

NEW CRIMINAL LAWS IN INDIA: A PARADIGM SHIFT IN JUSTICE DELIVERY

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Abstract

India's criminal justice system has undergone a transformative overhaul with the introduction of three new laws effective from July 1, 2024 i.e. the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA). These laws replace the colonial-era Indian Penal Code (IPC) of 1860, the Code of Criminal Procedure (Cr.PC) of 1973, and the Indian Evidence Act of 1872, respectively. The primary objective is to shift from a punishment-centric approach to one focused on justice, efficiency, and modernization, incorporating technological advancements, victim-centric reforms, and provisions for contemporary crimes such as terrorism, organized crime, and mob lynching. Key features include mandatory timelines for trials and investigations, digital integration for FIRs and evidence handling, enhanced protections for women and children, and the introduction of community service as a rehabilitative punishment. The BNS redefines offences with clearer provisions, omitting archaic concepts like sedition while adding new categories for cybercrimes and financial frauds. The BNSS streamlines procedures with citizen-centric elements like zero FIRs and virtual hearings, while the BSA expands evidence admissibility to include electronic records as primary evidence. Implementation efforts involve extensive training for law enforcement, development of apps like eSakshya, and state-level adaptations. However, challenges such as infrastructural gaps, potential ambiguities in new definitions, and concerns over transgender and male sexual assault provisions persist. These laws aim to reduce case pendency, promote restorative justice, and align with constitutional values of equality and speedy trials, marking a significant decolonization of India's legal framework. This article explores the background, detailed provisions, reforms, and implications of these laws, drawing from official and analytical sources to provide a comprehensive analysis.

Keywords: Zero FIR, Criminal Justice System, Speedy Trials, Trial and Investigation

Introduction

The enactment of new criminal laws in India represents a monumental step towards reforming a system inherited from colonial times. For over a century, the Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act have formed the backbone of criminal jurisprudence in India. However, these laws, drafted in the 19th and early 20th centuries, were increasingly seen as outdated, cumbersome, and misaligned with modern societal needs. They emphasized punishment over rehabilitation, lacked provisions for emerging crimes like cyber terrorism, and contributed to chronic issues such as judicial delays, overcrowded prisons, and low conviction rates.

On December 21, 2023, the Indian Parliament passed three groundbreaking bills: the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA).

These bills were given assent by the President and came into force on July 1, 2024, replacing the IPC, Cr.PC, and Indian Evidence Act respectively. This transition is not merely a replacement but a philosophical shift from “Dand” (punishment) to “Nyaya” (justice), as articulated in official documents, aiming to indianize the criminal justice system while preserving core constitutional principles.¹ The rationale behind these reforms stems from long-standing critiques of the colonial laws. The IPC, for instance, was designed to maintain British control rather than deliver equitable justice. Post-independence amendments were piecemeal, failing to address systemic inefficiencies. By 2024, India faced over 50 million pending cases, with criminal matters constituting a significant portion.² The new laws seek to tackle this by introducing time-bound processes, technological integration, and a focus on victim’s rights, thereby enhancing transparency, accessibility, and efficiency. One of the core objectives is to modernize the system in line with technological advancements. For example, the laws mandate the use of digital tools for filing FIRs, recording evidence, and conducting trials, reducing paperwork and expediting proceedings. They also introduce new offences to combat contemporary threats like organized crime, mob lynching, and terrorism, which were inadequately covered under the old regime.

Moreover, the reforms emphasize restorative justice. Punishments now include community service for petty offences, aiming at rehabilitation rather than mere incarceration. The implementation of these laws has been supported by extensive preparations. The Ministry of Home Affairs (MHA) has provided official texts and resources; Training programs for police, judiciary, and forensic experts have been rolled out nationwide, with apps like eSakshya facilitating evidence collection. States have been empowered to make amendments, ensuring flexibility while maintaining uniformity.³

However, the rollout has not been without hurdles. Initial concerns include the need for infrastructural upgrades, such as digital connectivity in rural areas, and potential gaps in addressing certain crimes, like sexual offences against men and transgender individuals. Despite these, the laws promise a more just and efficient system, reflecting India’s evolution as a sovereign democracy. This article delves deeper into the background, specifics of each law, key reforms, implementation strategies, criticisms, and future implications. By drawing on authoritative sources, it aims to provide a balanced, in-depth perspective on this legal transformation.

