governments, ambassadors, diplomatic agents, consuls, United Nations representatives, the President of India, and State Governors, etc.

Likewise, alien enemies cannot be prosecuted for acts of war in criminal courts. In such instances, trials occur under the stipulations of military law. However, alien enemies, regardless of their disposition, may be prosecuted in conventional criminal tribunals for any offenses they commit.

A foreign army is granted immunity from criminal jurisdiction, provided it remains on the host nation’s territory with consent. Warships and men-of-war of a foreign nation in foreign waters are also free from the criminal jurisdiction of the state in whose territorial authority they are located.

Extra-territorial operation

Sub-sections (4) and (5) of section 1 of Bharatiya Nyaya Sanhita, 2023 provide the concept of extra-territorial operation of the Sanhita. We may say that if a person commits an offence beyond the territory of India, he may be held criminally liable under the Bharatiya Nyaya Sanhita, 2023.

Clause (a) of sub-section (5) of section 1 of the Bharatiya Nyaya Sanhita, 2023 extends the operation of the Sanhita to an offence committed by a citizen of India in any place beyond India and clause (b) to an offence committed by any person on any ship, or aircraft registered in India wherever it may be.

Fatima Bibi Ahmed Patel v. State of Gujarat, AIR 2008 SC 2392

Even if a foreigner acquires citizenship later, the Code does not apply to an offence committed by a foreigner outside of India. In other words, the provisions of section 4 of Indian Penal Code, 1860 and section 188 CrPC are not applicable if the accused person is not a citizen of India at the time of the commission of the offence. In the same vein, an Indian citizen who relinquishes his citizenship and obtains citizenship in another country, such as the United States, is not subject to the jurisdiction of Indian Courts.

In other words, the test for determining the applicability of section 4 is the citizenship at the time of the offence, rather than the citizenship acquired subsequently.

Admiralty Jurisdiction

The Indian Courts are granted admiralty jurisdiction and the authority to prosecute offences committed on any ship or aircraft registered in India, regardless of their location, as stipulated in clause (b) of sub-section (5) of section 1 of the Bharatiya Nyaya Sanhita, 2023. A ship is regarded as a floating island and is the property of the country under whose flag it is flying, same rule is there for aircraft also. Consequently, all aircraft, ships, or vessels are regarded as belonging to the country under whose flag they operate.

A person committing a crime aboard a ship, regardless of nationality, is subject to the jurisdiction of Indian Courts if the ship is registered in India and flies the Indian flag. A foreigner who commits a crime outside India and subsequently enters India may be extradited to the nation where the offense occurred for trial, pursuant to a formal request under the Indian Extradition Act of 1962.

Cyber Crime Targeting a Computer Resource Located in India

The jurisdiction of section 1(5)(c) of the Bharatiya Nyaya Sanhita, 2023 is extended to any offense committed by a person in any location outside India that targets a computer resource situated in India.

2. Definition

In this Sanhita, unless the context otherwise requires:—

- (1) “act” denotes as well a series of acts as a single act;

COMMENTARY

Section 2(1) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 33 of the Indian Penal Code, 1860. The phrase ‘The word’ has been omitted while the section has been split into two parts and renumbered as Sections 2(1) and 2(25).

In the context of the Bharatiya Nyaya Sanhita (BNS), the term “act” refers to any deed or physical action committed by a person. Under the BNS, an act can encompass a wide range of behaviors and actions that are subject to legal consequences. It may result in a legal consequence, whether it constitutes a crime, a civil wrong, or any other legally significant action.

This means that:

- (a) The word “act” can refer to a single action, or
 - (b) It can refer to a series of connected actions forming a single transaction.
- (2) “animal” means any living creature, other than a human being;

COMMENTARY

Section 2(2) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 47 of the Indian Penal Code, 1860. The language of the section remains unchanged and the provision has been retained as it is.

- (3) “child” means any person below the age of eighteen years;

COMMENTARY

This clause is a new addition to the Bharatiya Nyaya Sanhita, 2023. The lawmaker has introduced this new expression i.e. ‘child’ to keep the uniformity throughout the BNS, 2023 which is achieved by replacing the expression ‘minor’ and ‘child under the age of eighteen years’ with the word ‘child’.

