



THE NEW ERA OF INDIAN CRIMINAL LAW: FROM COLONIAL CODES TO THE 2023 REFORMS

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BEST CITATION – TANVI MALPANI, THE NEW ERA OF INDIAN CRIMINAL LAW: FROM COLONIAL CODES TO THE 2023 REFORMS, *INTERNATIONAL JOURNAL OF CRIMINAL JURISPRUDENCE (IJCJ)*, 3 (1) OF 2025, PG. 17-21, APIS – 3920 – 0012.

ABSTRACT

The Indian Penal Code (IPC) of 1860, the Code of Criminal Procedure (CrPC) of 1973, and the Indian Evidence Act (IEA) of 1872, which were colonial-era regulations that formerly governed the country's criminal justice system, have long needed to be modernised in order to meet the demands of modern society. The current criminal laws from July 2024 were replaced by three historic statutes passed by the Indian Parliament in December 2023: the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA). By modernising legislative definitions, imposing stronger penalties for severe crimes, incorporating digital technology into investigations and court proceedings, and encouraging procedural efficiency, these reforms seek to fortify the criminal justice system. The BNS emphasises restorative justice through community service and implements comprehensive measures against crimes that target women, children, and organised criminal organisations. The BNSS requires forensic involvement, establishes strict investigative and judicial timetables, and guarantees trial results are transparent. Expert witnesses and digital evidence are given greater significance in court proceedings because of the BSA. Notwithstanding these progressive reforms, challenges still exist, such as inadequate police training, deficiencies in the forensic infrastructure, overlapping laws, and the partial acceptance of contemporary ideas like gender-neutral definitions of sexual offences. The main features of the 2023 changes, their ability to update Indian criminal law, and the real-world obstacles to their successful implementation are all examined in this article.

Key Words: Indian criminal law, Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023, Bharatiya Sakshya Adhinyam 2023, criminal justice reform, legal modernization, IPC amendments, procedural efficiency, legal infrastructure

Introduction

"Injustice anywhere is a threat to justice everywhere."

-Martin Luther King Jr.

The Indian Penal Code (IPC) of 1860, the Code of Criminal Procedure (CrPC) of 1973, and the Indian Evidence Act (IEA) of 1872 constituted the three main laws that govern the Indian criminal justice system. While the CrPC is over five decades old, both the IPC and IEA originate from the colonial period. Therefore, there is an urgent necessity to update these outdated laws to enhance the justice de-

livery system, guaranteeing that justice is executed promptly, effectively, and efficiently, and to enforce harsher penalties for crimes that jeopardise national security. In response to these imperatives, three legislative bills were introduced in the Indian Parliament aimed at amending the existing criminal laws. In December 2023, the Parliament enacted three new criminal bills namely, the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhinyam, 2023 (BSA), which collectively replace the current statutes



and are scheduled to come into effect on July 1, 2024.²⁹

These new enactments seek to revise and augment the existing legal framework by updating definitions and modifying penalties for specific offenses. The bills were formulated to address systemic challenges within the current criminal justice system, including deficiencies in police investigations, the backlog of pending court cases, inadequate infrastructure, both technological and human resources, and outdated procedural requirements for initiating cases. Furthermore, the reforms aim to align the criminal justice process with recent technological advancements by digitizing all stages of criminal investigations, from the filing of the First Information Report (FIR) to the preparation of charge sheets and the delivery of judgments. For instance, under the new CrPC, summons may be issued electronically, and testimonies from experts, witnesses, the accused, and other parties can be presented digitally.

By integrating digital processes throughout the investigative and judicial stages, these reforms endeavor to modernize the administration of criminal justice in India. The BNSS, for example, explicitly permits electronic issuance of summons and digital submission of statements, reflecting a commitment to leveraging technology to enhance procedural efficiency. This legislative overhaul marks the commencement of a transformative phase in Indian criminal law, envisioning a justice system that is not only effective but also comprehensive and reflective of the nation's evolving principles.

The main changes made to the IPC, CrPC, and IE A, henceforth referred to as BNS, BNSS, and BSA, respectively, are outlined in this paper. The analysis is confined to the salient features of the new statutes and does not encompass all

related modifications, such as section renumbering or enhanced penalties.

Rationale Behind the 2023 Criminal Law Reforms

Although the existing criminal laws have been established for a considerable duration, recent reforms in criminal legislation represent a pivotal advancement towards enhancing the justice system by developing laws that are more progressive, rational, and better suited to address the evolving needs of society. Several key justifications underpin the enactment of these new laws, including the following:

- I. The prior legal framework was inherited from the colonial British era and essentially mirrored British criminal law. These laws were not designed to serve or deliver justice to the Indian populace but were primarily intended to exert control and impose oppression.
- II. Given the substantial social transformations across various domains, many provisions within the existing laws had become obsolete.
- III. Enhancing the efficiency of the criminal justice system constitutes a fundamental objective of the newly introduced criminal statutes.

