

**Bill No. XXVII of 2024**

**THE BHARATIYA NYAYA SANHITA (AMENDMENT) BILL, 2024**

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BILL

*to amend the Bharatiya Nyaya Sanhita, 2023.*

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

	1. (1) This Act may be called the Bharatiya Nyaya Sanhita (Amendment) Act, 2024.	Short title and commencement
5	(2) It shall come into force at once.	
45 of 2023	2. In the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as the principal Act), in section 63, <i>Exception</i> . 2 shall be omitted.	Amendment of Section 63.
	3. Section 83 of the principal Act shall be omitted.	Omission of Section 83.
10	4. In the principal Act, after section 110, the following new section shall be inserted, namely, –  “110A. Whoever, voluntarily harms the dignity or right of a dead person, shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.”	Insertion of new Section 110A.  Punishment for harming the dignity or right of a dead person.

## STATEMENT OF OBJECTS AND REASONS

The Indian Penal Code, 1860 has been replaced by the Bharatiya Nyaya Sanhita, 2023 (BNS). The main ground of the Government to replace the Code was that the existing criminal law reflected colonial outlook and to get rid of the colonial past, a new law is required. There is no doubt that colonial moral imprints were clearly visible in the provisions that criminalized homosexuality, adultery, enticing married women and even marital rape exemption in the Indian Penal Code (IPC). However, it seems that the Government failed to grab the opportunity to truly decolonise the law.

2. While the BNS has dropped the provisions on criminalizing adultery (Section 497 IPC), thus giving effect to the Supreme Court decision in *Joseph Shine v. Union of India* (2019), it continues to retain the provisions on enticing a married woman (Section 83) and the marital rape exemption (Section 63, Exception 2). Section 498 of the repealed IPC criminalized enticing or taking away a married woman with the intention of sexual intercourse. Since, women were perceived as a property of their husbands, any form of sexual transgression with a wife is considered an infringement of the husband's proprietary right over her. The section was designed to protect the right of the husband and not the wife. Similar is the case of retention of marital rape exemption from the IPC in BNS, based on the belief that husbands have ownership over their wives post marriage. This exemption to the offence of rape grants immunity to the husband to have non-consensual sexual intercourse with their wives. This is even when marital rape has been recognized as cruelty and a ground for divorce. All of this is at the cost of women's dignity, bodily integrity and her right to sexual autonomy. Therefore, these provisions should be deleted from the BNS.

3. Further in *Rangaraju and Vajapeyi Vs. State of Karnataka*, the Karnataka High Court has observed that the act of sexual harassment or assault on a dead body does not come under any of the provisions of the Indian Penal Code (IPC). The Court has recommended that the IPC should be amended to make necrophilia, *i.e.*, sexual attraction or act involving a person engaging in sexual activities with a deceased body, an offence. The Division Bench passed the order acquitting the accused from the charges of raping a 25 year old woman after murdering her.

4. Necrophilia is a paraphilia in which the perpetrator derives pleasure from a heinous crime such as having sex with dead bodies. Necrophilia is a "psychosexual disorder" identified as a "paraphilia" by the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders) which includes pedophilia, exhibitionism and sexual mutilation.

5. Even in the new Nyaya Sanhita, a dead person does have right and dignity. Section 315 of the BNS recognizes dishonest misappropriation of the dead man's property, as an offence. Further, section 351 of BNS, which deals with defamation, stipulates that libel or slander against a dead

person also constitutes the offence of criminal defamation. Section 356 of the same law, which defines criminal intimidation, includes threatening a person with injuring the reputation of a dead person dear to him, as an offence. Section 301, deals with the offence of trespassing on burial grounds etc., states that if any person offers any indignity to any human corpse, or causes disturbance to any person assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

6. The Supreme Court in its various judgements has held that the right to dignity prevails even after death. In *S. Sethu Raja Vs. The Chief Secretary (W.P. (MI) No. 3888 of 2007)*, the petitioner had brought to the court's attention, the Supreme Court's stand on right to accord decent burial or cremation to a dead body. The Supreme Court's stand be interpreted from its decision in *Ram Sharan Autyanuprasi Vs. Union of India (AIR 1989 Supreme Court 549)* in which it held thus,

"13... It is true that the life in its expanded horizons today includes all that give meaning to a man's life including his tradition, culture and heritage and protection of that heritage in its full measure would certainly come within the encompass of an expanded concept of Art. 21 of the Constitution."

Further the Apex Court in *Pt. Parmanand Katara Vs. Union of India (1995 (3) SCC 248)* had observed thus,

"the word and expression "person in article 21, would include a dead person in a limited sense and that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his dead body with respect, which he would have deserved, had they been alive subject to his tradition, culture and the religion, which he professed. The State must respect a dead by allowing the body of that dead person to be treated with ignity and unless it is required for the purposes of establishing a crime, to ascertain the cause of death and the subjected to post-mortem or for any scientific investigation, medical education or to save life of another person in accordance with the law, the preservation of the dead body and its disposal in accordance with human dignity"

In *Ashray Adhikar Abhiyan Vs. Union of India (AIR 2002 SC 554)* the Supreme Court had upheld the right of a homeless deceased to have a decent burial as per their religious belief and the corresponding obligation of the State towards such people.

7. Many countries in the world have laws on necrophilia. In the UK, any kind of sexual harassment or inappropriate physical conduct with a dead body is against the law, and conviction in this case can lead to a jail term of six months to two years or a fine. Legislation against necrophilia also exists in Canada, New Zealand and South Africa. In Canada, without using the word necrophilia, it is mentioned that maximum sentence of 5 years can be cited for harming the dignity and rights of a dead body.

At the same time, in New Zealand, a provision has been made for a maximum punishment of 2 years regarding this law.

8. It is therefore the need of the society that a law for providing punishment for necrophilia should be made by creating a new offence under BNS.

The Bills seeks to achieve the above said objectives.

A.D. SINGH

## ANNEXURE

### EXTRACTS FROM THE BHARATIYA NYAYA SANHITA, 2023 (45 OF 2023)

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#### CHAPTER V

#### OF OFFENCES AGAINST WOMAN AND CHILDREN

##### *Of Sexual offences*

**63.** A man is said to commit “rape” if he— Rape.

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*Exception.2*—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

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##### *Of offences relating to marriage*

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**83.** Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Enticing or taking away or detaining with criminal intent a married woman.

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RAJYA SABHA

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*to amend the Bharatiya Nyaya Sanhita, 2023*

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*(Shri A.D. Singh, M.P.)*