- (4) “counterfeit” : A person is said to “counterfeit” who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation 1: It is not essential to counterfeiting that the imitation should be exact.

Explanation 2: When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised;

COMMENTARY

Section 2(4) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 28 of the Indian Penal Code, 1860. The language of the section remains unchanged and the provision has been retained as it is.

Meaning of the term ‘Counterfeit’

“Counterfeit” refers to the act of making an imitation of something, typically currency, documents, or goods, with the intention of deceiving or defrauding. Counterfeiting involves the creation of replicas that are designed to look genuine in order to represent the fake items as real.

Under various legal frameworks, including the Bharatiya Nyaya Sanhita (BNS), counterfeiting is a criminal offence. Here are a few key points about counterfeiting:

- **Currency:** Counterfeiting currency is the act of producing fake money with the intent to deceive people into accepting it as real money. This is a serious crime with severe penalties.
- **Documents:** Counterfeiting documents can include forging legal documents, contracts, identification papers, or any other official documents to commit fraud or deception.
- **Goods:** Counterfeiting goods involves producing fake products, such as branded clothing, electronics, pharmaceuticals, etc., and selling them as if they were genuine. This not only deceives consumers but can also pose significant safety risks, particularly with counterfeit medicines.

In the Bharatiya Nyaya Sanhita, the term “counterfeit” is defined in Section 2(4) and main element of counterfeiting as laid down in the section are:

- (a) Causing one thing to resemble another thing;
- (b) Intending by means of that resemblance to practise deception;
- (c) Knowing it to be likely that deception will thereby be practised.

The term ‘counterfeit’ has been used in offences relating to coin, currency notes, bank notes and Government stamps under Chapter X and offences relating to documents and to property marks under Chapter XVIII.

- (5) “Court” means a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially;

COMMENTARY

Section 2(5) of the BNS, 2023 is equivalent to section 20 of the Indian Penal Code, 1860. There is no change, and the provision has been carried forward as it is, however, the phrase ‘The words “Court of Justice” denote’ has been substituted with “Court” means’.

- (6) “death” means the death of a human being unless the contrary appears from the context;

COMMENTARY

Section 2(6) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 46 of the Indian Penal Code, 1860. The language of the section remains unchanged and the provision has been retained as it is. However, the phrase ‘The word’ was omitted and ‘denotes’ has been substituted with ‘means’.

- (7) “dishonestly” means doing anything with the intention of causing wrongful gain to one person or wrongful loss to another person;

COMMENTARY

Section 2(7) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 24 of the Indian Penal Code, 1860. The phrase ‘Whoever does anything’ has been replaced with “dishonestly” means doing anything’.

Concept of ‘Dishonesty’

The Bharatiya Nyaya Sanhita, 2023 introduces the definition of dishonesty under Section 2(7), continuing the foundational concept present in the Indian Penal Code, but placing it explicitly within the definitional section of the new code. According to Section 2(7), “Dishonestly means doing anything with the intention of causing wrongful gain to one person or wrongful loss to another person.” This definition captures the essential mental element or *mens rea* required to constitute various property-related offences under criminal law.

The terms wrongful gain and wrongful loss, though not elaborated within this clause itself, carry the same meaning as traditionally interpreted- where wrongful gain refers to gaining property by unlawful means to which one is not legally entitled, and wrongful loss refers to unlawfully depriving someone of property they are legally entitled to. The presence of intention plays a critical role; mere loss or gain is not sufficient unless it is shown that the act was done with a dishonest intention to cause such an outcome.

This definition of dishonesty serves as a key ingredient in offences like theft, cheating, misappropriation, and breach of trust under the BNS. For instance, in cases of theft under Section 303 of the BNS, the dishonest intention to take movable property without the owner’s consent is crucial. Courts often look into the surrounding circumstances to determine whether the accused acted with dishonest intent, especially in the absence of direct evidence. Thus, Section 2(7) acts as a cornerstone for understanding the mental state that converts an act into a punishable offence under the new penal structure.

