

BHARATIYA NYAYA SANHITA

Objective of the Course:

It was Lord Macaulay who moved the House of Commons in 1833 to codify the whole of Criminal Law in India. This codification of both the substantive (the Indian Penal Code, 1860) and adjectival (Procedural) Criminal law (The Criminal Procedure Code, 1973) brought uniformity and definiteness to the Criminal jurisprudence in India. In the year 2020, The ministry of Home Affairs constituted a committee to review the existing criminal laws as they were enacted to rule the nation rather than serve the citizens. Constitution, human rights, techno centricity, unambiguous and consistent procedures, time bound investigation and trial, balancing the rights of victims vis-à-vis the accused were the guiding principles for drafting the new criminal laws. The Bharatiya Nagrik Suraksha Sanhita and The Bharatiya Nyaya Sanhita together constitute 'Criminal Law' of India. These laws marks end of colonial era laws. The Bharatiya Nyaya Sanhita is a Substantive law containing 358 sections. It replaced the Indian Penal Code of 1860. New forms of offences and punishments are introduced in the act. Definition of offences, containing many ingredients must be remembered with abundant caution. Even if one ingredient is slipped, it will not amount to an offence. Further, the illustrations play a dominant role and should be studied again and again to comprehend the essentials of the offences. 'Mens rea' which is the subject of great discussion in England, is much simplified by the B.N.S. The subject is heavy but is worth its weight in gold.

After undergoing the study, the student will be able to understand the following:

- Analyze criminal acts, their elements, parties to offenses, and application to the criminal justice system
- Express an increased awareness of the legal principles of criminal law and its application
- Students will demonstrate an understanding of the origins of criminal behaviour, society's response to crime, and the consequences of crime to our society, utilizing multiple perspectives
- Students will articulate ethical implications of decision making in a professional capacity.

COURSE OUTLINE

Module I: Nature and Scope of Criminal Law

- a) History of Criminal Law- Development, Nature, Commencement, Extent & Applicability-Principles of Criminal Law -Crime Definition- **Committee for reforms in Criminal Law (2020)- IPC and BNS comparative analysis**
- b) Elements of Crime: Mens Rea- Actus Reus Psychology of crime- Stages of Crime: Intention, Preparation, Attempt & Commission
- c) Classification of crime: General- specific- Group- Joint and Constructive Liability- Corporate Liability
- d) Jurisdiction: Territorial-Extra Territorial Jurisdiction
- e) **Inchoate Crime-** Criminal Conspiracy- Abetment-Attempt

Module II: General Exceptions

- a) Object, Nature & Scope -Excusable & Justifiable-Whether Exhaustive-Burden of Proof
- b) Mistake-Judicial Acts –Accident-Necessity
- c) Infancy-Insanity-Intoxication –Consent
- d) Good Faith-Compulsion or Threat -Trivial Acts
- e) Right of Private Defence

Module III: Punishment

- a) Punishments-Theories of punishment
- b) Types of punishment-death-life imprisonment-rigorous imprisonment-simple imprisonment- forfeiture of property-fine - community service
- c) Commutation of sentence
- d) Solitary confinement-Limit of solitary confinement
- e) Enhanced punishment

Module IV: Offences against Human Body

- a) Culpable Homicide and Murder- **Organized crime- Terrorism- Mob lynching**
- b) Rash and Negligent Act-Attempt and Abetment to Suicide
- c) Hurt and Grievous Hurt- Criminal Force and Assault-Wrongful Restraint and Wrongful Confinement
- d) Kidnapping and Abductions
- e) **Offences against Women** -Outraging the Modesty of Women-cybercrime against women-Voyeurism-Stalking-**Sexual harassment-** Acid Attack-Rape-**Sexual intercourse by employing deceitful means-Cruelty- Dowry death,** Offences relating to Marriage.

Module V: Offences against Property

- a) Theft, Extortion, Robbery and Dacoity
- b) Criminal Misappropriation and Criminal Breach of Trust
- c) Cheating and Forgery-Mischief-Receiving Stolen Property
- d) Fraudulent Deeds & Disposition of Property-Criminal Trespass
- e) Offences Relating to Documents & to Property Marks.

