

## LAW REVIEW

# A Penal Code for the 21st century?



**As we have been discussing extensive reforms to the existing laws, it is hoped that the government will consider updating the Penal Code 1860 to address contemporary challenges of the 21st century and improve efficiency.**

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The Indian Penal Code 1860 (IPC) used to form the core of criminal law in India. However, in recent years, the Government of India deemed it necessary to review the country's existing criminal laws to modernise, 'decolonise', and strengthen the criminal justice system. Consequently, the *Bharatiya Nyaya Sanhita* (BNS) 2023, also referred to as the *Indian Justice Code* 2023 was enacted in 2023.

A comprehensive discussion of all sections of the BNS 2023 is beyond the scope of this write-up, hence, our focus will be on some key provisions that provide significant insights for legal researchers, policymakers, and practitioners.

The BNS comprises only 358 sections, a significant reduction from the 511 sections of the IPC. Notably, the new code prioritises offences against women and children, murder, and offences against the State. To address organised crimes, terrorist activities, and gang rape effectively, new provisions have been introduced in the Indian Justice Code, 2023.

A 'child' has been defined under section 2(3) of the BNS as any person below the age of 18

years. The pronoun 'he' is now inclusive of all genders—male, female, and gender-diverse as per section 2(10). The definition of 'movable property' has been revised under section 2(21) to include both tangible and intangible property. Furthermore, offences such as attempt, abetment, and criminal conspiracy which were previously scattered across different chapters, are now consolidated under Chapter IV of the BNS 2023.

A significant innovation in the BNS is the introduction of 'Community Service' as an alternative punishment for certain minor offences, replacing imprisonment in specific cases. Examples include drunken misconduct in public (section 355), public servants unlawfully engaging in trade (section 202), and first-time theft involving stolen property valued below 5,000 rupees, provided the offender restores the property (section 303(2)).

The BNS increases fines for 83 offences and extends imprisonment for 41 sections. The term 'imprisonment for life' has been clarified as imprisonment for the remainder of a person's natural life in various provisions (sections 64, 65, 66, 70). For causing death by a rash or negligent act, the maximum penalty

has been increased to five years imprisonment under section 106(1). However, if the death is caused by a registered doctor, the punishment is capped at two years. In hit-and-run cases, drivers who cause death through rash and negligent driving and flee without reporting the incident face imprisonment of up to 10 years and fines.

The BNS also introduces a new category of culpable homicide related to 'mob murder' in section 103(2). When a group of five or more individuals commits murder based on race, caste, community, sex, language, or similar grounds, each member is punishable with death or with life imprisonment, and a fine. Other new offences include organised crime (section 111), petty organised crime (section 112), and Terrorist act (section 113).

Sexual offences receive particular attention in the BNS. For instance, having sexual intercourse under false pretences—such as promises of marriage or employment, or through concealment of identity—is now a criminal offence under section 69. In the domain of property offences, the new category of 'snatching' (section 304) has been added, broadening the definition of theft. Theft becomes snatching when property is forcibly or suddenly seized from a person or from their possession.

Pertinently, certain colonial era provisions have been removed. These include, but are not limited to, sections 124A (sedition), 497 (adultery) and 377 (unnatural offences) of the IPC. Terms such as 'lunatic', 'insane', and 'idiot' have been replaced, and colonial remnants such as 'Queen' and 'British-India' have been eliminated.

The BNS received the President's assent on 25 December 2023 and came into effect on 1 July 2024. While it is too early to evaluate its full impact, this new code is expected to align with the needs of the 21st century and enhance the delivery of justice. As we have been discussing extensive reforms to the existing laws, it is hoped that the government will consider updating the Penal Code 1860 to address contemporary challenges of the 21st century and improve efficiency.

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## LAW ADVOCACY

## The urgency of introducing anti-grooming law

MD. TAWSIF MOTTAKI CHOWDHURY

On February 2, eleven-year-old Subah vanished from Mohammadpur, startling the entire country. The episode went viral as netizens started to voice their support for her rescue on social media. Fortunately, law enforcement stepped in quickly rescuing her from Naogaon where she had travelled to with an adult named Momen. They communicated with each other on the well-known social networking site Tiktok. This is an illustration of grooming, which is the term used to describe how an adult manipulates a child.

The Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse released by the Interagency Working Group on Sexual Exploitation of Children ("Terminology Guidelines") in Luxembourg in 2016, defined grooming as "the process of establishing/building a relationship with a child either in person or through the use of the Internet or other digital technologies, to facilitate either online or offline sexual contact with that person". However, this case raises a critical legal issue—Bangladesh currently has no specific law criminalising grooming, leaving a dangerous loophole that child predators can exploit.

Many developed nations (US, UK, EU, Canada, Norway, Australia etc.) have recognised the seriousness of the issue and have enacted laws to criminalise such behaviour, preventing the abuse that may follow. However, in Bangladesh, the absence of specific enactment means that the act of grooming itself cannot be considered crime unless it is too late, making prevention difficult.

