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# Replacement of Old Criminal Laws by New: A Reformative Step to Boost Criminal Justice System of India

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## ABSTRACT

*With the object of accessible and speedy justice to all the citizens and also by considering the long-standing inadequacy and inefficiency of archaic criminal laws, the parliament of India introduced three pivotal criminal laws i.e. Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhinyam to overhaul The Indian Penal Code-1860, The Code of Criminal Procedure-1973 and The Indian Evidence Act-1872 respectively. With this discernible effort to get rid of century old colonial criminal era mindset and to uplift the provisions of Indian Constitution, new criminal laws were made effective from 1st July, 2024. To overhaul century old criminal justice system, various committees suggested reforms to the system, which specially includes, Vohra Committee (1993), Malimath Committee (2003), Madhav Menon Committee (2007), etc. Amongst them, major reforms to the criminal justice system in India were envisioned by Justice Malimath Committee through its 158 recommendations in 2003. Though, few of the recommendations were considered and new provisions were introduced in earlier criminal laws, the purpose was not fully accomplished. These reforms, by introduction of new criminal laws in the criminal justice administration will have a profound impact on law enforcement agencies, judiciary and common public. These new enactments are remedy to a long pendency of trials and procedural hurdles while investigation. With an innovative step to investigate alleged offences with imprisonment of seven years or upwards through forensic team will have a positive impact on India's criminal justice administration. These recent laws are expected to bring liberalization and modernization under the criminal justice system of India.*

**Keywords:** Criminal Justice System, Constitution, Recommendations, Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), Bharatiya Sakshya Adhinyam (BSA).

## I. INTRODUCTION

To cope up with the changing demands and by addressing gaps in the earlier laws stifled to

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growth of criminal justice system, Indian parliament has introduced new criminal laws. The goal behind it was to make these laws more relevant to the needs of modern society and also to provide due mechanism for upcoming challenges. These laws reflect contemporary understanding and issues through enhanced legal definitions. They have also streamlined procedures for having more efficient and accessible legal process. One of the other objectives was to strengthen provisions for support and protection of victims of crime. These laws have also provided necessary steps for addressing crimes related to technology and digital era as opposed to the extreme emphasis of the British Raj on maintenance of law and order and protecting the properties as strategic installations of the then government and of curbing the sedition. As of now, these laws are truly going through transition process. While addressing the joint session of parliament on 27<sup>th</sup> June 2024, hon'ble Draupadi Murmu, President of India, said "Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhinyam 2023 will speed up the judicial process...The three new criminal laws which are slated to come into force from 1<sup>st</sup> July 2024, will provide justice rather than punishment, which was the mindset during the British regime." Indian prisons have world's largest number of under trials which irrefutable substantiates the inefficacy of existing laws. According to the data of National Crime Records Bureau (NCRB), 67.2% of total prisoners in Indian Prisons are categorized as under trial. The recently introduced laws also recognizes the importance of police in maintenance of law and order and in the administration of justice and also touches upon the issues which plague the Indian Police system especially the huge workload and the accountability issue. It aims to bring into picture the diversion from retributive to restorative justice. It was very much in all these aspects, the recently introduced laws were a dire need and necessity for the country.<sup>3</sup>

The moment when these three bills were introduced for passing, they suffered with utter criticism. In parliamentary democracy, the will of the people needs to prevail. These bills were passed without any opposition as 146 members of parliament were suspended before passing these bills which raises a question on credibility of ruling government in power and to legislative intent in particular. Though criticized, these laws will have positive impacts on the criminal justice system of India because they are designed to align contemporary societal needs as well as international human rights standards. Moreover, they opens avenues for academic research which will explore the implications of laws on existing legal policies and practices, which will result in to fostering deep understanding of criminal justice in modern India.

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<sup>3</sup>Vijeta Shrivastava, *Independence from Colonial Vestige and Overhaul of Indian Criminal Justice System through Three New Laws*, 33 CONTEMPORARY SOCIAL SCIENCES 174 (2024).

## II. WORLDWIDE LEGAL REFORMS: AN IMPACT ON INDIAN CRIMINAL JUSTICE SYSTEM

To improve the justice mechanism and to have efficiency in legal framework, existing laws needs to be analysed and modified. Criminal justice system can be corrected by repealing old laws and introducing new legislations, by consolidating laws in a comprehensive framework and by codification of legal principles which will ensure precision and convenience.