Background and History

The roots of India’s criminal laws trace back to the British colonial era, when the need for a unified legal framework arose to govern the vast subcontinent. The Indian Penal Code was drafted by Lord Macaulay in 1837 and enacted in 1860, primarily to consolidate criminal laws and ensure British authority. It defined offences and punishments in a manner that prioritized deterrence and control over rehabilitation or justice. Similarly, the Indian Evidence Act of 1872 standardized evidence rules, while the Cr.PC, originally from 1898 and revised in 1973, outlined procedural aspects. Post-independence, India retained these laws with amendments to align with the Constitution.

However, criticisms mounted over time. The laws were seen as relics of colonialism, with provisions like sedition used to suppress dissent, echoing their original intent to curb Indian nationalism. By the late 20th century, issues like case backlogs exceeding 30 million by 2000 and low conviction rates (around 40% for serious crimes) highlighted systemic flaws.⁴

Reform efforts began in earnest with committees like the Malimath Committee (2003), which recommended overhauling the criminal justice system for speedier trials and victim focus. Subsequent reports from the Law Commission and parliamentary committees echoed these calls, emphasizing the need for decolonization.⁵

The push for new laws gained momentum under the BJP government, with the Home Minister emphasizing “justice over punishment.”⁶ In 2020, a Committee for Reforms in Criminal Laws was formed, consulting stakeholders extensively. The bills were introduced in Parliament in August 2023, debated, and passed amid suspensions of opposition members, leading to some controversy. The new laws incorporate global best practices. For instance, the emphasis on timelines mirrors systems in Singapore, where trials must conclude within specified periods. The inclusion of digital evidence draws from the U.S. Federal Rules of Evidence, adapted for India's context. Historically, similar reforms have been attempted elsewhere. The UK's Criminal Justice Act 2003 introduced community sentences, reducing prison populations.⁷

In India, pilot projects in states like Delhi and Maharashtra tested digital courts, informing the new framework. The transition addresses socio-economic changes. With India's digital economy booming, crimes like cyber fraud have surged, necessitating updated provisions.⁸ Demographic shifts, including urbanization and gender dynamics, have influenced protections for vulnerable groups. Pending cases from before July 1, 2024, will continue under old laws, ensuring smooth transition.

This dual system, while temporary, underscores the scale of reform. In essence, these laws mark India's assertion of legal sovereignty, blending tradition with modernity to foster a justice-oriented society.

The Bharatiya Nyaya Sanhita (BNS)

The Bharatiya Nyaya Sanhita, 2023, replaces the Indian Penal Code, introducing substantive changes to offence definitions and punishments. Comprising 358 sections (down from 511 in IPC), it streamlines provisions while adding contemporary elements.⁹

A key innovation is the introduction of six punishment types under Section 4: death, life imprisonment, imprisonment (rigorous or simple), forfeiture of property, fine, and community service. Community service, a rehabilitative measure, applies to petty offences like theft under Rs. 5,000 by first-time offenders or public drunkenness. This draws from restorative justice models, where offenders contribute to society, as seen in community payback schemes in the UK, which have reduced reoffending by 10-15%.

The BNS redefines gender to include transgender persons and replaces “minor” with “child” for consistency with the Indian Majority Act. Movable property now encompasses incorporeal assets like intellectual property, addressing modern economic crimes.

A dedicated chapter (Chapter 5, Sections 63-99) focuses on crimes against women and children, covering sexual offences, assault, and marriage-related crimes. Enhanced punishments for rape and child exploitation aim to deter such acts, with provisions for deceitful sexual intercourse punishable as rape.

New offences include mob lynching: Section 103(2) prescribes death or life imprisonment for murders by groups of five or more based on race, caste, or community. Section 117(4) addresses grievous hurt in similar scenarios, with up to seven years imprisonment. This responds to rising incidents, like the 2019 Jharkhand lynching, providing a legal deterrent.¹⁰

Organized crime is defined under Section 111, covering syndicates involved in kidnapping, extortion, cybercrimes, and human trafficking. Penalties range from life imprisonment to death if resulting in fatalities. This fills gaps in the IPC, which lacked comprehensive syndicate provisions. Terrorism is explicitly defined in Section 113 as acts threatening India’s unity, integrity, sovereignty, security, or economic stability, or intending to strike terror. This broadens beyond the Unlawful Activities (Prevention) Act, allowing registration under BNS or special laws. Sedition is omitted, protecting free speech, a move praised for aligning with Article 19(1) (a) of the Constitution of India. Decriminalization of minor offences reduces judicial burden, focusing resources on serious crimes. However, an anomaly exists: no specific section for sexual crimes against men and transgender persons, though amendments are planned. Interim use of allied sections like wrongful confinement is advised.

