

20.8.2024

Certain Judgments of Supreme Court & High Courts Reported On

- **Bharatiya Nyaya Sanhita, 2023 (BNS)**
- **Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS)**
- **Bharatiya Sakshya Adhiniyam, 2023 (BSA)**

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1. **Bharatiya Nyaya Sanhita, 2023 made enforceable from 01.07.2024:**
Vide Notification no. S.O. 850(E) dated 23.02.2024, the Central Government has notified 01.07.2024 as the effective date for enforcement of the provision of the **Bharatiya Nyaya Sanhita, 2023**, except its Section 106(2). **Bharatiya Nagarik Suraksha Sanhita, 2023** and **Bharatiya Sakshya Adhiniyam, 2023** have also been made effective from the same date i.e. 01.07.2024 by the said notification dated 23.02.2024.
2. **PIL challenging constitutionality of three new criminal laws of 2023 dismissed by Supreme Court:** A PIL challenging the constitutional validity of the three new criminal laws enacted by Parliament in 2023 viz. (i) Bharatiya Nyaya Sanhita, 2023, (ii) Bharatiya Nagarik Suraksha Sanhita, 2023 and (iii) Bharatiya Sakshya Adhiniyam, 2023 was dismissed by the Supreme Court on 26.02.2024.
3. **Madras Bar Association passes resolution to change the nomenclature of BNS, BNSS & BSA :** Even before passing of the said three bills, the Madras Bar Association had passed a resolution on 25.08.2023 raising objections against the renaming of the IPC, CrPC and the Indian Evidence Act in Hindi. The Bar Association took objections to the names "Bharatiya Nyaya Sanhita Bill", "Bharatiya Nagarik Suraksha Sanhita Bill" and "Bharatiya Sakshya Bill" which sought to replace the Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act.

4.1 Division Bench judgment dated on 6.08.2024 of Allahabad High Court on applicability of IPC & BNS and CrPC & BNSS: If an offence is committed prior to the enforcement of new criminal laws, then if the FIR is registered after the enforcement of the new criminal laws, the same will be registered under the provisions of the IPC in view of the provisions of Article 20 of the Constitution of India, but the procedure for investigation will be as per the BNSS. Similarly, in case the offence is committed after the enforcement of the new criminal laws and thereafter the FIR is registered, then the investigation would be conducted as per the BNSS. However, in case the offence is committed prior to the enforcement of the new criminal laws and FIR is also registered prior to the enforcement of the new criminal laws, then the procedure of investigation would be as per the CrPC in view of Section 531 (2)(a) of the BNSS. Therefore, the procedure for investigation provided by the Circular dated 07.04.2024 of the Police Technical Services Headquarter, Uttar Pradesh is absolutely correct. See: **Judgment dated 06.08.2024 of Allahabad High Court passed in Criminal Misc. Writ Petition no.12287/2024, Deepu Versus State of UP (DB)(Para 15)**

4.2 Summary of Division Bench judgment dated 06.08.2024 of Allahabad High Court on applicability of IPC/BNS and CrPC/BNSS: Summary of Division Bench judgment dated 06.08.2024 of the Allahabad High Court regarding applicability of IPC/BNS and CrPC/BNSS is reproduced below:

- (i) If an FIR is registered on or after 01.07.2024 for the offence committed prior to 01.07.2024, then the FIR would be registered under the provisions of the IPC but the investigation will be conducted as per the BNSS.
- (ii) In the pending investigation on 01.07.2024 (on the date of commencement of new criminal laws), investigation will continue as the CrPC till the cognizance is taken on the police report and if any direction is made for further investigation by the competent court, then the same will continue as per the CrPC.
- (iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceedings including inquiry, trial or appeal would be conducted as the procedure of the BNSS.
- (iv) Section 531 (2)(a) of the BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or appeal is commenced after 01.07.2024, the same will be proceeded as per the procedure of the BNSS.

- (v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024,, then appeal or revision against the judgment passed in such a trial will be as per the BNSS. However, if any application is filed in appeal, which was pending on 01.07.2024, then the procedure of CrPC will apply.
- (vi) If the criminal proceeding or charge sheet is challenged before the High Court on or after 01.07.2024, where investigation was conducted as the CrPC, then the same will be filed u/s 528 of the BNSS, not u/s 482 CrPC. See: **Judgment dated 06.08.2024 of Allahabad High Court passed in Criminal Misc. Writ Petition no.12287/2024,Deepu Versus State of UP (DB)(Para 16)**

5 Supreme Court compared Sections 102, 103(1), 109 of the BNS, 2023 with analogous Sections of IPC: While setting aside the judgment of conviction and sentence dated 28.05.1983 passed by the Addl. Sessions Judge, Kanpur Dehat as affirmed by the Allahabad High Court for the offences under Sections 302, 301, 307 IPC, the Supreme Court compared the said penal sections of the IPC with the new Sections 102, 103(1), 109 of the Bharatiya Nyaya Sanhita, 2023 and extended to the convicts the benefit of doubt. See: **Ram Singh Vs. State of UP, (2024) 4 SCC 208** (Paras 21 to 39).

