UPDATES

A Comparative Analysis of the New Criminal Bills and the Existing Codes

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1 Introduction

The Bharatiya Nyaya Sanhita Bill, 2023 (**Nyaya Sanhita Bill**) and the Bharatiya Nagarik Suraksha Sanhita Bill, 2023 (**Nagarik Suraksha Sanhita Bill**) (collectively, **New Codes**) were introduced in the Lok Sabha on 11 August 2023 to repeal and replace the Indian Penal Code, 1860 (**IPC**) and the Code of Criminal Procedure, 1973 (**CrPC**).

The wide-ranging changes to the existing criminal law regime proposed by the New Codes include consolidating the existing provisions of the IPC to make it concise and streamlined and introducing new offences in provisions pertaining to hate speech, terrorism and acts affecting the sovereignty, unity, and integrity of the nation. They also introduce provisions relating to timelines for conducting investigation and trial, and trial *in absentia* against absconders.

The New Codes were introduced to shift away from the colonial legacy of criminal justice administration which was geared towards punishing and repressing individuals, to a new system which promotes the idea of justice and safeguards the rights of Indian citizens.

The Bharatiya Nyaya Sanhita Bill, 2023 and the Bharatiya Nagarik Suraksha Sanhita Bill, 2023 have been introduced to repeal and replace the existing Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973. With an intent to overhaul the law enforcement and criminal justice system in India, these bills seek to consolidate existing offences and mandate timelines for investigation and trial. This newsletter summarises key divergences from the existing codes that have been proposed under the new regime.

2 Proposed Changes in the Nyaya Sanhita Bill

The landscape of economic offences such as cheating and falsification of accounts has undergone modifications in the Nyaya Sanhita Bill. Some of the changes include consolidating different provisions relating to the same offence in the existing IPC under a new umbrella provision in the Nyaya Sanhita Bill, and introducing a new provision relating to '*organised crime*'.

a. Introduction of the definition of 'organised crime'

The Nyaya Sanhita Bill introduces a new Section 109 pertaining to '*organised crime*' where a group of individuals act in concert or as members or on behalf of an organised crime syndicate to commit offences such as extortion, land grabbing, and offences relating to bodily harm, economic offences, etc.

Further, the term 'economic offences' has also been defined (in the context of organised crime) to 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".

As is evident from the above, the definition of organised crime is wide in ambit. Moreover, economic offences have been linked with the offence of organised crime under the Nyaya Sanhita Bill and as such, there could be a risk that companies and their officers may also be accused of the offence of organised crime along with the associated economic offences by the concerned law enforcement agencies. That being said, the practical impact of these inclusions can only be assessed once the New Codes are enacted, implemented by law enforcement agencies and interpreted by courts.

b. ***Changes in offences of cheating, criminal breach of trust, forgery and falsification of accounts***

The offences of cheating, criminal breach of trust, forgery and falsification of accounts have been consolidated and rearranged. The new Section 316 dealing with cheating has consolidated the definition of cheating[1] and punishment for cheating[2]. The new provision also sets out the aggravated offences of cheating i.e., cheating with the knowledge that wrongful loss would ensue[3] and cheating and dishonestly inducing the delivery of property[4], and consolidates the same.

Similarly, provisions under the New Codes relating to criminal breach of trust (under Section 314), and forgery and falsification of accounts (under Sections 333 and 334), consolidate and rearrange the corresponding offences under IPC[5].

Notably, the punishment in case of criminal breach of trust has been increased from three years to five years. In addition, it is now mandatory to report the commission of an offence of criminal breach of trust under the Nyaya Sanhita Bill.

Insofar as businesses are concerned, the offence of criminal breach of trust is usually made out in cases of misappropriation and embezzlement of funds by employees and/or third parties. Companies/businesses often seek to amicably resolve such matters through private settlements in order to mitigate any potential reputational risks. However, with the obligation to report such offences to the police, it may introduce additional steps in arriving at such settlements and amicably resolving such issues, for example, filing a quashing petition in case an FIR is registered post such reporting by the company. However, the New Codes envisage that the commission of such an offence need not be reported in case there is a "reasonable excuse" not to do so. While exploring a settlement may arguably constitute a reasonable excuse, this will have to be judicially tested once the New Codes come into force.

