

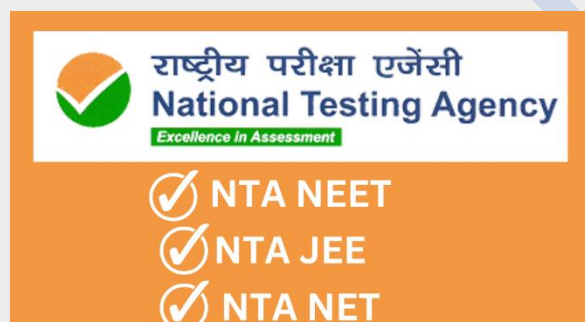
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1. How many examinations are under the charge of the National Testing Agency? Is it equipped to handle the large number of students and centres? What are the challenges? What are the loopholes in the system that can be manipulated by unscrupulous players?

Why in News?

The National Testing Agency (NTA) has come under intense fire over the past few weeks, with widespread allegations of cheating, paper leaks and other irregularities impacting flagship examinations such as the NEET (National Eligibility cum Entrance Test) for undergraduate medical college admissions and the UGC-NET for Ph.D and assistant professor appointments. The agency's director general, Subodh Kumar Singh, has been removed, the CBI is probing irregularities, and a high-level panel has been set up to create a roadmap for a systemic overhaul.



What is the NTA?

The NTA was set up in 2017 as a specialist, self-sustaining and autonomous organisation under the aegis of the Union Education Ministry. Its director general and governing body are appointed by the Union government. However, it is registered as a society and is a separate legal entity, which raises questions about the government's legal liability for the

NTA's actions.

Its main mandate is to conduct efficient, transparent and international standard tests to assess the competency of candidates for admission, and recruitment purposes. Soon after it was established, the NTA took over the conduct of major all-India examinations, such as the JEE for engineering college admissions, NEET-UG, and UGC-NET (both of which had previously been conducted by the Central Board for Secondary Education or CBSE), as well as the entrance tests for Jawaharlal Nehru University and Delhi University.

The National Education Policy of 2020 envisaged a broader role, recommending that the NTA conduct an entrance or aptitude test for all universities across the country. In all, the NTA now has charge for more than 20 examinations.

Why have there been so many problems?

One of the main problems is that the NTA was originally intended to conduct computer-based tests only. Thus, when the NTA took over conduct of the UGC-NET examination from the CBSE

six years ago, it was converted from a pen-and-paper examination to a computer-adaptive test. This year, however, for reasons that are unclear, UGC-NET shifted back to the pen-and-paper mode. The day after it was conducted for over 11 lakh aspirants, the government cancelled the examination, citing inputs from the cyber crime unit.

“Pen-and-paper is a heaven for scamsters,” said one former official, noting that the printing process is particularly vulnerable to leaks. It is interesting that when the government announced fresh dates for UGC-NET 2024 to be held again, it also stipulated that it would be a computer-adaptive test this time.

However, when the conduct of NEET-UG was taken over by the NTA, the Health Ministry flatly refused to allow it to shift to a computer-based exam, citing concerns about students in rural areas who would not be prepared for an online exam. Hence, the NTA has been forced to run a major examination in a mode that it was never intended to implement by design.

Officials and educationists note that the agency is severely understaffed for the role it is currently being asked to undertake. According to a senior official, the agency was set up with only about 25 permanent staff positions. A number of its functions have also been outsourced to technical partners from the very beginning. Given that NEET-UG alone had more than 23 lakh candidates writing the examination in almost 5,000 centres across the country and abroad, this has left the agency stretched thin, according to some officials. However, some educationists have complained that engaging third-party players takes accountability out of the government's hands and leaves loopholes in the system which can be exploited by unscrupulous players.

Officials say the NTA has also failed to develop robust mechanisms needed to handle a large-scale pen-and-paper examination, including the setting of the question paper and its encryption, selection of external printing presses and exam centres, transportation to printing presses, storage and distribution to examinees at examination centres and then the collection and transportation of answer sheets to evaluation centres. Each of these is a stage where malpractice can occur without robust security mechanisms.