- **Trend for Incorporating the Electronic Evidence:** Recent legal reforms of India embraced the recognition of digital evidence, one of the noteworthy shifts which aligns with global practices. To ensure that legal system of India remains relevant in an advanced digital era, enhancing the evidentiary framework was inevitable. In the newly adopted criminal laws, provisions for electronic evidence are introduced. It replicates growing acknowledgment of digital landscape's role in overall criminal proceeding. At a global level, there is a trend for incorporating the electronic evidence and victim-centric approaches in criminal laws.
- **Timely Cases Resolution Mechanism:** Timely resolution of cases by strict implementation of timelines is a feature of criminal justice system of Japan. Provisions under The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) also provides timely resolution. With regard to preliminary enquiry and investigation, a timeline is provided. One of the more significant changes brought about through the BNSS is the attempt to address the delays in investigation and trial. Specified timelines have been prescribed for various stages of the criminal process including to complete the investigation and file a final report and for trial of the offence. For instance, it is mandatory for a Magistrate to decide whether to take cognizance of the chargesheet within a period of 14 days.<sup>4</sup>
- **Victim Centric Approaches:** Old criminal laws were highly criticized on the basis of their accused centric approaches. In the countries like Australia and New Zealand, priority is given to the victim's rights. For victims of serious crimes, provisions under The Bharatiya Nagarik Suraksha Sanhita, 2023 are designed with intent to provide financial support and rehabilitation.<sup>5</sup>

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<sup>4</sup>The Bharatiya Nagarik Suraksha Sanhita, 2023 A Premier on the Legislation Replacing The Code of Criminal Procedure, 1973 (2/3).[https://www.cyrilshroff.com/wp-content/uploads/2024/01/Client-Alert-The-Bharatiya-Nagarik-Suraksha-Sanhita-2023\\_part-2.pdf](https://www.cyrilshroff.com/wp-content/uploads/2024/01/Client-Alert-The-Bharatiya-Nagarik-Suraksha-Sanhita-2023_part-2.pdf) (last visited Dec. 02, 2024).

<sup>5</sup>Section 396 of BNSS-2023.

- **Use of Scientific and Forensic Evidence and Provision for Mobile Forensic Labs & Quick Analysis:** The mandatory involvement of forensic teams in serious crimes, as stipulated by the Bharatiya Sakshya Adhiniyam, is expected to significantly enhance the quality of investigations. Forensic experts can provide critical insights that help establish the facts of a case, reducing the likelihood of wrongful convictions and ensuring that justice is served. For example, the use of DNA evidence has been instrumental in solving cold cases and exonerating the innocent, as seen in numerous instances worldwide. To further bolster the use of forensic evidence, the government has introduced mobile forensic labs that can quickly reach crime scenes and provide timely analysis. These labs are equipped with the latest technology to perform on-the-spot testing and analysis, reducing the time taken to process evidence and improving the overall efficiency of the criminal justice system. This initiative has been successfully implemented in several states, leading to faster resolution of cases and higher conviction rates.<sup>6</sup>

### III. KEY CHANGES THROUGH NEW CRIMINAL LAWS

The new criminal laws are introduced with significant changes which will have positive impact on criminal justice system in India. Few important changes in nutshell are-

- **Expansion of Powers of Police-** The maximum limit of police custody as provided under Cr.P.C.-1973 for 15 days is expanded by the BNSS-2023 to either 60 or 90 days, depending upon gravity of offence. This substantial increase in powers of police may lead to arbitrariness and is a threat to civil liberties. The threat of custodial violences against poor and deprived class due to prolonged detention may also become one of the challenges before criminal justice mechanism.
- **Community Service as a Kind of Punishment-** Community Service for the petty offences is one of the important changes introduced through BNS-2023. Section 4(f) of the BNS formally introduces community service as a form of punishment in India. This legislative change aims to provide an alternative to traditional forms of punishment, addressing issues like prison overcrowding and promoting the rehabilitation of offenders.<sup>7</sup>

