

**BNS,2023 or IPC,1860 after 1.7.2024 for offence committed prior to 30.6.2024
Midnight**

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A confusion reigns as to what provisions should be registered or what provisions will be attracted to cases, which are reported in the P.S. or complaints filed into the Courts, after the midnight of 30th June, 2024 of the incidents (offences) which occurred prior to 30th June, 2024.

Let us first see, as to why this confusion arose.

Section 531 of Bharatiya Nagarik Suraksha Sanhita, 2023 states

531. Repeal & Savings

(1) The Code of Criminal Procedure, 1973 is hereby repealed.

(2) Notwithstanding such repeal—

(a) if, immediately before the date on which this Sanhita comes into force, **there is any appeal, application, trial, inquiry or investigation pending**, then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as in force immediately before such commencement (hereinafter referred to as the said Code), as if this Sanhita had not come into force;

(b) -----

(c) -----

(3) Where the period specified for an application or other proceeding under the said Code had expired on or before the commencement of this Sanhita, nothing in this Sanhita **shall be construed as enabling any such application to be made or proceeding to be commenced under this Sanhita by reason only of the fact that a longer period therefor is specified by this Sanhita or provisions are made in this Sanhita for the extension of time.**

The application of Code of Criminal Procedure, 1973 has been saved only to PENDING appeal, application, trial, inquiry or investigation. New cases have to be dealt under BNSS,2023, irrespective of the date of occurrence of the offence.

Now contrastingly in Section 358 of Bharatiya Nyaya Sanhita, 2023

358- Repeal and Savings

358. (1) The Indian Penal Code is hereby repealed.

(2) Notwithstanding the repeal of the Code referred to in sub-section (1), it shall not affect,—

(a) ---

(b) ----

(c) ---

- (d) --
- (e) any proceeding, investigation or remedy in respect of any such penalty or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty may be imposed as if that Code had not been repealed.
- (3) -----
- (4) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of the repeal.

As seen, reference to new Cases instituted are to be dealt as if Indian Penal Code exists and that it has not been repealed for the offence which occurred prior to the amendment.

Section 358 BNS, 2023 refers to Section 6 of General Clauses Act, 1897, let us have a glance on the said provision

Section 6 in The General Clauses Act, 1897

6. Effect of repeal

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

The plain interpretation of the above provisions would mean that

- 1. Cases pertaining to offences committed and registered after midnight of 30th June, 2024 would be governed by**
 - a. Provisions under BNS, 2023 &**
 - b. Procedure mentioned under BNSS, 2023.**
- 2. Cases pertaining to offences committed prior to 1st July, 2024 and registered after midnight of 30th June, 2024 would be governed by**
 - a. Provisions under IPC &**
 - b. Procedure mentioned under BNSS, 2023.**

THE APPLICATION OF BNSS, 2023 FOR THE OFFENCES WITH PROSPECTIVE EFFECT FOR OFFENCES COMMITTED PRIOR TO 1ST JULY, 2024 AND NON-APPLICATION OF BNS, 2023 FOR THE OFFENCES COMMITTED PRIOR TO 1ST JULY

2024 IS THE ASPECT WHICH HAS GIVEN RISE THE MISPERCEPTION THAT BNS, 2023 SHOULD BE APPLIED AT PAR WITH BNSS, 2023 FOR OFFENCES REPORTED AFTER 1ST JULY, 2024, IRRESPECTIVE OF THE DATE OF OFFENCE BEING PRIOR TO 1ST JULY 2024.

With this background, we will now try to comprehend the factual aspects of the issue: The constitution is the foundational or fundamental law of a country from which all other laws and principles derive. Any law made has to be in conformity of the constitution law. Article 20 speaks of concepts of Ex Post Facto laws, Double Jeopardy and Right against Testimonial Compulsion.

Article 20 in Constitution of India

20. Protection in respect of conviction for offences

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) ----

(3) ----

Article 20 of the Indian Constitution safeguards certain rights in criminal proceedings. It provides protection against self-incrimination, double jeopardy, and retrospective punishment.

Article 20(1) prohibits the imposition of retrospective punishment. It states that no person shall be punished for an act that was not an offense at the time it was committed. This provision ensures that individuals cannot be held accountable for actions that were legal when they occurred but were later made illegal by subsequent legislation.

PRECEDENTS ON THE ISSUE:

In the landmark judgment, [Kedar Nath v. State of West Bengal](#) the Supreme Court held that when an act is declared a criminal offense by the legislature and provides penalties for it, such declaration is always prospective and cannot be applied retrospectively as per the provisions of Article 20(1)

However, it is important to note that this clause prohibits only the procedure of sentencing and convicting, not the trial itself. Therefore, a person accused under a particular procedure cannot claim protection under this clause or the doctrine of ex post facto law.

In the case of [Mohan Lal v. State of Rajasthan](#) involving the Narcotics, Drugs, and Psychotropic Substances Act, the court opined that Article 20 prohibits only conviction and punishment under an ex post facto law, not the trial or prosecution itself. Furthermore, a trial conducted under a different procedure from the one existing at the time of the offense does not fall within the scope of this provision and cannot be deemed unconstitutional.