What is the way ahead?

The high-level panel headed by former ISRO chief K. Radhakrishnan has been given two months to recommend reforms in the examination process, improve data security protocols, and overhaul the NTA's functioning.

Educationists, however, propose starkly different pathways for the future. One option is to add manpower and infrastructure to the NTA to equip it to take on large-scale pen-and-paper examinations in an improvement to the CBSE system that preceded it. Those recommending this return to the past point out that pen-and-paper examinations are more equitable, especially for students in rural and remote areas with little access to technology.

Another option is to dismantle the centralisation process that seeks to move all testing in the country under the NTA. Some State governments, and professors from individual universities, notably JNU, have called for entrance tests for their institutions to be removed from the NTA

and handed back to the institutions themselves, arguing that more decentralised structures are needed to meet the vastly differing needs of institutions.

However, others seek a more radical reform of the assessment system. They suggest systemic changes to remove the single, high-stakes entrance examination which results in extreme pressure on students, encourages an inequitable coaching industry, and incentivises malpractice. Instead, periodic assessments of knowledge, concept-based understanding, and aptitude can be conducted in the final years of school education as the precursor to the admission process, using online testing, and AI-based proctoring which can be overseen by the NTA.

Relevance: GS Prelims & Mains Paper II; Governance

Source: Indian Express

2. New crimes under the Bharatiya Nyaya Sanhita, and some grey areas

Why in News?

Three new criminal laws have come into effect from 1st July, 2024. The Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagrik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA), passed in Parliament last December, have replaced the Indian Penal Code (IPC), 1860, the Criminal Procedure Code (CrPC), 1973, and the Indian Evidence Act, 1872 respectively.



Since Independence, the colonial-era IPC (which provides the substance of criminal law), CrPC (which provides the procedure for law's enforcement), and Evidence Act have seen several revisions.

But as Union Home Minister Amit Shah said during the new laws' passage in Parliament, the sanhitas represented laws that had been framed by Indians, for Indians.

There has been an overwhelming consensus that India's criminal laws needed updating. At the same time, the consultation process during the pandemic for drafting the laws, and their hasty passage through Parliament, has caused much disquiet. Some legal experts opine that although the new laws make significant changes, they do not 'overhaul' the existing laws.

New crimes in BNS

1. The BNS introduces a handful of new crimes. Notable among them is Clause 69, which penalises sexual intercourse through the employment of "deceitful means".

The provision reads: "Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her... shall be punished with imprisonment" of upto 10 years, and also be liable for a fine. "Deceitful means" includes the false promise of employment or promotion, inducement, or marrying after suppressing identity. Critics say that this might, in some cases, end up criminalising consensual relationships and provide a fillip to the "love jihad" narrative.

2. The BNS, under Clause 103, for the first time also recognises murder on the ground of race, caste, or community as a separate offence. The SC had, in 2018, directed the Centre to consider a separate law for lynching. The new provision could now ensure such crimes, which have been on the rise in recent years, get legal recognition.

3. Another big-ticket addition to the BNS is the inclusion of offences such as organised crime and terror, previously in the ambit of specific stringent laws like Unlawful Activities Prevention Act for terrorism, and state-specific laws such as the Maharashtra Control of Organised Crime Act for organised crime. On terrorism, the BNS borrows heavily from the UAPA.

Organised crime, in Clause 111(1), encompasses “any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offences, cyber-crimes having severe consequences, trafficking in people, drugs, illicit goods or services and weapons, human trafficking racket for prostitution or ransom...” But vague descriptions such as “cyber-crimes having severe consequences” will have to be addressed. Snatching, defined in Clause 304(1), is also a ‘new’ crime, distinct from theft. The definition reads: “in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any moveable property”. Both theft and snatching prescribe a punishment of upto three-years in jail.