Module VI: General Offences

- a) Offences against State -Offences against Election
- b) Offence Relating to Coins & Government Stamps
- c) Offences Relating to Religion- Defamation- Criminal Intimidation, Insult & Annoyance
- d) Offence Affecting the Public Health, Safety, Convenience, Decency & Morals
- e) Offences Relating to the Army, Navy & Air Force-Offences against the Public Tranquility-**Contempts of the lawful authority of public servants**-False Evidence & Offence against Public Justice.

Recommended Reading

Books

1. Glanville Williams, Text Book of Criminal Law, Universal Law Publishing Co., New Delhi, 2016
2. K.I. Vibhuti, PSA Pillai's Criminal Law, Lexis Nexis, Butterworths Wadhwa, Nagpur, 2017
3. **Criminal Manual along with comparison table, edited by Virag Gupta, Commercial Law Publishers (India) Pvt. Ltd. New Delhi, Edition 2024.**
4. **Anjana Prakash & Anuj Prakash, Concise Commentary on The Bharatiya Nyaya Sanhita, 2023, Lexis Nexis,**
5. **Taxmann's Hand book on New Criminal Laws, Taxmann Publications (P) Ltd., New Delhi, 2024**
6. **The Bharatiya Nyaya Sanhita, 2023 along with Introduction, Comparative Tables and Notes on Clauses, Asia Law House, Hyderabad, 1st Edition.**

Journals/ Article

1. Murder-suicide: A review of the recent literature, Eliason S, Journal of the American Academy of Psychiatry and the Law (2009) 37(3) 371-376
2. Whose problem is it anyway? Crimes against women in India, Himabindu Barora R Prashanth N, Global Health Action (2015) 8(1)
3. Mens Rea, Hampton J, Social Philosophy and Policy (1990) 7(2) 1-28
4. Intention, Parkinson C Wheatley T, Elsevier Inc., (2012), 452-457
5. Trafficking in women and children in India: nature, dimensions and strategies for prevention, Ghosh B, The International Journal of Human Rights (2009) 13(5) 716- 738

Further Reading

Books

1. Supreme Court on Penal Code Collection (in 5 Volumes), Surendra Malik and Sudeep Malik, 2018 Edition, Eastern Book Company
2. Indian Penal Code (IPC), C.K. Takwani, 2014 Edition, Eastern Book Company
3. Criminal Law (Indian Penal Code), K S N Murthy & K V S Sarma, 1st

- Edition, Lexis Nexis
4. Crime and Punishment– Trends and Reflections, N V Paranjape, 1st Edition, Lexis Nexis
5. Textbook on Criminal Law, Allen M, Oxford University Press, (2013)
6. The Language of Crime, Tiersma P Solan L, Oxford University Press, (2012)
7. Death sentence on taxonomy in India, Pratapan k Rajan, P Narendran TViraktamath C Aravind, N Poorani J See fewer, Current Science, 2008
8. Law of crimes: A hand book: a single volume commentary on Indian penal code, 1860 (Act no. XLV of 1860), V. V Raghavan, Orient Law House : sole selling agents, Orient Sales Organisation; 1st edition (1980)
9. Codification, Macaulay and the Indian Penal Code: The Legacies and Modern Challenges of Criminal Law Reform (International and Comparative Criminal Justice), Ashgate; 1 edition (February 28, 2013)
10. R.C. Nigam, Law of Crimes in India (Vol. I) New York, Asia Pub. House (1965).
11. **Vageshwari Deswal & Saurabh Kansal, Bharatiya Nyaya Sanhita 2023 Law and Practice, 2024 edition.**