- (8) “document” means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, and includes electronic and digital record,

intended to be used, or which may be used, as evidence of that matter.

Explanation 1 : It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in a Court or not.

Illustrations

- (a) *A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.*
- (b) *A cheque upon a banker is a document.*
- (c) *A power-of-attorney is a document.*
- (d) *A map or plan which is intended to be used or which may be used as evidence, is a document.*
- (e) *A writing containing directions or instructions is a document.*

Explanation 2 : Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

Illustration

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and shall be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature.

COMMENTARY

Section 2(8) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 29 of the Indian Penal Code, 1860. The phrase 'the word' has been omitted while the term 'denotes' has been replaced with the term 'means'.

The term "document" includes traditional physical records, including handwritten contracts, printed agreements, and certifications, as well as modern electronic records, such as digital files, emails, and data stored on electronic devices. The key lies in the intention – if the matter is documented in any format with the purpose of serving as a record of evidence of that matter, transaction, or fact, it qualifies as a document under the BNS.

The term 'evidence' is not employed here in the context of admissible or legal evidence as defined in the Bharatiya Sakshya Adhiniyam, 2023. The terms 'evidence' and 'evident' exclusively refer to that which is observable with the 'naked eye'. It is not inherently synonymous with the term 'evidence'.

- (9) "fraudulently" means doing anything with the intention to defraud but not otherwise;

COMMENTARY

Section 2(9) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 25 of the Indian Penal Code, 1860. The definition has been rephrased partially from ‘a person is said to do a thing fraudulently if he does that with intent’ to fraudulently means doing anything with the intention’.

Concept of ‘Fraudulently’

The Bharatiya Nyaya Sanhita, 2023 does not provide any exclusive definition of the term ‘Fraudulently’. It only states that anything with the intention to defraud but not otherwise. Thus, the genesis of the term ‘fraudulently’ is having intention of fraud.

Key Elements of the Definition

- (a) **Intent to Defraud**—The central element is the presence of a dishonest or deceptive intention aimed at causing wrongful gain to one and wrongful loss to another.
- (b) **Not Mere Dishonesty**—The act must be more than just dishonest — it must involve trickery, deceit, or cheating.
- (c) **Not Otherwise**—The absence of intention to defraud negates the element of “fraudulently.” That means, if an act is done negligently or mistakenly but without fraudulent intent, it does not fall under this definition.

Illustrations—Suppose A sells a car to B, knowing that the car is stolen, but hides this fact. A has acted fraudulently because the act was done with intent to deceive B and cause wrongful gain to himself.

But if A mistakenly believes he is the rightful owner (e.g., due to a paperwork error), even if the car is not lawfully his, the act may not be termed fraudulent as per Section 2(9), because there is no intent to defraud.

Distinction between ‘Dishonestly’ and ‘Fraudulently’

Both the words “dishonestly” and “fraudulently” seems to be very similar to each other in meaning; however, they differ in meaning in law. The terms ‘dishonestly’ and ‘fraudulently’ are often used in criminal law, especially in offences involving property and deception. Under the Bharatiya Nyaya Sanhita, 2023, dishonestly is defined under Section 2(7) as doing something with the intention of causing wrongful gain to one person or wrongful loss to another. The core idea behind dishonesty is the presence of an intention to unjustly enrich oneself or cause loss to someone else, regardless of whether deceit is involved.

On the other hand, fraudulently is defined under Section 2(9) of the BNS as doing an act with intent to defraud. The phrase “intent to defraud” implies not only a dishonest intention but also involves an element of deception or trickery. Fraudulence includes dishonesty but goes a step further by requiring that the act be carried out with the intention to mislead or cheat another person. Hence, while every fraudulent act is dishonest, not every dishonest act is necessarily fraudulent.

For example, if a person misrepresents facts to induce another into parting with property, it would amount to a fraudulent act. However, if a person simply

takes someone else's property with an intent to cause wrongful gain or loss without using deceit, it may be dishonest but not necessarily fraudulent. The distinction is significant for charging appropriate offences under BNS, such as cheating, forgery, or criminal breach of trust, where the presence of fraudulence (i.e., deception) changes the nature and gravity of the offence.