The BNS promotes proportionality in sentencing, with fixed punishments for clarity. For example, first-time offenders can secure bail after serving one-third of their term. Implications are profound: conviction rates may rise due to clearer definitions, but training is crucial to avoid misapplication. Comparative analysis with Australia’s Criminal Code Act 1995 shows similar modernization benefits, including reduced appeals. Overall, the BNS embodies a reformatory ethos, balancing deterrence with rehabilitation in India’s diverse socio-legal landscape.

The Bharatiya Nagarik Suraksha Sanhita (BNSS)

The Bharatiya Nagarik Suraksha Sanhita, 2023, overhauls procedural aspects, replacing the Cr.PC with a citizen-centric, efficient framework. It standardizes court structures, abolishing terms like Metropolitan Magistrate, to ensure uniformity across jurisdictions. Central to BNSS is the emphasis on timelines: judgments must be delivered within 30-45 days post-arguments, with only two adjournments permitted. This addresses delays, where average trial times exceed five years under Cr.PC. Victim-centric reforms include mandatory progress updates within 90 days, compensation schemes, and witness protection. Zero FIRs are codified, allowing registration at any station, crucial for emergencies like the 2012 Delhi gang rape case.

Digital integration is pivotal: e-FIRs via CCTNS, electronic summons, and virtual examinations reduce physical presence needs. Forensic involvement is mandatory for offences punishable by seven or above years, with videography during searches ensuring transparency.¹¹

Arrest protocols are refined: for minor offences i.e. less than 3 years punishment, prior approval is needed for elderly or infirm arrests. Summary trials extend to offences up to three years, potentially resolving 40% of session's court cases swiftly.

Post-charge sheet investigations can continue up to 90 days with permission, allowing thorough probes. These changes align with Article 21's right to speedy justice. Globally, similar reforms in Canada via the Criminal Code have cut delays by 20%. Challenges include digital divide in rural areas, requiring infrastructure investments. Nonetheless, BNSS promises accessible, transparent procedures, revolutionizing India's criminal process.

The Bharatiya Sakshya Adhiniyam (BSA)

The Bharatiya Sakshya Adhiniyam, 2023, modernizes evidence rules, replacing the 1872 Act. It classifies as an adjective law, guiding substantive and procedural applications. "Documents" now include electronic records like emails and CDs, admissible as primary evidence under Section 57. This upgrades from secondary status in the old Act, facilitating cybercrime prosecutions. Secondary evidence expands to oral/written admissions, enhancing flexibility.

Electronic evidence requires comprehensive certificates from operators or experts, broadening authentication. Witness protection is strengthened against intimidation, ensuring fair trials. Digital processes for charges and discharges are recognized, reducing paperwork. BSA simplifies evidence collection, excluding irrelevant material, aligning with fair trial norms. Comparatively, the EU's e-Evidence Regulation mirrors this digital focus, improving cross-border cases. In India, this will boost conviction rates in tech-related crimes, though training on digital forensics is essential.

Implementation Efforts

The implementation of the new criminal law in India has been a massive undertaking, requiring extensive coordination and training across the country. Over 40 lakh personnel, including law enforcement officers, judicial staff, and administrative officials, have been trained through webinars, mobile applications, and in-person workshops to ensure effective adoption of the new legal framework. States like Delhi have embraced technology-driven solutions, such as the e-Pramaan platform, to streamline evidence collection and case management, enhancing transparency and efficiency in the judicial process.¹²

Challenges

Despite these efforts, several challenges have emerged during the rollout of the new criminal law:

1. **Infrastructural Gaps:** Many regions, particularly rural areas, lack the necessary technological infrastructure, such as high-speed internet and modern forensic facilities, to fully implement the law's provisions.
2. **Ambiguity in Provisions:** Certain clauses within the new law are perceived as vague, leading to inconsistent interpretations and application across different jurisdictions.
3. **Resource Strains:** The increased workload on police, courts, and administrative bodies has strained existing resources, including personnel, funding, and equipment.

Solutions

To address these challenges, a multi-pronged approach has been adopted:

1. **Phased Rollouts:** Implementing the law in stages allows authorities to address infrastructural and operational shortcomings gradually, ensuring smoother transitions.
2. **Amendments and Clarifications:** Ongoing efforts to revise ambiguous provisions through legislative amendments aim to provide clearer guidelines for enforcement.
3. **Capacity Building:** Continued investment in training programs and infrastructure upgrades, particularly in underserved areas, is critical to overcoming resource constraints.

