

CRIMINAL LAW 2.0: A NEW ERA OF INDIAN CRIMINAL JUSTICE SYSTEM

Background:

“When justice is done, it brings joy to the righteous but terror to evildoers”

For years the Indian Penal Code (IPC), Indian Evidence Act and Code of Criminal Procedure have cast a shadow over India’s legal system. While these laws have been the foundation of our justice system, they have struggled to address the complexities of modern India. A new era has dawned and India has taken great steps towards evolution in the field of law with introduction of new criminal laws. The initiative originated in 2020 when the Committee for Reforms in Criminal Laws (CRCL) was established, and chaired by Prof (Dr.) Ranbir Singh. The transformative bills, named as Bharatiya Nyaya Sanhita (BNS), Bharatiya Sakshya Adhinyam (BSA) and Bharatiya Nagarik Suraksha Sanhita (BNSS) promise to bring about a rebirth by replacing these outdated and erstwhile statutes with new legal frameworks that are specifically designed for the needs of 21st century India.

Throughout India’s history, the development of its criminal justice system can be traced across multiple periods including the Vedic age, Delhi Sultanate, Mughal Empire era and up to the present stage. During the Vedic era, principles rooted in Rig Vedic teachings played a role in determining punishments and maintaining order under the guidance of Dharma. Subsequently during the Delhi Sultanate Era, there was an evolution influenced by sources like Smriti and the implementation of Shariat law during that era.

During the time of the Mughal Empire, the Mughals created the Mahakuma e Adalat, a department responsible, for dealing with both criminal and civil cases under Islamic law. However, there were multiple challenges that came

with this system. These challenges included the absence of a distinction between the judiciary and the executive branches, inconsistencies, in the application of criminal laws and instances of corruption.

During the Colonial period there was a paradigm shift. The East India Company (EIC) played a key role, in shaping this transformation alongside the introduction of court systems and the establishment of the High Court. These developments set the foundation, for the enactment of codes in the 1860s.

These bills have been revised based on recommendations, from the Standing Committee and had been approved by both houses of Parliament. Hon'ble President gave her assent on December 25th, 2023. The need for reforms and changes in legislation is the realization that the existing laws are outdated remnants of the colonial era reflecting a criminal justice system that aimed to oppress rather than serve justice. Many sections of the old laws have become irrelevant and obsolete requiring an overhaul.

The Act introduced by Central Government are:

1. Bharatiya Nyaya (Second) Sanhita, 2023 (BNS),
2. Bharatiya Sakshya (Second) Adhinyam, 2023 (BSA), and
3. Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 (BNSS)

TABLE COMPARING NUMBER OF SECTIONS IN EXISTING OLD ACTS AND PROPOSED LEGISLATIONS

IPC – 511 sections	New BNS – 358 Sections
Old Cr.PC – 484 sections	New BNSS – 531
Old Evidence Act – 167 sections	New BSA – 170 Sections

Overview

1. **BHARTIYA NYAYA SANHITA** is among the three criminal laws bills aiming to replace the longstanding IPC, 1860 which will have 358

Sections. Changes have been done in 175 Sections wherein 8 new Sections have been added and 22 Sections have been repealed. It mostly retains IPC provisions, recognized new offenses, eliminates court-invalidated offenses, and raises penalties for some offenses. Through amending, repealing and adding sections this law aims to take a nuanced approach towards offenses by imposing penalties on actions that pose a threat to the sovereignty, unity and integrity of India. Additionally, it tackles challenges like terrorism, organized crime, by differentiating between serious and minor offenses and imposing strict punishments for serious offenses. The idea of 'Community Service', as a penalty for crimes is now being implemented under the law focusing on a more rehabilitative approach to justice. The recent legislation has added "snatching" as an offense, under Section 304 of the Bharatiya Nyaya Sanhita.