In summary, these legal reforms are regarded as critical developments within the criminal justice system, as they acknowledge the historical limitations of laws originally formulated during the British colonial period, which prioritized maintaining control over the administration of justice.

Major Reforms and Innovations in the 2023 Criminal Statutes³⁰

The Bharatiya Nyaya Sanhita (BNS) represents a comprehensive effort to reinterpret and fortify penal legislation, while the Bharatiya Nyaya Sanhita Samhita (BNSS) seeks to humanize the criminal justice system. Concurrently, the Bharatiya Sakshya Adhinyam (BSA) recognizes the increasing significance of technology in

²⁹ New Criminal Laws Replacing Indian Penal Code to Come Into Effect from July 1, available at: <https://www.news18.com/india/new-criminal-laws-replacing-indian-penal-code-to-come-into-effect-from-jul-1- govt-8791518.html>

³⁰ Overview of Criminal Law Reforms, available at: Overview of Criminal Law Reforms (prsindia.org)



judicial proceedings. The principal features of these three criminal statutes are summarized below:

Principal Features of the Bharatiya Nyaya Sanhita, 2023

The new legislation introduces a dedicated chapter addressing offenses against women and children, accompanied by more stringent penalties aimed at deterrence. Under the current Indian Penal Code (IPC), such offenses are categorized under crimes affecting the human body. Notably, Section 69 of the BNS prescribes imprisonment of up to ten years for individuals who engage in sexual intercourse through deceptive means, such as false promises of employment advancement or marriage without genuine intent to fulfill such promises.

The offense of sedition has been removed from the statute. Although the term “sedition” no longer appears in the new law and citizens retain the right to criticize the government, any actions undermining the integrity, unity, or sovereignty of the nation remain punishable under Section 150 of the BNS.

Organized crime is explicitly addressed through a new provision, defined as unlawful activities conducted by groups involved in serious offenses including kidnapping, robbery, extortion, land grabbing, contract killing, Ponzi schemes, and cybercrime, as stipulated in Section 109(1) of the BNS. While mob lynching is not specifically defined, it is criminalized under the provisions relating to murder. Group-perpetrated murder motivated by race, caste, community, sex, personal belief, or any other grounds is punishable under Section 101 of the BNS. Significantly, the legislation introduces community service as a novel form of punishment applicable to at least six categories of offenses, such as defamation, theft of goods valued under five hundred rupees, and public misconduct by intoxicated individuals. This measure aims to promote offender rehabilitation and alleviate prison overcrowding, marking a pivotal advancement toward a more

equitable and reformative criminal justice framework.

Principal Features of the Bharatiya Nagarik Suraksha Sanhita, 2023

To facilitate the prompt conduct of hearings, the legislation prescribes specific timelines for investigation, trial, and judgment. Section 193 of the BNS mandates the completion of all investigations within designated timeframes, particularly emphasizing that inquiries into offenses against women and children, such as rape and gang rape, must be concluded within two months following the police recording of facts. Additionally, the charge sheet is required to be filed within 90 days of the First Information Report (FIR) registration; however, the court may, at its discretion, extend this period by an additional 90 days, allowing for a maximum investigation duration of 180 days.

Moreover, Section 258 of the BNS obligates courts to deliver judgments within 30 days after the conclusion of hearings, with a possible extension to 60 days under special circumstances. By stipulating these precise procedural timelines, the legislation aims to enhance the accessibility and responsiveness of the justice system to societal needs. Furthermore, judgments must be made available online within seven days of their pronouncement, ensuring transparency and public accessibility.

In cases involving serious crimes, the BNS provisions underscore the necessity of a mandatory forensic expert visit to the crime scene. Compared to the Criminal Procedure Code (CrPC), the BNS requires forensic investigations for offenses punishable by imprisonment of seven years or more. Specifically, it mandates that forensic experts conduct on-site evidence collection and video documentation, as outlined in Section 157 of the CrPC and Section 176 of the BNS. This strategic provision is designed to strengthen investigative procedures by ensuring that expert teams perform thorough crime scene assessments to gather critical physical evidence. By



institutionalizing such visits, the legislation seeks to improve the comprehensiveness and precision of criminal investigations, thereby contributing to a more robust legal framework aligned with contemporary standards of justice. Additionally, the deployment of mobile forensic science laboratories (FSLs) at the district level is required to support these investigative efforts.

