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## **Article**

### **CRITICAL AND COMPARATIVE ANALYSIS OF NEW CRIMINAL LAW BILLS , 2023**

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#### **Abstract**

The Indian Penal Code (IPC), 1860; the Code of Criminal Procedure, 1973; and the Indian Evidence Act, 1872 were to be replaced by three bills that were introduced in the Parliament a few days prior to India's 77th Independence Day celebration. These three bills are the Bharatiya Sakshya Bill (2023), the Bharatiya Nagarik Suraksha Sanhita (2023), and the Bharatiya Nyay Sanhita (BNS) of 2023.

Although the repeal of legislation created about 160 years ago was the intended signal of a break from colonial continuities, analysts and attorneys have questioned the real degree of this separation. The article's focus would be limited to just significant modifications made to criminal procedural legislation by a thorough comparative study of CrPC and BNSS regulations.

#### **Keywords -**

Justice, Sovereignty, Parliamentary Standing Committee, Decolonisation, Hate Speech, Replacement Bills, Legal History, Legal Transition, Criminal Justice System, Parliament, Comparative Law, Constitutional Rights, Controversy, Investigations, Judicial System, Public Engagement, Integrity, Legislation.

#### **1. Introduction**

August 11, 2023, was a landmark day when a number of rumors about the implementation of new criminal significant legislation were finally dispelled. The three laws that would replace the current IPC, CrPC, and IEA were introduced on this date by India's honorable home minister, Shri Amit Shah. The Bharatiya Sakshya Bill, 2023, The Bhartiya Nagrik Suraksha Sanhita, 2023, and The Bharatiya Nyay Sanhita, 2023 are the names of these legislation, respectively. Referred to the appropriate Parliamentary Standing Committee are all three of the laws. Despite not having been announced or

passed yet, the laws have already generated a great deal of discussion and controversy. .. Many others have questioned the decision, arguing that it was made too quickly and without sufficient public engagement, while some are cheering the initiative to decolonize the current criminal apparatus. Most of the talk at the moment is on the IPC or the next Bhartiya Nyaya Sanhita.

The New Codes propose extensive modifications to the current criminal law system, such as adding new offenses to sections relating to hate speech, terrorism, and acts that compromise the sovereignty, unity, and integrity of the country, as well as streamlining and condensing the IPC's existing provisions. They also include new regulations for deadlines for investigations and trials, as well as trials in absentia for absconders.

The purpose of the New Codes was to replace the colonial-era criminal justice system, which was designed to punish and suppress people, with a new one that upholds Indian citizens' rights and advances the notion of justice.

## **2. The Criminal Justice System's Decolonization and Modernization**

The Bills' noble goal of decolonizing India's criminal justice system is commendable. This is an essential first step towards modernising and reforming India's criminal justice system, especially in light of the fact that the country's criminal laws were employed to support India's colonialism by inciting fear in the minds of people . IPC brought criminal law in India under one roof, but it was not without flaws. The native Indian people were considered undeserving of reformation because they were considered "aboriginal savages." Regretfully, the three Bills fail to decolonize on the following grounds and fail to address these fundamental presumptions regarding the role of criminal law and punishment in India:

### **2.1 Absence of precise guidelines and methods for decolonization**

In pre-independence India, the citizen-state interactions were guided by the colonial logic of dominance. The new Bills neither deviate from this nor even address how the nature of the citizen-state relationship has changed since independence.

Nothing in the three Bills expressly establishes the punitive philosophy of the contemporary postcolonial Indian state, with the exception of the overarching goal of

decolonizing and modernizing India's criminal justice system. These Bills fail to express the purpose of India's criminal code, or what the state deems an act worthy of criminalisation.

**A missed chance to develop a framework for criminal lawmaking based on principles:** The chance to rethink crime and punishment in India based on progressive reformatory notions of justice was presented by the rewriting of the criminal laws. It offered a chance to identify the boundaries of the legislature's ability to criminalize and to establish the guiding principles for criminal lawmaking in India.

A guiding framework for enacting criminal laws may have also provided legislative acknowledgement to the Courts' gradual attempts to curtail the reach of the law by removing sections that made adultery<sup>1</sup>, homosexuality, begging, and attempted suicide<sup>2</sup> illegal.

In these instances, the courts established a broad guideline that forbids criminalization in the event that it infringes upon basic rights, individual liberty, or the criminal provision. This is especially important in light of the approximately 400 union statutes that deploy criminal provisions to enforce social and regulatory compliance, indicating an overcriminalization issue.

## **2.2 Retention of a colonial penal philosophy and irrational punishments**

The BNS still overuses the death penalty, mandatory minimum punishments, and incarceration to instill fear in people—a practice known as the colonial philosophy of punishment.

The Indianization of our criminal justice system may have started with an emphasis on reform and rehabilitation, especially in light of the Bills' goal of ensuring "justice" rather than "punishment" acceptance of community service as a punishment for a small number of infractions, but not at the expense of jail time demonstrates the unwillingness to accept a change in the punitive theory.