2. **BHARATIYA SAKSHYA ADHINIYAM** will replace the Indian Evidence Act, 1872 with some major changes in which, 23 sections have been amended, 1 Section is entirely new, and 5 Sections have been removed. The Act strives to establish general rules and principles of evidence for a fair trial, adapting to technological advancements and societal changes over recent decades. In today's environment, where technology holds great importance, this new criminal law acknowledges electronic evidence, as any information produced or transmitted by a device or system that can store or recover data. Section 57 of the Bharatiya Sakshya Adhinyam emphasizes the recognition of electronic records as primary evidence. Moreover, the Act includes provisions that enable the electronic presentation of even

oral evidence. This advancement makes it possible for witnesses to testify remotely ensuring that digital records hold the same significance as traditional paper documents. Section 24 of the Act, expands on the idea of joint trials.

3. **BHARATIYA NAGARIK SURAKSHA SANHITA** will replace Code of Criminal Procedure, 1973, repealing 9 Sections from the existing Act, suggesting changes in 160 Sections and introducing 9 new provisions. By setting timelines for investigations, it intends to ensure that justice is more accessible and responsive to the needs of the people. In this new criminal law one notable change can be seen in Section 176 of the Act, which mandates investigation for crimes carrying a punishment of seven (7) years imprisonment or more. This means that appointed experts will be involved in conducting on site investigations. Additionally, Section 173 of the Bharatiya Nagarik Suraksha Sanhita embraces the new digital age by allowing digital methods for trials, inquiries and proceedings. This shift toward documentation and proceedings aligns with advancements in technology and helps streamline legal processes. One revolutionary concept is the implementation of Zero FIRs. According to Section 173 of the Act, individuals have the right to file a First Information Report (FIR) at any police station, for a cognizable offense regardless of its jurisdiction. It states that the FIR must be transferred to the police station, for handling crimes committed in that particular area within a span of 15 days. Crime and Criminal tracking system will be used for benefit of the public.

BASIS	OLD CRIMINAL LAWS	NEW CRIMINAL LAWS
Laws and Philosophy	The laws were Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act. The philosophy was to provide punitive and retributive justice.	The laws are Bharatiya Nyaya Sanhita, Bharatiya Nagrik Suraksha and Bharatiya Sakshya Adhiniyam. The philosophy is to provide restorative justice focused on rehabilitation and victim centric.
Ideology	Developed by Britishers under British oversight and ideology	Built for the Modern India, with focus on ever dynamic legal landscape.
Sentencing	There were fixed punishments and penalties specified for various kinds of crimes.	There are provisions for fixed punishments as well as restorative justice provisions like imposition of community service or rehabilitation.
Admissibility of Evidence	The acts provided strict and rigid rules for testimonies of witness and sometimes relied upon unreliable circumstantial evidence. Electronic evidence had limited admissibility.	Scope of admissibility was expanded to take into account digital evidence and records and to strengthen investigations.
Trial Procedures	Tiring, cumbersome and lengthy procedures due to which people face delays and backlogs in courts.	Aimed at expediting the trial process by implementing time limit and leverage technology to enhance efficiency.

CONCLUSION

All the 3 Acts are a testament to India's commitment to reform. They bring our legal, policing, and investigative systems into the modern era with a focus on technology and forensic science. The Acts ensure

enhanced protection for the poor, marginalized and vulnerable sections of our society. It aims to align the criminal justice system with contemporary needs and values, emphasizing the protection of citizens' rights and the efficient administration of justice. The success of this reform will depend on careful implementation, clear guidelines, and continuous monitoring to ensure that the law serves its intended purpose without unintended consequences.

And the primary objective is to raise awareness among stakeholders and other participants regarding the new legislations of 2024 i.e. Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhinyam, 2023.

In this context, the Hon'ble Chief Justice of India Mr. D Y Chandrachud has also said, *"India is set for a significant overhaul of its criminal justice system with the upcoming implementation of three new criminal laws. These laws signify a watershed moment for our society because no law affects the day-to-day conduct of our society like the criminal law. The enactment of these laws by Parliament is a clear indication that India is changing and, on the move, and needs new legal instruments to deal with the current challenges,"*