6 Supreme Court ruling on cancellation of bail under BNSS, 2023: Pointing out Sections 483, 480, 403 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the Hon'ble Supreme Court has recently ruled that the law is well settled that the considerations for grant of bail and cancellation thereof are entirely different. Bail granted to an accused can only be cancelled if the court is satisfied that after being released on bail:

- (i) the accused misused the liberty granted to him
 - (ii) the accused flouted the conditions of bail order
 - (iii) the bail was granted by the court in ignorance of statutory provisions restricting the powers of the court to grant bail
 - (iv) the bail was procured by the accused by misrepresentation or fraud.
- See: **Himanshu Sharma Vs. State of MP, (2024) 4 SCC 222** (Paras 10 & 11).

7 Two statutes when can be said to be in pari materia? : Two statutes are said to be in pari materia with each other when they deal with the same subject matter. Rationale behind this rule is based on the interpretative

assumption that words employed in legislations are used in an identical sense. However, this assumption is rebuttable by the context of the statutes. Therefore, words used in a particular statute cannot be used to interpret the same word in a different statute specially in the light of the fact that the two statutes are not in pari materia with each other and have a wholly different scheme from one another. See :

- (i) **Royal Medical Trust Vs. Union of India, (2015) 10 SCC 19 (Three-Judge Bench)**
- (ii) **Bangalore Turf Club Limited Vs. ESI Corporation, (2014) 9 SCC 657.**

8 Two statutes when not in pari materia: Rule of construction of statutes in pari materia is to avoid contradiction between two statutes dealing with the same subject but this rule is not applicable when two statutes are not in pari materia. Unless and until the facts and circumstances in a cited case are in pari materia in all respects with the facts and circumstances of the case in hand, it will not be proper to treat an earlier case as a precedent to arrive at a definite conclusion. Hence a given case should be determined on facts and circumstances of that case only and facts arising in the cases cited should not be blindly treated as a precedent to determine the conclusions. See:

- (i) **Ramesh Singh vs. State of A.P., (2004) 11 SCC 305.**
- (ii) **Babu Khan vs. Nazim Khan, (2001) 5 SCC 375.**

9 Pari materia principles not to be applied when two Acts of two States are different? : Decision of a High Court of a State on interpretation of provisions of a State Act holds the field in the State and the same cannot be relied upon to interpret the provisions of an Act of another State on the same subject matter when the two Acts are not in pari materia. See: **Shahabad Co-operative Sugar Mills Ltd. Vs. Special Secretary to Govt. of Haryana Corporation & Others, (2006) 12 SCC 404.**

10 Supreme Court's criticism of Sections 85 & 86 of BNS, 2023 and suggests changes in BNS: Days after the Hon'ble Chief Justice of India Dr. DY Chandrachud called the introduction of new criminal laws a watershed moment for the Indian society, a Bench of the Supreme Court comprising Hon'ble Justices JB Pardiwala and Manoj Misra made an observations on 03.05.2024 while quashing a case filed by a wife against her husband and his relatives by questioning the justification of Sections 85 and 86 of the Bharatiya Nyaya Sanhita, 2023. The Bench observed that Section 490A of the Bharatiya Nyay Sanhita (BNS) has produced Section 498A of the Indian Penal Code (IPC) in verbatim. The apex court urged the Union government and Parliament to make necessary changes in the BNS and to consider pragmatic realities. Section 498A of the IPC dealt with cruelty against the

wife by the husband or his relatives. The Bench observed thus : "We request the Legislature to look into the issue, taking into consideration the pragmatic realities and consider making necessary changes in Sections 85 and 86, respectively, of the Bharatiya Nyaya Sanhita, 2023, before both the new provisions come into force". The Supreme Court's observations came during the hearing of an appeal against a Punjab and Haryana High Court order which refused to quash the proceedings against the husband. The apex court bench observed that the case filed by the wife was pretty vague, sweeping and without a specific instance of criminal conduct. The Bench further observed that "The plain reading of the FIR and the charge-sheet papers indicate that the allegations leveled by the First Information Report are quite vague, general and sweeping, specifying no instances of criminal conduct. It is also pertinent to note that no specific date or time of the alleged offence/offences has been disclosed in the FIR. Even the police thought fit to drop the proceedings against the other members of the appellant's family. The Supreme Court observed that such legal methods lead to the complete destruction of marriage on trivial issues and minimize even fair chances of reconciliation between spouses. Many times, the parents, including the close relatives of the wife, make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavors to save the marriage, their action, either due to ignorance or on account of sheer hatred towards the husband and his family members, brings about the destruction of marriage on trivial issues. The first thing that comes to mind of the wife, her parents and her relatives is the police as if the police are the panacea of all evil. No sooner the matter reaches up to the police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed."