**A chance wasted to rationalize punishments:** Repenning these rules would have given rise to the chance to guarantee that sentences for all offenses are just and have a legitimate connection to the crime they are intended to deter. It offered a chance to update

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<sup>1</sup> Joseph Shine v Union of India (2019) 3 SCC 39

<sup>2</sup> P. Rathinam v Union of India (1994) 3 SCC 394

the penalties from the colonial era and provide a framework for determining the kind and severity of punishments.

For example, neglecting to report a treasure worth more than ten rupees can result in a year<sup>3</sup> and a half in jail, while being dirty can result in two years in jail for navy members<sup>4</sup>. The penalty for assault or using unlawful force is three months<sup>5</sup> in prison, whereas reckless kite flying entails a two-year sentence. Money laundering<sup>6</sup> and assaulting or using illegal force with the purpose to disrobe a woman<sup>7</sup> carry the same punishment, which is a minimum three-year sentence that can be extended to seven years in jail.

The BNS's continued inclusion of these essentially colonial clauses and the addition of the crime of "endangering sovereignty, unity, and integrity of India" (2 Clause 150), which is similar to the sedition charge under Section 124A of the IPC, is ineffective in terms of decolonization.

#### **2.4 Developing Victorian morality in India in the 21st century:**

Victorian moral ideals were intended to be met by "civilizing" native Indians through the implementation of the IPC. Provisions criminalising homosexuality, adultery, seducing a married woman, and even the exception for marital rape were blatant examples of this Victorian moral legacy. In addition to reflecting the imposition of authoritarian norms, these regulations have supported cultural imperialism in India for more than a century.

Victorian sensibilities and morals are reflected in the BNS through the marital rape exception (exception 2 under Clause 63), offences that presume the inferiority of women or deny them agency (entertaining a married woman under Clause 83), and offences that associate harassment and assault of women with their "modesty" (Clauses 73 and 78)

#### **2.5 Disconnect between the goal of prompt justice and the suggested laws:**

The establishment of deadlines for timely investigations, trials, and judgements is what drives the BNSS's goal of providing speedy justice; nevertheless, it is unclear how these rules will be carried out. Additionally, this ignores a number of factors that contribute to the delay of criminal proceedings, including subpar investigation methods, improper

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<sup>3</sup> The Indian Treasure-trove Act, 1878, s 20

<sup>4</sup> The Navy Act, 1957, s 53

<sup>5</sup> The Indian Penal Code, 1860 s 352

<sup>6</sup> The Prevention of Money-Laundering Act, 2002, s 4

<sup>7</sup> The Indian Penal Code, 1860 s 354B

summons service, insufficient police and inadequate logistics to handle the volume of criminal matters, and even the problem of overcriminalization.

To ascertain the viability and effects of establishing these timetables on the Police and the Judiciary, impact assessment tests must be implemented.

### **3. Creating a criminal justice system that prioritizes citizens**

#### **3.1 Putting citizens at the center of the criminal justice system:**

Indian citizens are still regarded with suspicion by the BNS and BNSS, which also grant the law enforcement apparatus broad authority to restrict their freedom upon simple apprehension. The colonial history of the legal system and the authority granted to the police is not significantly altered by the criminal justice system under the BNSS.

It appears that the Bill has lost the chance to establish a criminal justice system that is user-friendly for citizens rather than a labyrinth of legalese. Moreover, the BSB takes no action to regulate contemporary police techniques like facial recognition software and biometric systems, which are being utilised to support law enforcement nationwide.

This was also a chance to ensure that people will have this kind of protection by adopting into the legislation the directives and recommendations of the Supreme Court, such as the D.K. Basu guidelines.

In order to completely revamp the criminal justice system, careful consideration must be given to changing the Police Act, 1861.

#### **3.2 The language of laws that empower and enable citizens:**

Setting out what behavior will be penalized is one of the goals of criminal law, allowing individuals to behave appropriately in their dealings with one another. But the usage and use of nebulous terms like "obscenity," "promoting disharmony," "misleading information," and so forth allow the police to act arbitrarily and set imprecise standards for citizen conduct.

The terms of the legislation must be clear and understandable rather than vague and antiquated in order for it to be citizen-centric. It would be preferable to create the three laws using simple English to guarantee that they are Simple, Accessible, Rational, and Actionable (SARAL).

## 4. Conclusion

A chance to genuinely decolonize and Indianize the criminal justice system exists with the three Bills. They also offer a chance to maintain constitutional principles in the criminal justice system and make the institutions citizen-centric. Regrettably, the Bills fail to meet their stated goals in their current form.

Reform and rehabilitation are the cornerstones of an evidence-based strategy that will be necessary to make India's criminal justice system more responsive and efficient. It will be necessary to establish a clear sentencing strategy, rationalize sanctions, and restrict the application of criminal law. It will also need an assessment of how our institutions—like the police and prisons—function, as they still use colonial-era methods.

Modernizing the criminal justice system would also greatly benefit from pre-legislative budgetary, justice, and community impact evaluations of criminal legislation, a framework for periodic reviews of criminal laws, and a principle-based criminal law-making strategy.

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