The rearrangement of provisions in the BNS signals legislative intent. Like the IPC, it starts with chapters dealing with general exceptions, punishments, abetment, and the Right of Private Defense. Offences against the state comes before offences against women and offences against body. But in the BNS crimes against women, comes before in Chapter V before offences against the state (like sedition).

New timelines, processes

A big change in the BNSS is the expansion of detention in police custody from the 15-day limit in the CrPC to up to 90 days.

According to Section 167(2) of the CrPC, an accused had to be sent to judicial custody (prison) after a maximum of 15 days in police custody. This was intended to incentivise the police to complete investigations in a time-bound manner, and curtail the likelihood of custodial torture and forced confessions. Clause 187(3) of the BNSS has deleted the words “otherwise than in police custody,” essentially, allowing the police to keep custody of an accused for upto 90 days for all offences listed in the BNS.

The BNSS also states that in cases where the punishment is seven years or more, the victim shall be given an opportunity of being heard before withdrawal of the case by the government.

Trials in absentia — where a person accused of a crime can be tried and convicted in his absence, as if he was present in court and has waived his right to a fair trial for all offences — are another new introduction in the BNSS. While such a provision already exists under the UAPA, the burden of proof is reversed in the terror law, i.e. the onus is on the accused to prove himself not guilty, rather than the state to prove his guilt. Critics argue that the introduction

of trials in absentia under normal criminal law allows the state to forgo its duty to properly locate the accused before the trial begins.

The BNSS also removes the provision for statutory bail if an accused has more than one offence against his name. Under the CrPC, an accused could be granted statutory bail if he has served at least half of the maximum sentence prescribed for the offence. This was to ensure that trials do not take forever, and when they do, the accused does not suffer continued incarceration for no fault of his.

The upside

Among key positive changes in the new laws is the introduction of community service as an alternate form of punishment for some offences. These include small theft, defamation, and attempt to die by suicide with an intention to keep a public official from discharging her duty.

While it is unclear how offences deserving no jail time were chosen, with three-fourths of India's prison population being undertrials, community service as punishment keeps first-time convicts and those convicted for minor offences out of prison. The BNS, however, does not define what constitutes community service, leaving it to the discretion of judges.

Also, sexual intercourse with a minor wife has been brought under the ambit of rape. The IPC had carved out only one exception for marital rape — intercourse with wife who is less than the age of 15 years. In 2017, the SC had held that this 15 year limit was at odds with child rape laws under the POCSO Act. The new law addresses the grey area that 15-18 year old married girls fell in, under the IPC.

The inclusion of offences for mob-lynching is crucial, and signals a legislative acknowledgement of such hate crimes. The emphasis on video-conferencing of trials, and prescription of timelines for speedy trials should improve justice delivery but their success will depend on implementation on the ground.

Remaining grey areas

Among the big announcements made by the government on the three laws was "doing away with sedition." This was crucial since it came over a year after the SC in May 2022 virtually stalled the operation of sedition law deeming it "prima facie unconstitutional."

Despite the government's claims, the BNS has in fact introduced the offence with a wider definition, while incorporating the SC guidelines in the 1962 Kedarnath Singh case, which upheld the constitutional validity for the crime of sedition. In Hindi, the law carries out a simple name change — from rajdroh (rebellion against the king) to deshdroh (rebellion against the nation).

The other big concern, as the criminal laws are rolled out, is the issue of penalising rape in cases where the victims are male. The BNS, with a seemingly progressive outlook, entirely leaves out the contentious Section 377 of the IPC which criminalises "carnal intercourse against the order of nature". In 2018, this provision had been read down by the apex court in its landmark *Navej Singh Johar v Union of India* ruling to the extent that it criminalised consensual sex among adults, including those of the same sex.

But Section 377 is still invoked to penalise non-consensual sex, and is often the only recourse in cases of rape of men (specific rape laws are applied in cases of women victims). With the exclusion of this provision in the BNS, and with rape laws still not made gender-neutral, there is little criminal recourse for male victims of sexual assault.

