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THE BHARATIYA NAYAY SANHITA NEEDS A RELOOK

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The Bharatiya Nyaya Sanhita Bill, 2023, Bharatiya Nagarik Suraksha Sanhita Bill, 2023, and Bharatiya Sakhshya Bill, 2023 have been referred to the Standing Committee on Home Affairs headed by BJP MP Brijlal (in picture). Photo: X/@BrijLal_IPS

It is important that the offences in any penal law are clearly defined. Those who administer the law must know what offence has been committed so that arbitrary and discriminatory enforcement does not occur. In *Shreya Singhal v. Union of India* (2015), the Supreme Court held Section 66A of the Information Technology Act as unconstitutional. It found the term “grossly offensive” in the Section to be vague and devoid of precision. Recently, the Central government introduced a few new offences in the Bharatiya Nyaya Sanhita (BNS) Bill to deal sternly with terrorism-related crimes and organised crimes. It is feared that some terms in the Bill may be challenged as they are vague.

The number of sections in the Sanhita has been reduced, mainly because various sections pertaining to ‘definition’ have been merged into one section, offences and punishments have been clubbed together, and offences of a similar nature brought under one section. A few omitted sections are unnatural offences (Section 377 of the Indian Penal Code), adultery (Section 497 of the IPC) and attempt to commit suicide (Section 309 of the IPC, though not completely).

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While the definition of ‘terrorist act’ in the Sanhita has been largely borrowed from the Unlawful Activities (Prevention) Act (UAPA) of 1967, the words ‘to strike terror in the people’ have been replaced with the words ‘to intimidate the general public’. Though less severe, these words do not change the gravamen of the section. The expression ‘such as to destroy the political, economic, or social structure of the country’ is vague. The explanation added to the section defining a ‘terrorist’ is at variance with the one who commits a ‘terrorist act’. Similarly, while terrorist organisations are notified in the First Schedule to the UAPA, ‘terrorist organisation’ is given a specific definition in the section. The only advantage of adding terrorism in the Sanhita (vis à vis the UAPA) is that the investigating officer would not require any sanction for prosecution from the government. But at the same time, the restrictive bail provision would also not apply to the accused.

Another offence reintroduced with some changes (in place of sedition) is about ‘acts

endangering sovereignty, unity and integrity of India'. This appears more objective as it does not intend to punish criticism of or disaffection towards the government. The addition of words such as 'purposely or knowingly' serve as a safeguard because they indicate mandatory presence of the mens rea. But it would help if the meaning of 'subversive activities' is clarified to dispel fears of misinterpretation and misuse by the authorities. Further, the explanation added to the section appears incomplete and needs to be modified.

Similarly, taking a cue from the Maharashtra Control of Organised Crime Act (MCOCA), 1999, a new offence called 'organised offence' has been added with the difference that three (instead of two) or more persons indulging in such activities would constitute an 'organised crime syndicate'. While about a dozen categories of offences have been specifically included in the definition, offences such as 'cyber-crimes having severe consequences' appear vague. The new offence of 'petty organised crime' which starts with the vague expression 'any crime that causes general feeling of insecurity among citizens relating to theft…' does not carry any barometer to assess the general feeling of insecurity. The constituents of 'organised crime or gang' are not specified. Further, while most offences relate to theft and are cognisable offences, 'petty organised crime' has been categorised as a non-cognisable offence. Most surprisingly, while 'snatching' (a type of theft) has been defined as a separate offence with the same punishment as that of theft (though without any provision for subsequent conviction), it has been categorised as a non-cognisable offence.

The gravity of murder based on factors such as race, community, sex, or language by a group of five or more has been diluted. Punishment varies from seven years to imprisonment for life, whereas the present provision provides for life imprisonment or death for every person acting with common intention. This clause may not stand scrutiny of the constitutional courts as the differentiation is prima facie arbitrary and unreasonable. At the same time, punishment for a fatal accident could extend to 10 years if the accused does not report the incident to the police or escapes from the scene.

'Sexual intercourse by employing deceitful means' has been rightly made a separate offence with lesser punishment as provided for rape, but exception with regard to 'marital rape', the constitutionality of which is under challenge before the Supreme Court, has not been removed. The right to 'decent cremation or burial' (which is a part of right to life) and was allegedly denied to many during the pandemic, has not been taken cognisance of by making it a new offence, though it was noticed by many courts.

While the addition of 'community service' as a form of punishment for petty offences is laudable, that a reformation approach to punishment finds no place in the 'statement of objects and reasons' seems regressive.

As the Sanhita will have a far-reaching impact on the criminal justice system, it needs further deliberations. The Parliamentary Standing Committee must ensure that inconsistencies are checked, vague expressions are removed, appropriate explanations added, and drafting errors eliminated.

R.K. Vij is a retired Indian Police Service Officer. Views are personal

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