Principal Features of the Bharatiya Sakshya Adhiniyam, 2023

A comparative analysis of the International Evidence Act (IEA) and the newly enacted BSA reveals a heightened recognition and prioritization of technological evidence within judicial proceedings. The BSA defines digital evidence broadly as any information generated or transmitted by devices or systems capable of storage or retrieval, reflecting the increasing technological sophistication of the legal environment. This comprehensive definition encompasses a wide array of evidence formats relevant to contemporary contexts, including multimedia files, emails, and text messages. The incorporation of digital information is essential to safeguarding the integrity and reliability of judicial processes amid ongoing technological advancements. Furthermore, electronic information submitted in court is required to meet standards of credibility, with electronic records now accorded the status of primary evidence.

The legislation further reinforces its commitment to a modern and effective legal framework through specific provisions addressing the admissibility of DNA evidence and the formal recognition of expert opinions as evidentiary material. Additionally, the new statute includes a clause permitting the digital presentation of oral evidence, aligning with the broader digital transformation underway within the country.

Implementation Hurdles and Practical Challenges

Critical Gaps in the Provisions of the New Laws

Although sedition is no longer a crime under the BNS, the clause pertaining to the threat to India's integrity, unity, and sovereignty seems to still contain aspects of sedition. Additionally, the BNS does not include important suggestions from the Justice Verma Committee (2013), including the idea of criminalising marital rape and making rape a gender-neutral offence. Significantly, the BNS eliminates the crime of unnatural sex under Section 377 of the Indian Penal Code, a clause that the Supreme Court confirmed was unconstitutional in the 2018 Navtej Singh Johar³¹ judgment. Since the rape of an adult male is no longer considered a crime under the amended statute, this elimination essentially shields male rape from criminal culpability, exposing serious flaws in the legal system.

Furthermore, a couple of BNS offences and those covered by specific legislation overlap, frequently with differing punishments or requirements for the legal process. Various regulatory frameworks, higher compliance costs, and the possibility of various charges stemming from the same behaviour are potential consequences of this overlap. For example, the BNS includes "terrorism" and "organised crime" offences under normal criminal law without incorporating any particular safety measures found in specific laws. As a result, law enforcement officials might decide to utilise general criminal law instead of specific statutes, which could lead to abuse. This gives investigative authorities a great deal of latitude in choosing between laws or applying both at the same time, which could result in a lot of legal conflicts and inconsistent rulings from judges based on the same facts or evidence.

Practical Barriers to Effective Execution of New Criminal Laws

The majority of modifications included in recent legislation are unquestionably progressive improvements overall, although not revolutionary. It is important to recognise that in

³¹ Navtej Singh Johar vs Union Of India, AIR 2018 SC 4321



order to achieve the desired effectiveness of this new legislation, issues like insufficient forensic infrastructure, overworked and understaffed police officers, and the requirement for thorough training for all stakeholders must be addressed meticulously.

Understaffing, inadequate training resources, inadequate residential facilities, stressful employment conditions, and a lack of transportation are frequently encountered problems at police stations. Among the contributing causes are: (i) inadequate investigative methods; (ii) the blurring of the lines between law enforcement and investigative responsibilities; (iii) irregular case diary management; and (iv) improper evidence collection and preservation. Therefore, rather than implementing piecemeal changes to current laws, comprehensive police reform is the only way to eradicate the colonial legacy in policing.

According to the new rule, a forensic expert must be required to attend the crime scene to gather material proof for crimes bearing a sentence of seven years or more in prison. Nonetheless, State governments have been given a maximum of five years to implement this clause into effect, acknowledging the present deficiencies of forensic infrastructure at the local level. Therefore, unless State authorities proactively invest appropriate resources to strengthen forensic capabilities, including technical enhancements and human resource development, the impact of this reform may not be immediately apparent. In addition, forensic science labs are today confronted with several kinds of difficulties, including: (i) an inadequate supply of resources to carry out prompt investigations; (ii) the requirement to upgrade technological equipment; (iii) a lack of skilled workers; and (iv) maintaining strict quality control and assurance procedures.

Conclusion

The recent adoption of all three Acts demonstrates India's dedication to legal reform.

Even if the nation's legal systems are well-established, new laws must be passed in order to have a fair and effective legal system. More than just a statutory update, modernisation of criminal law reflects a dedication to bringing justice into compliance with the continually evolving needs encountered in modern society. In order to enhance legal, policing, and investigative procedures, these laws prioritise the development of forensic science and technology. Such a change necessitates a lengthy and expensive commitment and can only be successful if it is carried out carefully, with established standards and perpetual conformity, ensuring that the law achieves its intended objectives without having potential repercussions.

"Justice is the constant and perpetual wish to render everyone his due."

- Immanuel Kant