Relevance: GS Prelims & Mains Paper II; Governance
Source: Indian Express

3. New criminal laws in effect; amendments soon

Crime and punishment

The new Bharatiya Nyaya Sanhita has 358 Sections against the 511 in the Indian Penal Code that it replaces. The Bharatiya Nagarik Suraksha Sanhita replaces the Code of Criminal Procedure, and the Bharatiya Sakshya Adhiniyam comes in place of the Indian Evidence Act.

 <p style="font-size: small; margin: 0;">ISTOCKPHOTO</p>	<p>What is new?</p> <ul style="list-style-type: none"> ■ Provision for Zero FIR allowing filing of a first information report at any police station, regardless of jurisdiction ■ Online registration of police complaints and mandatory videography of crime 	<p>scenes for all heinous crimes</p> <ul style="list-style-type: none"> ■ A person can now report incidents by electronic communication, without the need to visit a police station ■ Judgment in criminal cases has to come within 45 days 	<p>of completion of the trial</p> <ul style="list-style-type: none"> ■ Provisions against false promise of marriage, gang rape of minors and mob lynching ■ Statement of a woman rape victim will be recorded by a woman police officer 	<p>in the presence of her guardian or relative</p> <ul style="list-style-type: none"> ■ Death sentence or life imprisonment for gang rape of a minor ■ Sedition has been replaced with 'secession' or 'act against the country's sovereignty, unity and integrity'
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Why in News?

As three new criminal laws come into effect across the country despite objections from States ruled by non-BJP parties, Union government officials said here on Sunday that the States were free to bring in their own amendments to some provisions of the Bharatiya Nagrik Suraksha Sanhita (BNSS) that replaces the Code of Criminal Procedure (Cr.PC.). The BNSS prescribes the procedure and conditions for arrest, bail, and custody, among other things.

The Bharatiya Nyaya Sanhita (BNS), which replaces the Indian Penal Code, 1860, may also be amended soon to incorporate a section on sexual crimes against men and transgender persons. A senior government official said that police officers were being asked to invoke other allied sections under the BNS, such as wrongful confinement and physical hurt, if they get such complaints, until an amendment is brought to correct this anomaly.

The Bharatiya Sakshya (BS), which replaces the Indian Evidence Act, 1872, is the third law which will come into force.

The IPC and Cr.PC will run concurrently along with the new laws as several cases are still pending in courts and some crimes that took place before July 1 that are reported later will have to be registered under the IPC.

First information reports

First information reports (FIRs) are filed through the Crime and Criminal Tracking Network Systems (CCTNS), a programme that functions under the National Crime Records Bureau. A

significant upgrade to the CCTNS will help people file an e-FIR, without visiting a police station, and a zero FIR, which can be filed irrespective of the jurisdiction of the crime location.

The official said that changes have also been made to the CCTNS software to register FIRs in languages other than English and Hindi.

Electronic evidence

The BNSS mandates compulsory audio-video recording of search and seizure in each criminal case and mandatory forensic examination in all cases where an offence attracts punishment of seven years or more.

The recordings will have to be submitted before the court electronically "without delay." Under Section 105 of the BNSS, the scope of audiovisual recording during search and seizure includes the process of preparing a list of seized items and the signature of witnesses.

While the Home Ministry is testing eSakshya (e-evidence), a mobile based application to help police record scene of crime, search and seizure in a criminal case and upload the file on the cloud-based platform, several States depending on their capacities have devised their own systems.

For instance, the Delhi Police have developed an e-pramaan application which will help investigating officials record a scene of crime and generate a hash value along with a certificate under Section 62 of Bharatiya Sakshya. Officials pointed out that the security of the cloud-based system where the data will be stored will be of prime concern.

Relevance: GS Prelims & Mains Paper II; Governance

Source: The Hindu