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<sup>6</sup>Abhinandan, *New Indian Criminal Laws 2024: Key Highlights, Impact*, AUTHBRIDGE (Jul. 01, 2024)<https://authbridge.com/blog/new-criminal-laws-india-2024/>

<sup>7</sup>Anurag Mishra & Yash Raj, *Community Service: A Progressive Shift Introduced By Bharatiya Nyaya Sanhita*, (Jun. 19, 2024, 11:43 AM ) <https://www.livelaw.in/lawschool/articles/community-service-bharatiya-nyaya-sanhita-indian-penal-code-juvenile-justice-act-national-crime-records-bureau-260813>

- **Use of Technology:** Section 173 of Bharatiya Nagarik Suraksha Sanhita, 2023 provides for use of digital technologies for investigation of crimes, trial of the accused and documentation of court proceedings. Further, Section 57 of the Bharatiya Sakshya Adhiniyam, 2023 underlines the value of electronic records as primary evidence. The law also allows the electronic presentation of oral evidence. Now the witnesses can testify remotely using information and communication technology. New law recognizes electronic or digital records, emails, server logs, smartphones, computers, laptops, SMS, websites, locational evidence, and messages available on devices as documents admissible in courts of law. The importance of Section 65B of the Evidence Act-1872 was envisaged by hon'ble Supreme Court in *Anvar P.V. V/s. P.K. Basheer*<sup>8</sup>, ruled that to be admissible in court, electronic evidence, such as phone records and e-mails must strictly comply with the procedural requirements of Section 65B. This ruling underlined the need to familiarize legal practitioners with the nuances of handling and presenting electronic evidence in court of law. To maintain the integrity of digital evidence, forensic techniques are employed. While collecting digital evidence, unique identifiers for digital data i.e. hash values are created by experts. To verify that the data has not been altered the hash values of original and copied data gets compared by cyber forensic experts.
- **Reconstruction of Definitions and Procedures with Modern Requirements:** These three newly introduced criminal laws provide more streamlined definitions and processes to accommodate new forms of crimes, procedure and evidence-such as digital signatures, blockchain records, and AI-generated data.
- **Emphasis on Speedy Justice:** To deal with 'Justice delayed is justice denied' principle, the provisions of new criminal laws are incorporated with measures to speed up the judicial process. As discussed earlier, BNSS and BSA prescribes simplified and timely procedures for winding up of criminal matters, presenting evidence and encouraging alternative dispute resolution mechanisms to decrease the court's burden.
- **Gender Neutrality:** As the Constitution of India guarantees the right to equality as a fundamental right, parliament of India incorporated some positive gender-neutrality principles through new criminal laws. Now under BNS, the definition of 'victim' is broadened. Some offences against children and women are now made as gender-neutral, which includes all victims (Section 141) and perpetrators (Sections 76& 77) irrespective

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<sup>8</sup> AIR 2015 SC 180.

of their gender. Many words have been replaced to new words such as sections 76, 77, 96, and 141 which implicate gender-neutrality. Women are now considered as adult family members for the purposes of serving summons on behalf of the individual being summoned under Section 66 of the BNSS. “Some adult member” has been used in place of the previous reference to “some adult male member.”

- **A Protective Shield for Women:** In spite of having right to equality as fundamental right, there are some exceptions for protection of vulnerable groups such as women. Article 15(3) of Indian Constitution intends to ensure that special provisions for women are not considered as discrimination. Nowadays, offenses against women are increased in spite of introducing changes in the criminal justice system. Hence, women are facing new challenges of protection in changing society equipped with technology. For giving them more protection and to cope up with the new challenges, few changes have been made under new criminal laws which is the need of an hour. Section 176 of BNSS provide more protection to the victim and ensure clarity in the investigation related to an offence of rape, the statement of the victim shall be recorded through audio-video means by police.