Summary

- (a) Fraudulently = Act + Intent to Defraud
- (b) Mere negligence or ignorance ≠ Fraud.
- (c) It's used in various BNS sections like 243, 246, 318, 320, 335, etc., to describe the mental state behind criminal acts.
- (10) "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;

COMMENTARY

Section 2(10) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 8 of the Indian Penal Code, 1860. Under the Sanhita, by giving effect to the right of transgender community interpreted by the Supreme Court in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, the scope of the gender has been expanded.

This expanded definition replaces the binary male-female framework that existed in the Indian Penal Code, 1860, and affirms the legal recognition of transgender persons as a distinct and protected category under criminal law. The inclusion of transgender within the definition of gender aligns with the constitutional mandate of equality, dignity, and non-discrimination under Articles 14, 15, and 21 of the Constitution of India.

This amendment reflects the spirit of the landmark judgment in *National Legal Services Authority (NALSA) v. Union of India*, (2014) 5 SCC 438, where the Supreme Court recognized the right of individuals to self-identify their gender, including as third gender, and held that transgender persons are entitled to fundamental rights and equal protection under law. By explicitly including transgender persons within the scope of gender in the BNS, the legislature has extended the protection of criminal laws against offences such as sexual harassment, assault, and trafficking to transgender individuals, ensuring they are not left out of the legal framework.

Further, this provision is consistent with the Transgender Persons (Protection of Rights) Act, 2019, which provides a statutory basis for recognizing the identity and rights of transgender individuals. The inclusion of gender diversity in the BNS will not only influence interpretation of penal provisions but also ensure sensitive and inclusive enforcement by the police and judiciary. It marks a crucial step towards ending structural discrimination and promoting legal equality in criminal justice.

Recognition to ‘Third Gender’ I National Legal Services Authority (NALSA) v. Union of India, (2014) 5 SCC 438

Historical Background—India’s transgender and third-gender communities, historically known by various names like Hijras, Kothis, Aravanis, Jogappas Shiv-Shakthis etc., have long existed in South Asian culture and tradition. They were once revered in ancient texts and rituals, but were later criminalized and marginalized, particularly during colonial rule under laws like the Criminal Tribes Act, 1871. Even after independence, transgender persons remained excluded from legal, social, and economic protections due to the binary understanding of gender (male/female) in legislation and official documents.

In the absence of legal recognition, transgender persons faced immense discrimination in education, employment, healthcare, and access to justice. They were frequently denied identity documents, leading to exclusion from welfare schemes, voting rights, and other basic services. Against this backdrop, the National Legal Services Authority (NALSA) approached the Supreme Court under Article 32 of the Constitution seeking legal recognition and constitutional rights for transgender persons.

Facts of the Case—The National Legal Services Authority (NALSA) and Mata Nasib Kaurji Women Welfare Society filed a Public Interest Litigation (PIL) in 2012 on behalf of the transgender community and Hijras/Eunuchs, particularly seeking legal recognition of third gender status with all Constitutional protection. It was joined by other petitioners, including prominent transgender activists like Laxmi Narayan Tripathi, who argued that the non-recognition of their gender identity violated their fundamental rights under Articles 14, 15, 16, 19, and 21 of the Constitution.

The core demand was that the right to self-identify one’s gender must be recognized by the state, and that transgender persons should be given the same legal protections and access to public facilities as other citizens. They also sought socio-economic support, reservations in education and jobs, and protection from discrimination and abuse.

Issues Before the Court

- (a) Whether transgender persons are entitled to be recognized as a “third gender” under the Constitution?
- (b) Whether the right to self-identify one’s gender is a part of fundamental rights under Part III of the Constitution?
- (c) Whether the State has a duty to provide affirmative action and protection to the transgender community?