In another significant judgment, [Maru Ram Etc. v. Union Of India & Anr \(1980 AIR 2147\)](#), the Court observed that Article 20(1) also encompasses the principle that

penalties for an offense should not be retrospectively increased beyond what existed at the time of the offense.

However, there is an exception to the restriction imposed by this provision. In the case of Rattan Lal v. The State of Punjab, the Supreme Court allowed for retrospective application of criminal laws in situations where the issue at hand concerns the reduction of punishment for the said offense.

(source : <https://indiankanoon.org/doc/655638/>;)

Coming to the interpretation of Section 6 of the General Clauses Act, as to the ambiguity of application of amendments to Substantive law and Procedural Law, the Hon'ble Apex Court had held in the following cases thus:

1. Section 6 of the General Clauses Act, therefore, inter alia saves a right accrued and/ or a liability incurred. It does not create a right. When Section 6 applies only an existing right is saved thereby. The existing right of a party has to be determined on the basis of the statute which was applicable and not under the new one. If a new Act confers a right, it does so with prospective effect when it comes into force, unless expressly stated otherwise. Section 140 of the 1988 Act does not contain any procedural provision so as to construe it to have retrospective effect. It cannot enlarge any right. Rights of the parties are to be determined on the basis of the law as it then stood, viz., before the new Act come into force.

It is now well-settled that a change in the substantive law, as opposed to adjective law, would not affect the pending litigation unless the legislature has enacted otherwise, either expressly or by necessary implication.

{2008 0 AIR(SC) 2276; 2008 5 ALD(SC) 13; 2008 12 SCC 112; 2009 1 SCC(Cri) 328; State of Punjab & Ors. Vs. Bhajan Kaur & Ors.; Civil Appeal No. 3406 of 2008; Decided on 8.5.2008}

2. From the aforesaid decision, it is clear that when a substantive law is brought about by amendment, there is no assumption that the same ought to be given retrospective effect. Rather, there is a requirement for the legislature to expressly clarify whether the aforesaid amendments ought to be retrospective or not.

In the light of the aforesaid discussion, it is clear that ordinarily, the effect of amendment by substitution would be that the earlier provisions would be repealed, and amended provisions would be enacted in place of the earlier provisions from the date of inception of that enactment. However, if the substituted provisions contain any substantive provisions which create new rights, obligations, or take away any vested rights, then such substitution cannot automatically be assumed to have come into force retrospectively. In such cases, the legislature has to expressly provide as to whether such substitution is to be construed retrospectively or not.

2022 0 AIR(SC) 5435; 2022 6 ALD(SC) 37; 2023 3 ALT(SC) 104; 2023 1 SCC 355; Smt. Katta Sujatha Reddy & Anr. Vs. Siddamsetty Infra Projects Pvt. Ltd. & Ors.; Civil Appeal No. 5822 of 2022 (arising out of SLP (C) No. 13565 of 2021 With Siddamsetty Infra Projects Pvt. Ltd. Vs. Debbad Visweswara Rao (Dead, Through Lrs) & Ors ; Civil Appeal No. 5823 of 2022 (arising out of SLP (C) No. 19920 of 2021; With Debbad Srinandhan Rao & Ors. Vs. State of

Telangana & Ors.; Civil Appeal No. 5824 of 2022 (arising out of SLP (C) No. 19286 of 2021; 25-08-2022 {Constitution Bench}

3. A substantive law, as it is well-settled, in absence of an express provision, cannot be given a retrospective effect or retroactive operation.
2008 0 AIR(SC) 3086; 2008 2 ALD(Cri)(SC) 481; 2009 2 ALT (Cri) (SC) 218; 2008 0 CrLJ 3953; 2008 13 SCC 689; 2009 3 SCC(Cri) 834; Subodh S. Salaskar Vs. Jayprakash M. Shah and others; CRIMINAL APPEAL NO. 1190 OF 2008; [Arising out of SLP (Cri.) No. 541 of 2008]; Decided On: 1-8-2008

Another argument of applying the prospective application of amendment to cases instituted prior to the said amendment was dealt by the High Court of Telangana in CRIMINAL REVISION CASE No.273 OF 2019; Delivered on: 18.07.2023 Between: Abdul Asif And State of Telangana, regarding applicability of Section **7A. [Procedure to be followed when claim of juvenility is raised before any Court. [Inserted by Act 33 of 2006, Section 8 (w.e.f. 22.8.2006).]**, to offence reported prior to the said amendment.

The said judgment can be distinguished on the ground that the Rules made thereunder, extended the applicability of the amendment to the pre-existing cases. We see no such extension.

Conclusion

So, from the above, it is clear that Substantive Law that is BNS, 2023 can be given prospective effect only, whereas procedural Law that is BNSS, 2023 can be given retrospective effect too. Hence,

Cases concerning the date of offence prior to midnight of 30th June, 2024 but reported after 30th June,2024 midnight, have to be dealt with

- 1. BNSS, 2023 procedures &**
- 2. IPC provisions.**

In tabular form:

Offence committed and reported at P.S. prior to 30th June, 2024 midnight	Offence committed and reported at P.S. subsequent to 30th June, 2024 midnight	Offence committed prior to 30th June, 2024 Midnight, but reported at P.S. after 30th June, 2024 Midnight
IPC	BNS	IPC
CrPC	BNSS	BNSS