Section 183(6)(a) of the BNSS is another significant change in this regard. It states that for certain offenses against women, the victim's statements must be recorded, to the greatest extent possible, by a female magistrate or, in her absence, a male magistrate in the presence of a woman. This makes the procedural formalities more comfortable for women.<sup>9</sup>A separate chapter i.e., Chapter-V is introduced under BNS which relates to ‘Offenses against Women and Children.’ Under this chapter, a new offense has been added under section 69 wherein a girl is being protected from deceitful promise to marry and sexual intercourse. For offenses against women, punishments have been increased. Under Sections 184(6) of BNSS, medical practitioners are mandated to send the medical report of a victim of rape to the investigating officer within 7 days.<sup>10</sup>In *Anuja Kapur v. Union of India*<sup>11</sup>, Court has given guidelines for marital rape and observed that legislatures should make some provisions in relevant laws regarding marital rape. New formulation of BNS was a great chance to incorporate this provision but legislature has failed to commemorate the suggestions introduced through this

<sup>9</sup>Arindam Guha & Arpita Dey, *New Laws, New Shield: Protecting Women and Children*, (August 8, 2024), <https://www.foxmandal.in/new-laws- new-shield-protecting-women-and-children/>

<sup>10</sup>*Women, Children and New Criminal Laws, An overview of changes introduced in Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita*, 2023, [https://bprd.nic.in/uploads/pdf/Women,%20Children%20and%20the%20New%20Criminal%20Laws%20\(1\).pdf](https://bprd.nic.in/uploads/pdf/Women,%20Children%20and%20the%20New%20Criminal%20Laws%20(1).pdf) (last visited on Dec. 11, 2024).

<sup>11</sup>*Anuja Kapur v. Union of India* through Secretary, 2019, SCC OnLine Del 12339.

*case for having express provision for marital rape and its punishment.*

#### **IV. ISSUES PERTAINING TO NEW CRIMINAL LAWS**

New criminal law brings essential key changes which are obviously fruitful to modern society but there are some challenges which they have to face either now or then. Such as the penalties and procedures may conflict as a result of the BNS's introduction of offenses that overlap with current special laws. This overlap raises questions regarding legal complexity, makes regulatory compliance more difficult, raises the cost of adherence, and allows for multiple charges. In contrast to individual murder, the law imposes a lesser penalty for group murders based on specific identity markers. The consistency and proportionality of punishment for comparable offenses are called in to question by this disparity in penalties. The BNS modifies the mental health protections, substituting "mental illness" for "unsound mind." Notably, the definition of mental illness does not include mental retardation. This change creates complications that could result in the prosecution of people with mental retardation and the exoneration of those who are voluntarily intoxicated. Section 377 of the IPC, which the Supreme Court had previously read down, is not included in the BNS.

A more thorough analysis of the implications for gender justice and the protection of vulnerable groups are necessary because this exclusion eliminates provisions pertaining to bestiality and male rape as crimes. International conventions supporting higher age limits may be at odds with maintaining the age of criminal responsibility at seven years old, with a potential extension to twelve years old based on maturity. This calls into question whether the BNS complies with international juvenile justice standards.<sup>12</sup> Considering these changes, judicial interpretation will play a crucial role in every case. The revised laws preserve approximately 75% of the provisions from the previous laws, including the IPC, CrPC and Indian Evidence Act. This raises doubts about the assertion that the laws have been decolonized, as a large portion of the legislation remains intact. Especially, Section 187 of the BNSS which increased the maximum duration of police custody from 15 days to either 60 days or 90 days. This marks a significant increase compared to the limits established by prior laws such as the UAPA, POTA, and TADA.<sup>13</sup> The BNSS allows for the prosecution and trial of proclaimed offenders in their absence greatly restricting the accused person's capacity to defend themselves. This represents a notable shift from the previous system, in which only evidence could be collected without accused being

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<sup>12</sup>Chitranjali Negi, *Legal Evolution in India: Transitioning from Colonial Legacies to New Frontiers-An In-depth Analysis of Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill in 2023* (Dec 28, 2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4677357](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4677357)

<sup>13</sup>Criticisms of new criminal justice system, available at <https://forumias.com/blog/criticisms-of-new-criminal-justice-system/> (last visited on Dec.13, 2024)



present.