Judgment of the Supreme Court

In a landmark judgment delivered on 15 April 2014, a Division Bench comprising Justice K.S. Radhakrishnan and Justice A.K. Sikri unanimously held:

- (a) Transgender persons have the right to self-identify as male, female, or third gender, and this right is protected under Article 19(1)(a) (freedom of expression) and Article 21 (right to life and dignity).
- (b) Legal recognition of gender identity is a fundamental right under

Articles 14, 15, and 16, and the Constitution guarantees equality and non-discrimination on grounds of sex — which includes gender identity.

- (c) The Court directed the Central and State Governments to:
 - (i) Recognize transgender persons as a third gender.
 - (ii) Provide reservations in education and public employment as socially and educationally backward classes.
 - (iii) Take steps for public awareness, healthcare, and legal protection.
 - (iv) Issue identity documents reflecting the preferred gender identity.

Significance and Impact

The NALSA judgment is hailed as a milestone in the history of gender justice in India. It was the first legal recognition of the third gender by a constitutional court. It laid the foundation for subsequent legal and policy reforms, including:

- (a) The enactment of the Transgender Persons (Protection of Rights) Act, 2019.
- (b) Inclusion of the term “transgender” in official government schemes, census, and identity documents.
- (c) Greater judicial awareness and interpretation of rights concerning gender identity in later cases like *Navtej Singh Johar v. Union of India (2018)* (which decriminalized homosexuality).

The case remains a cornerstone for the interpretation of gender rights under Indian constitutional law and inspired similar developments in other countries recognizing gender diversity and bodily autonomy.

- (11) “good faith” - Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention;

COMMENTARY

Section 2(11) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 52 of the Indian Penal Code, 1860. The language of the section remains unchanged and the provision has been retained as it is.

Concept of ‘Good Faith’

The term “good faith” in common language suggests honesty of intention. However, under criminal law, especially this Sanhita, the definition goes beyond mere honesty or absence of bad intention.

The section defines the term ‘Good Faith’ negatively. It states that an act done without due care and attention is not presumed to have been done in good faith. To have the better understanding upon ‘Good Faith’, we may refer the other statute also i.e. the definition of the term ‘Good Faith’ under the General Clauses Act, 1897. Section 3(22) of the said Act reads as below:

“A thing shall be deemed to be done in good faith when it is in fact done honestly, whether it is done negligently or not.”

From the above definition, it may be stated that the central idea behind the term 'Good Faith' is the honesty. However, under the Sanhita, genesis is the due care and attention. If someone has done something honestly but not followed the due care and attention required for the said act, it may be said that there is absence of good faith. So, under the Sanhita, idea of honesty is not there rather it is due care and attention.

Harbhajan Singh v. State of Punjab, AIR 1966 SC 97 | Key Elements of Good Faith

- (a) **Honest Intention**—The person must act with an honest purpose and without malicious motives.
- (b) **Due Care**—The person must act prudently, in a way that a reasonable man would act, considering the circumstances.
- (c) **Due Attention**—The person must pay sufficient attention to facts before acting or forming a belief.
- (d) **Objective Standard**—The test of good faith is not what the person subjectively believed, but whether the belief or act was based on reasonable and careful examination of facts.

In the case in question, it was determined that the element of due care and attention is significant. If it is evident that the accused failed to exercise due care and attention prior to making the statement, this would invalidate his claim of good faith. However, it should be noted that good faith does not necessitate logical correctness.

Illustrations of "Good Faith"

Medical Emergency—A doctor performs a life-saving procedure during a medical emergency without obtaining formal consent, based on the urgent condition of the patient. If the doctor used proper medical knowledge and followed standard procedures, the act is in good faith under Section 30 BNS.

Here are key provisions where good faith is central:

Sections	Description
14	Act done by a person bound, or by mistake of fact believing himself bound, by law.
15	Act of Judge when acting judicially
16	Act done pursuant to judgment or order of Court
17	Act done by a person justified, or by mistake of fact believing himself justified, by law
26	Act not intended to cause death, done by consent in good faith for person's benefit
30	Act done in good faith for benefit of a person without consent
31	Communication made in good faith
33	Act causing slight harm

- (12) “Government” means the Central Government or a State Government;

COMMENTARY

Section 2(12) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 17 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the phrase ‘the word government denotes’ and ‘government of a state’ have been substituted with ‘Government means’ and ‘State Government’ respectively.