In the United Kingdom, the Sexual Offences Act 2003 provides a clear legal framework to combat



child grooming. Section 15 of the Act criminalises the communication by an adult with a child under the age of 16 with sexual intent as well as the act of meeting with the child after engaging through online or offline communication. The law provides a maximum penalty of up to 10 years in prison, ensuring that offenders are prosecuted even before physical abuse occurs.

In the United States, 18 US Code § 2422(b), also known as the 'Coercion and enticement provision' prohibits any attempt to persuade, induce, or lure a minor into sexual activity. Similarly, PROTECT Act (2003) also targets sexual exploitation of children and imposes severe penalties ranging up to life imprisonment strengthens the protection even more. These provisions ensure the criminalisation of the preparatory acts that facilitate child exploitation under federal law.

Australian Criminal Code 1995 under section 474.27 categorises both online and offline grooming as criminal offenses. In Australia, communicating with a child under 16 for sexual purposes is punishable by up to 15 years in prison.

Similarly, under Section 172.1(l)(b) of the Criminal Code of Canada any act by an adult to communicate with a child under 16 years of age with the intent of facilitating sexual exploitation or abuse. The law imposes severe penalties, including imprisonment up to 14 years, ensuring that individuals engaging in grooming behavior are prosecuted before they can cause harm.

Bangladesh, however, still lacks a dedicated anti-grooming law. In Bangladesh, the Penal Code, 1860 under Sections 375 and 376 criminalise rape but do not include preparatory acts such as psychological manipulation or trust-building, which are the elements of child grooming. It means that law enforcement can only take action after an offense like rape has already been committed, rather than preventing it through legal intervention at an earlier stage.

Similarly, the Nari-O-Shishu Nirjatan Daman Ain, 2000, contains punishment for child sexual abuse, without addressing the psychological manipulation or grooming leading to the abuses. The newly introduced Cyber Protection Ordinance 2024 too does not contain any provision that explicitly defines and criminalises the act of online grooming or predatory behavior targeting minors through social media, messaging platforms or other digital media. This legal gap exposes Bangladeshi children to manipulative tactics used by predators, making it imperative for lawmakers to introduce clear legislation that defines, criminalises, and punishes grooming before it escalates to abuse. These laws, as it appears, are reactive rather than preventative, leaving a critical loophole where abusers can groom minors without facing prosecution unless physical harm occurs.

The case of Subah is a wake-up call for Bangladesh. The government must take immediate actions introducing anti-grooming laws to protect the children from the acts of online grooming. It is necessary to introduce clear legislation that defines, criminalises and punishes grooming before it escalates into abuse.

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## WELFARE VISION

## Improving our elderly well-being framework

RAFEA KHATUN

According to UN demographic predictions, the percentage of the global population over 65 has almost doubled, rising from 5.5% in 1974 to 10.3% in 2024. This percentage is expected to increase even further, reaching 20.7% between 2024 and 2074. Although developed countries have the largest percentages of elderly individuals, developing countries are witnessing a rapid growth of their elderly population that is five times that of many Western industrialised nations. Among these countries, South Asian developing countries are demonstrating strong evidences to join as an active member in the ageing countries club.

Bangladesh, as a new addition to this 'club', is facing multi-faceted problems—socio-economic, cultural, legal and



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political. However, Bangladesh is still failing to place sufficient importance on this issue in its political agenda. As a recent initiative, the political parties are promising to increase social safety networks and securing various socio-economic services for the elderly people to gain political popularity among the general public.

Regulating elderly well-being in Bangladesh takes place through four approaches. These approaches are

informal familial and community approaches; state-oriented legal and institutional approaches; voluntary charitable approaches; and lastly, private approaches. The informal familial approaches are declining for multiple reasons, including socio-economic transitions, changes in family patterns, rapid urbanisation and industrialisation, and the fading away of social values among the 'new generations'. On the other hand, voluntary charitable old homes are

mostly financially and administratively inadequate in serving the rapidly increased elderly population of this country. These existing shortfalls oblige the acceleration of the fourth approach—the private approach, which include various private organisations such as private nursing homes, private old care homes, private hospitals, etc. However, this fourth approach is profit-driven and oftentimes beyond the capacity of common people.

The public legal regulatory approach focuses on some substantive laws, such as The Maintenance of Parents Care Act 2013 and some policy initiatives, such as the National Policy on Older Persons 2013, the National Health Policy 2011, etc. Besides these, there are some social safety schemes in operation, such as old age allowances, vulnerable group feeding card, etc., which arrange some monetary and other essential support from the government funds. However, these initiatives and legal benefits often never reach those who are in need of it the most. The above

complexities in various existing regulatory approaches for elderly well-being created some unavoidable problems in ensuring a sufficient and sustainable well-being scheme for the older people in Bangladesh. In these scenarios, we need to ask ourselves if we should think of a new mechanism for ensuring elderly well-being in Bangladesh.

Should the long-lasting taboo on formal institutional elderly well-being be broken now? Can the elderly well-being be better catered through a for-profit social business model which will be financially and administratively self-sufficient and sustainable? All these thoughts will provoke the multi-disciplinary research for establishing sustainable elderly well-being scheme in our country.

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