## V. CONCLUSION AND SUGGESTIONS

After taking an overview of these new criminal laws, it can be concluded that, BNS, BNSS and BSA are effective pieces of legislation in the modern era. These new criminal laws would definitely protect the vulnerable groups and tries to maintain gender justice which is the basic structure of the Indian Constitution.<sup>1415</sup> Bharatiya Nyaya Sanhita, 2023 is an important step in India's efforts to address the problems caused by technology-based crimes in a society that is becoming more and more digital. A quick development in the technology has not only made crime more complex and transnational, but it has also necessitated a more flexible and proactive judicial system to deal with these new dangers. Though the Sanhita represents a step forward, for tackling new-age crimes successfully, it requires a comprehensive and ongoing effort. In order to combat transnational cyber threats, this entails strengthening cross-border cooperation, improving protections for vulnerable groups, collaborating with technology businesses, and integrating cutting-edge tools like artificial intelligence and machine learning into criminal investigations. Encouraging digital literacy and creating precise legal definitions of cybercrimes will enable both the public and law enforcement machineries to successfully navigate and address these issues.<sup>16</sup>

The reforms made by new Criminal laws are able to tackle persistent problems such as insufficient safeguards for witnesses and victims, lengthy court proceedings, and the requirement for additional sentencing and rehabilitation strategies. The new legislations demonstrate a commitment to not just catching up with international legal norms but also taking the lead in creative practices that support the rule of law by using digital technology, strengthening victim rights, and adjusting to modern forms of criminality like cybercrime. Additionally, by recognizing that punitive measures might not be enough to address the complex social variables that contribute to criminal behavior, the BNS's emphasis on rehabilitation and alternative punishment highlights a trend towards a more compassionate approach to justice.

By incorporating digital offenses, expanding its definitions, and proposing severe penalties, the BNS exemplifies this more recent thinking. Their main distinction is that they favour a more

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<sup>14</sup>Revathi v. Union of India, AIR 835, 1988 SCR(3)73.

<sup>15</sup>M.G. Badappanavar v. State of Karnataka, AIR 2001(2)SCC 666.

<sup>16</sup>Shivanshu Katare, Dr. Rubina Khan, Tripti Dhaka (July31,2024). *The Role of Technology in Facilitating and Addressing New-Age Crimes under Bharatiya Nyaya Sanhita, 2023*. Library Progress International, Vol. 44(3), 24038-24047, available at <https://bpsajournals.com/library-science/index.php/journal/article/view/3043>

thorough and victim-centric approach over the outdated and occasionally restrictive IPC requirements. However, the actual use of BNS to be successful is how it is implemented.<sup>17</sup> The role of public ultimately the society and proper implementation will play an important role for future success of all Criminal laws.

This all-encompassing strategy, in conjunction with enhanced protections for digital evidence and witness protection under the BSA, guarantees fair trials, trustworthy evidence, and protected witnesses from coercion. The potential advantages of these reforms cannot be emphasized, even though there are still many obstacles to overcome, including implementation logistics, judicial capacity building, and guaranteeing equitable access to justice. They can preserve the equality and justice tenets of the constitution, increase the effectiveness of case adjudication, and rebuild public confidence in the legal system. In order to successfully navigate the challenges of transition and guarantee that the promise of a more modern and just legal framework in India is fulfilled, policymakers, legal professionals, civil society, and the general public will need to work together.<sup>18</sup> Rather than law on paper the behavior of a person towards other person, respect towards vulnerable groups and follow ethics and morality while working on digital devices are also important. If the initiatives would be taken from grassroots level, it would be an essential and initial step towards the upliftment of the society as well as success the new criminal laws. Despite few concerns, the initiation of three new criminal laws underlines India's commitment towards investigative, trial related and other legal reforms. A confident step to transition towards speedy and accessible justice in modern legal society is taken through the introduction of these criminal laws.

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<sup>17</sup>Priyamvada Singh, *Offences Against Women and Children under Bharatiya Nyaya Sanhita*, (July 15, 2024), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4973425](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4973425)

<sup>18</sup>PAWAN KUMAR & KASHISH JAIN, *NEW CRIMINAL LAWS SIGNAL END OF COLONIAL HANGOVER, BUT CHALLENGES AWAIT*, (JULY 02, 2024), [HTTPS://WWW.NEWINDIANEXPRESS.COM/WEB-ONLY/2024/JUL/02/NEW-CRIMINAL-LAWS-SIGNAL-END-OF-COLONIAL-HANGOVER-BUT-CHALLENGES-AWAIT](https://www.newindianexpress.com/web-only/2024/jul/02/new-criminal-laws-signal-end-of-colonial-hangover-but-challenges-await)