- (13) “harbour” includes supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or the assisting a person by any means, whether of the same kind as those enumerated in this clause or not, to evade apprehension;

COMMENTARY

Section 2(13) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 52A of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the words ‘Except in section 157, and in section 130 in the case in which the harbour is given by the wife or husband of the person harboured, the word’ have been omitted. This amendment would make a spouse culpable for the offence under Section 158 of the Bharatiya Nyaya Sanhita.

In common parlance, “harbour” refers to providing shelter, food, and clothing to assist an accused with an offense in evading arrest. Harboring such individuals is punished as specified in the relevant provisions.

- (14) “injury” means any harm whatever illegally caused to any person, in body, mind, reputation or property;

COMMENTARY

Section 2(14) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 44 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the phrase ‘The word’ has been omitted and the term ‘denotes’ has been substituted with ‘means’.

Section 2(14) provides a broad and inclusive definition of injury, which includes both physical and non-physical harm, as long as it is illegally caused. The term is very wide and does not restrict injury only to bodily harm. It includes mental, emotional, reputational, or financial harm. The injury must be the result of an unlawful act. If the harm is caused lawfully (e.g., under a valid defence or legal justification), it does not constitute an “injury” under BNS.

Injury can be to:

- (a) Body - Physical harm such as bruises, wounds, fractures, disfigurement, etc.
- (b) Mind - Mental trauma, psychological harm, emotional distress.
- (c) Reputation - Defamation, slander, libel, or any act that lowers a person’s reputation or social standing.
- (d) Property - Damage, destruction, or unlawful loss of property or possessions.

K.N. Mehra v. State of Rajasthan, AIR 1957 (SC) 369

The Supreme Court recognized that injury in IPC (Now the BNS) includes non-physical harm, such as harm to reputation and property, provided it is illegally caused.

- (15) “illegal” and “legally bound to do”- The word “illegal” is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be “legally bound to do” whatever it is illegal in him to omit;

COMMENTARY

Section 2(15) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 43 of the Indian Penal Code, 1860. The language of the section remains unchanged.

Concept of Illegal

The definition of “illegal” is wider than just criminal offences. According to BNS, an act is “illegal” if it falls into any one of the following three categories:

- (a) **An Offence** - Any act or omission made punishable under the law, especially under the BNS or any other criminal laws. Example: theft, murder, cheating, etc.
- (b) **Prohibited by Law** - Even if an act is not punishable with imprisonment, if it is expressly or implicitly forbidden by any law, it is illegal. Example: Operating a business without license, violating environmental rules, etc.
- (c) **Furnishes ground for a civil action** - An act that may not be a crime, but which gives another person the right to file a civil lawsuit (like torts). Example: Trespass, defamation (civil), nuisance - these can give rise to a civil claim for damages, making them illegal under BNS.

“Legally Bound to Do” – What It Means

Section 2(15) also defines “legally bound to do”. A person is legally bound to do whatever it is illegal in him to omit. Example - A police officer is legally bound to prevent crime. If he omits to act, when required by law, such omission is illegal.

- (16) “Judge” means a person who is officially designated as a Judge and includes a person,—
- (i) who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or
 - (ii) who is one of a body or persons, which body of persons is empowered by law to give such a judgment.

Illustration

A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge;

COMMENTARY

Section 2(16) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 19 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, illustrations (a), (c) and (d) appended earlier in the section have been omitted.

Concept of Judge

The BNS adopts a functional and expansive definition of “Judge”, focusing more on the powers and duties performed rather than the official designation.

Includes—

- (a) Officially designated Judges (e.g., District Judges, High Court Judges)
- (b) Persons legally empowered to give definitive judgments
- (c) Members of bodies (e.g., tribunals, panchayats, commissions) empowered by law to give a judgment

Judgment must be—

- (a) Given in a legal proceeding (civil or criminal)
- (b) Final or definitive, unless appealed against
- (c) Binding, unless law provides otherwise

Illustration—A Presiding Officer of an Income Tax Appellate Tribunal, Election Commission, or other quasi-judicial body can be treated as “Judge” if empowered by law.