Journal/ Article

1. Macaulay and the Indian Penal Code of 1862: The Myth of the Inherent Superiority and Modernity of the English Legal System Compared to India's Legal System in the Nineteenth Century, David Skuy, *Modern Asian Studies*, Vol. 32, No. 3 (Jul., 1998), [Cambridge University Press](#), pp. 513-557
2. Justifiable Homicide: A Study of the Application of Nonculpable Deadly Force in Cuyahoga County (Cleveland), Ohio, 1958–1982, Challener R Adelson LRushforth N, *Journal of Forensic Sciences* (1987) 32(5) 1118-6J
3. Proportionality in Sentencing and the Restorative Justice Paradigm: 'Just Deserts' for Victims and Defendants Alike?, Kirchengast T, *Criminal Law and Philosophy* (2010) 4(2) 197-213
4. Dignity and Defamation: The Visibility of Hate, Waldron J, *Harvard Law Review* (2009) 123(1596) 1596-1657
5. Sedition, Monét V, Taylor and Francis, (2013), 217-222
6. Indian Perspective on the legal Status of Marital Rape: An Overview, Sindhu S Thakur M, *International Journal of Multidisciplinary Approach & Studies* (2015) 2(1) 235- 250
7. Criminal Law - Cases and Materials, O'Daly M, *Criminal Behaviour and Mental Health* (1995) 5(1) 53-54
8. Criminal Conspiracy, Sayre F, *Harvard Law Review* (1922) 35(4) 393
9. Capital punishment, Aggarwal K, *Medico-Legal Update* (2010) 10(1) 7-8
10. Sentencing Sex Offenders in India: Retributive Justice versus Sex-Offender Treatment Programs and Restorative Justice Approaches, Gill A Harrison K, *International Journal of Criminal Justice Sciences* (2013) 8(2) 166-181
11. **Parliament of India Rajya Sabha, Department-Related Parliamentary Standing Committee on Home Affairs, 248th Report on the Bharatiya Nyaya Sanhita, 2023, Dec 2023.**
12. **Substantive analysis of the Bharatiya Nyaya Sanhita Bill 2023, Project 39A,**

National Law University Delhi, 2023.

13. Bharatiya Nyaya (Second) Sanhita Bill, 2023, Bharatiya Nagarik Suraksha (Second) Sanhita Bill, 2023, and Bharatiya Sakshya (Second) Bill, 2023, Analysis of Key Changes, Project 39A, National Law University Delhi, 2023.

Cases for Guidance

1. K.M. Nanavati v. State of Maharashtra, AIR 1962 SC 605
2. Tukaram v. State of Maharashtra, AIR 1979 SC 185
3. Suresh Kumar Koushal v. Naz Foundation, (2014) 1 SCC 1
4. Rawalpenta Venkalu v. State of Hyderabad, AIR 1956 SC 171
5. S.N. Hussain v. State of Andhra Pradesh, AIR 1972 SC 685
6. Ram Badan Sharma v. State of Bihar (2006) 10 SCC 115
7. Rambaran Mahton v. The State, AIR 1958 Pat. 452
8. S. Varadarajan v. State of Madras, AIR 1965 SC 942
9. State of Punjab v. Gurmit Singh (1996) 2 SCC 384
10. Bhupinder Singh v. UT of Chandigarh (2008) 8 SCC 531
11. Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094
12. Shri Bhagwan S.S.V.V. Maharaj v. State of A.P., AIR 1999 SC 2332
13. Indira Gandhi V. Raj Narain- 1975
14. Priyadarshini Mattoo case - October 2006
15. Jessica Lal Murder Case - December 2006
16. Nithari serial murders – 2009
17. Aarushi Talwar murder – 2008
18. Naz Foundation v Govt of NCT of Delhi) - July 2009
19. Ayodhya Ram Mandir Babri Masjid Case) - September 2010
20. Yakub Abdul Razak Memon V State of Maharashtra and Anr - July 2015
21. Independent Thought V. Union of India, 2017
22. Joseph Shine V. Union of India, 2018
23. Navtej Singh Johar V. Union of India, 2018
24. Vombatkere V. Union of India, 2022
25. The State of Jharkhand V. Shailendra Kumar Rai @ Pandav Rai, 2022

Learning Outcomes

1. To analyse the principles of criminal responsibility, undertake self-directed legal research using primary and secondary materials, and analyse and evaluate legal information relating to criminal law and legal theory.
2. To apply principles of criminal law to complex legal problems, and critique the operation of criminal law from both a policy and theoretical/principled perspective.
3. To prepare persuasive written and oral arguments for a legal and lay audience on issues relating to the drafting of new criminal laws and the application of existing criminal laws to common scenarios that arise in

criminal practice.

4. To demonstrate awareness of principles of ethical professional judgement in the management and conduct of a criminal law matter, relevant to both prosecution and defence.
5. To analyse the impact of criminal law from a policy perspective, with a focus on the impact of the law on those people who are vulnerable or outside mainstream culture.