By addressing these challenges strategically, the new criminal law can achieve its goal of modernizing India's justice system while ensuring equitable access and effective enforcement nationwide.

Criticisms

The introduction of India's new criminal law has sparked significant debate, with critics raising concerns about its legislative process, scope, and inclusivity. While the law aims to modernize the country's criminal justice system, several contentious issues have fueled discussions about its implications for civil liberties, security, and social equity. These criticisms and the ensuing debates highlight the delicate balance between strengthening law enforcement and safeguarding individual rights.

Key Criticisms

1. Rushed Legislative Passage

One of the most prominent criticisms of the new criminal law is the perceived haste in its passage through Parliament. Critics argue that the law was enacted with insufficient deliberation, limiting opportunities for comprehensive stakeholder consultation. Opposition leaders, legal scholars, and civil society groups have pointed out that the rushed process prevented thorough scrutiny of the law's provisions, potentially leading to unintended consequences.

The lack of extensive debate in legislative forums has raised concerns about the law's readiness to address the complexities of India's diverse socio-legal landscape.

2. Potential Overreach in Terrorism Definitions

Another significant point of contention is the law's expansive definition of terrorism-related offenses. Critics, including human rights organizations and legal experts, argue that the broad and ambiguous language used to define terrorism could lead to misuse by authorities. There is apprehension that vague provisions might enable overreach, allowing law enforcement to target dissenters, activists, or marginalized groups under the guise of national security. Such concerns are amplified by historical instances of misuse of anti-terror laws, which have sometimes been applied to non-violent activities, stifling free speech and political expression.

3. Gaps in LGBTQ+ Protections

The new criminal law has also faced criticism for its inadequate attention to the rights and protections of the LGBTQ+ community. While the law introduces progressive reforms in some areas, critics argue that it falls short in explicitly addressing issues such as hate crimes, discrimination, and gender-based violence targeting LGBTQ+ individuals.

The absence of clear provisions to safeguard this community has been seen as a missed opportunity to align the criminal justice system with evolving social norms and constitutional mandates on equality. Advocacy groups have called for amendments to ensure the law is inclusive and responsive to the needs of all citizens.

The Broader Debate: Balancing Security and Rights

At the heart of the discourse surrounding the new criminal law is the challenge of balancing national security imperatives with the protection of fundamental rights. Proponents of the law argue that its robust provisions are necessary to combat emerging threats such as cybercrime, organized crime, and terrorism in an increasingly complex global environment. They contend that modernizing outdated colonial-era laws is essential to equip law enforcement with the tools needed to maintain public safety.

However, critics counter that the law's emphasis on security comes at the expense of civil liberties. The expansive powers granted to law enforcement agencies, particularly in areas like surveillance and detention, have raised fears of potential abuse. Debates have also focused on the need for stronger checks and balances to prevent arbitrary enforcement and ensure accountability. For instance, the lack of robust oversight mechanisms to monitor the application of terrorism-related provisions has been a recurring point of contention.

Furthermore, the debate extends to the law's socio-cultural implications. While some view the law as a step toward a more equitable justice system, others argue that it does not go far enough in addressing systemic issues such as caste-based violence, gender inequality, and minority rights.

The absence of explicit protections for marginalized groups, including the LGBTQ+ community, has fueled calls for a more inclusive legislative framework.

Moving Forward

The criticisms and debates surrounding the new criminal law underscore the need for ongoing dialogue and reform. Addressing concerns about the legislative process, refining ambiguous provisions, and incorporating inclusive protections are critical steps toward building public trust. Engaging with civil society, legal experts, and affected communities can help refine the law to ensure it serves its intended purpose without compromising democratic principles.

Ultimately, the success of the new criminal law will depend on its ability to strike a delicate balance between security and rights. By addressing these criticisms through amendments, transparent implementation, and robust oversight, India can create a criminal justice system that is both effective and just, reflecting the aspirations of a diverse and dynamic nation.

Conclusion

The introduction of India's new criminal laws marks a pivotal step toward modernizing the country's legal framework, replacing outdated colonial-era statutes with provisions tailored to contemporary challenges. These laws aim to strengthen law enforcement, enhance judicial efficiency, and address emerging threats like cybercrime and terrorism. However, their success hinges on addressing critical challenges, including infrastructural gaps, ambiguous provisions, and concerns about civil liberties. Criticisms regarding the rushed legislative process, potential overreach in terrorism definitions, and gaps in protections for marginalized groups, such as the LGBTQ+ community, underscore the need for continuous refinement.

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