The concept of a “Judge” under the BNS is broad and functional. It encompasses not just traditionally appointed judges, but any person or group authorized by law to render binding decisions in civil or criminal proceedings. This ensures that all persons discharging judicial duties are afforded necessary protections, and their role is clearly identified for the purpose of criminal accountability or protection of judicial integrity.

- (17) “life” means the life of a human being, unless the contrary appears from the context;

COMMENTARY

Section 2(17) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 45 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the phrase ‘The word’ has been omitted and ‘denotes’ is now substituted with ‘means’.

- (18) “local law” means a law applicable only to a particular part of India;

COMMENTARY

Section 2(18) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 42 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the phrase ‘a local law is a law’ has been substituted with ‘local law means’.

Concept of Local Law

This refers to laws that operate within a specific geographical region, such as a state, union territory, or a district and are not uniformly applicable across the entire country. Examples- Bengal Excise Act (applicable in West Bengal), Bombay Police Act (applicable in Maharashtra), Goa Panchayat Raj Act, Delhi Rent Control Act (applicable only in the National Capital Territory of Delhi).

(19) “man” means male human being of any age;

COMMENTARY

Section 2(19) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 10 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, it has been divided into two parts i.e. sections 2(19) and 2(35). The phrase ‘the word’ is removed now.

The term “man” under BNS means any male human being of any age. This legal definition is essential for interpreting gender-specific provisions in criminal law. However, with evolving societal norms, there is growing advocacy for more inclusive and gender-neutral criminal legislation. “Man” refers only to male human beings. It does not prescribe any particular age and applies to all ages- from male infants to old men. Also, it refers only to human beings, not male animals.

(20) “month” and “year”- Wherever the word “month” or the word “year” is used, it is to be understood that the month or the year is to be reckoned according to the Gregorian calendar;

COMMENTARY

Section 2(20) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 49 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the phrase ‘British Calendar’ has been replaced with ‘Gregorian Calendar’.

The terms “month” and “year” under the BNS are to be understood according to the British (Gregorian) calendar. This ensures clarity and consistency in legal proceedings involving durations of imprisonment, limitation periods, and other time-bound legal actions.

(21) “movable property” includes property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth;

COMMENTARY

Section 2(21) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 22 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the phrase ‘The words “movable property” are intended to include corporeal property’ has been replaced with ‘movable property includes property’.

Concept of property and movable property

The term “property” is a broad concept in law and is used differently in civil and criminal contexts. In criminal law (BNS), the term is not exhaustively defined but is used in the context of offences involving wrongful gain, theft, misappropriation, extortion, etc.

General meaning of property

In general legal understanding, property refers to anything over which a person has a legal right or ownership, and which can be transferred or passed on.

Property means any valuable thing capable of being possessed and transferred, which may be either tangible (physical) or intangible (non-physical).

Movable Property

As per the BNS, it includes property of every description. Specifically, all corporeal property which are perceivable by the senses. However, it does not include growing crops, or standing timber as long as they stand unsevered from the earth upon which they grow. However, as soon as they are severed they become movable property. Example - Tangible things like vehicles, jewellery, documents, furniture, mobile phones, money, etc are the movable property.

R.K. Dalmia v. Delhi Administration, AIR 1962 (SC) 1821

The Supreme Court held that “property” under IPC (Now the BNS) includes both tangible and intangible items, movable and immovable, depending on the nature of the offence.

- (22) “number” — Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number;

COMMENTARY

Section 2(22) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 9 of the Indian Penal Code, 1860. The language of the section remains unchanged.

- (23) “oath” includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant or to be used for the purpose of proof, whether in a Court or not;

COMMENTARY

Section 2(23) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 51 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the phrase ‘the word’ is omitted now and ‘Court of Justice’ has been substituted with the word ‘Court’.