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1 Previously Section 415 in the IPC.
2 Previously Section 419 in the IPC.
3 Previously Section 418 in the IPC.
4 Previously Section 420 in the IPC.
5 Sections 405 to 409 of the IPC (for criminal breach of trust) and Sections 463 to 471 of the IPC (for forgery and falsification of accounts) have been consolidated and re-arranged.

3 Proposed Changes in the Nagarik Suraksha Sanhita Bill

The most notable changes introduced in the Nagarik Suraksha Sanhita Bill are aimed towards specifying timelines for conducting investigation and trial, and updating archaic provisions to account for modern means of communication, electronic evidence and conducting trials through virtual modes. The provisions for attachment and seizure of property amounting to or related to proceeds of crime have also been amended and new provisions have been inserted to allow trial for absconding offenders in their absence.

a. *Introduction of new timelines during various phases of investigation and trial*

The Nagarik Suraksha Sanhita Bill introduces specified timelines during the stages of investigation and trial. For instance, further investigation after a chargesheet has been filed will have to be completed within a period of 90 days. This time cannot be extended unless specifically allowed by the court. Further, this Bill obligates the police officer to inform the victim or informant of the progress of the investigation (including by way of electronic communication) within a period of 90 days.

A timeline of 60 days (from the date of the first hearing) has been specified in relation to the framing of charges. Further, the judgment has to be delivered within 30 days from the date of completion of arguments, which may be extended up to 60 days.

b. *Trial in electronic mode and electronic communication*

Under the Nagarik Suraksha Sanhita Bill, electronic communication and video conferencing facilities have been adopted at various stages including at the time of inquiry, investigation, and trial. For instance, for investigation of a cognisable offence the statement of the victim and a witness may be recorded through audio-video electronic means including a cell phone. Similarly, search conducted by a police officer has to be recorded through audio-visual electronic means, preferably a cell phone.

A summons issued by a court, or a summons issued by a police officer may be served via electronic communication. Further, the Nagarik Suraksha Sanhita Bill now allows the accused to attend the proceedings personally through audio-video electronic means. The Nagarik Suraksha Sanhita Bill also provides that all trials, inquiries, and proceedings, including recording of evidence in inquiries and trials, may be done by the use of electronic communication or audio-video electronic means.

c. *Jurisdiction in the case of electronic communication*

The Nagarik Suraksha Sanhita Bill has now added that if the offence of cheating is committed "*by means of electronic communications or letters or telecommunication messages*" then the same may be inquired into or tried by any court within whose local jurisdiction such electronic communications or letters or messages were sent or received.

d. *Provision for attachment and seizure of property*

The Nagarik Suraksha Sanhita Bill has inserted an entirely new provision that allows a police officer to make an application to the court or a judicial magistrate (with the approval of the Superintendent or Commissioner of Police), for attachment of certain properties where such properties are obtained, directly or indirectly, as a result of criminal activity or from the commission of any offence or which are '*proceeds of crime*'. Presently, the CrPC does not envisage or provide for the attachment of properties which are the '*proceeds of crime*'.

The definition of '*proceeds of crime*' is similar to that given under the Prevention of Money Laundering Act, 2002. Further, if the court finds the attached property to be derived from '*proceeds of crime*', the court may order distribution of such property to persons affected by such a crime.

e. ***Trial against a person declared an 'absconder'***

The Nagarik Suraksha Sanhita Bill allows for a trial to be conducted against a person declared as an '*absconder*' even in his absence. All a court has to do is record reasons in writing and proceed with the trial as if the proclaimed offender or absconder was present before it. The proclaimed offender or absconder also does not have a right to appeal unless he presents himself before the appellate court. Further, no appeal against conviction shall lie after the expiry of three years from the date of judgment.

4 Conclusion

The consolidation of the provisions of the IPC and CrPC into umbrella provisions in the New Codes is a welcome step in achieving streamlined enforcement and clarity in terms of the application of these offences.

Notably, the introduction of audio-visual and electronic means for undertaking various processes during trials and investigation and the introduction of stricter timelines are much-needed reforms.

The introduction of a strict process of trial *in absentia* will enable prompt disposal of trials against economic offenders, who flee the jurisdiction of courts to avoid prosecution.

However, the efficacy of these changes will also need to be tested on the basis of their interpretation by the courts across the country once the New Codes are enforced.