- (24) “offence”- Except in the Chapters and sections mentioned in sub-clauses (a) and (b), the word “offence” means a thing made punishable by this Sanhita, but—

- (a) in Chapter III and in the following sections, namely, sub-sections (2), (3), (4) and (5) of section 8, sections 9, 49, 50, 52, 54, 55, 56, 57, 58, 59, 60, 61, 119, 120, 123, sub-sections (7) and (8) of section 127, 222, 230, 231, 240, 248, 250, 251, 259, 260, 261, 262, 263, sub-sections (6) and (7) of section 308 and sub-section (2) of section 330, the word “offence” means a thing punishable under this Sanhita, or under any special law or local law; and

- (b) in sub-section (1) of section 189, sections 211, 212, 238, 239, 249, 253 and sub-section (1) of section 329, the word “offence” shall have the same meaning when the act punishable under the special law or local law is punishable under such law with imprisonment for a term of six months or more, whether with or without fine;

COMMENTARY

Section 2(24) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 40 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the term ‘Sanhita’ has been substituted with the term ‘Code’ and ‘the sections of the IPC’ have been substituted with the corresponding section of BNS.

Concept of ‘Offence’

The criteria set forth in this section merely represent the assertion of fact and cannot be regarded a definition of an offence. However, it may be stated that an offence refers to any act or omission which is punishable by law. It means a breach of law or a criminal wrong for which a legal punishment is prescribed under the BNS or any other special or local law.

Essential Ingredients of an Offence

The salient features of a modern offences are that it typically leads to punishment and that a certain legal procedure is followed in determining the guilt of the accused individual. A crime can be defined by the following basic attributes:

- (a) **Act or Omission** - There must be a human act or failure to act, e.g., hitting someone, or not to do an act when bound by the duty.
 - (b) **Mens Rea (Guilty Mind)** - The intention, knowledge, or motive behind the act.
 - (c) **Prohibited by Law** - The act must be declared illegal by statute.
 - (d) **Punishable by Law** - There must be a prescribed punishment (fine, imprisonment, etc.).
- (25) “omission” denotes as well as a series of omissions as a single omission;

COMMENTARY

Section 2(25) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 33 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the phrase ‘the word’ has been omitted while the section is now split and renumbered as section 2(1) and 2(25).

Concept of omission

Omission is the non-performance of an act that one is legally bound to do, and such failure can result in criminal liability only if there is a legal duty to act.

Key Elements of Criminal Omission—To hold a person criminally liable for an omission, all the following must be present:

- (a) **Legal Duty to Act** - The person must have a legal obligation (not just a moral one).

- (b) **Ability to Perform the Duty** - The person must be capable of acting.
- (c) **Failure to Act** - The person did not fulfill the duty.
- (d) **Resulting Harm** - The omission resulted in harm or risk of harm covered by a penal statute.
- (26) “person” includes any company or association or body of persons, whether incorporated or not;

COMMENTARY

Section 2(26) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 11 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the phrase ‘The word’ has been omitted.

Concept of ‘Person’ - Under the BNS, the term “person” is broadly defined and includes both natural persons (human beings) and juridical persons (legal entities like companies, associations, etc.).

Categories of Persons under BNS

Natural Persons:

- (a) Human beings (irrespective of age, gender, or nationality).
- (b) Have rights and duties under the law.
- (c) Can be held criminally liable, subject to exceptions (e.g., unsound mind, infancy).

Legal or Juridical Persons

- (a) Companies (e.g., a private or public limited company).
- (b) Associations or Bodies of Persons, whether incorporated (registered) or unincorporated.
- (c) They can be prosecuted for certain offences (e.g., fraud, environmental violations, tax evasion).
- (d) Penalties are usually fines, as imprisonment is not feasible for legal persons.

It is to be remembered that an unborn child in the mother’s womb is a ‘person’ for the purpose of section 2(26) of the Sanhita.

- (27) “public” includes any class of the public or any community;

COMMENTARY

Section 2(27) of the Bharatiya Nyaya Sanhita, 2023 is equivalent to section 12 of the Indian Penal Code, 1860. The language of the section remains unchanged; however, the phrase ‘The word’ has been omitted.

- (28) “public servant” means a person falling under any of the descriptions, namely—
 - (a) every commissioned officer in the Army, Navy or Air Force;
 - (b) every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;