



EVOLVING CRIMINAL LAWS IN INDIA: REFORMS, IMPACT, AND THE ROAD AHEAD

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INTRODUCTION

The new criminal laws of India Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, and the Bharatiya Sakshya Adhinyam-which came into force with effect from July 1, 2024, have supplanted the IPC, the CrPC, and the IEA that had outlived their utility as colonial-era statutes. While some would argue that only those parts that needed change should have been changed, the actual reality is more nuanced. The nature of the crimes themselves has altered over time; for instance, cybercrimes or digital scams were unheard of when original laws were drafted. It simply is no longer sufficient to just update old laws.

The reason behind introducing an altogether new set of laws can be summed up with the following quote: "If you have one shoe which has been broken and repaired 20 times, further repairs won't solve the problem - it is time for a new shoe." In the same vein, where this set of laws had already undergone over 106 amendments the system had reached a breaking point. We don't need more amendments but a complete overhaul new set of criminal laws that would be in tune with the imperatives of a modern society.

These reforms are not mere window dressing but a radical reworking of the criminal laws of India to bring them into step with the realities of contemporary life. The new laws aimed at ironing out perennial inefficiencies and inadequacies of the existent statutes were criticized as obsolete, insensitive, and incapable of meeting the requirements of modern society. The drive for change was harnessed from improving the legal process, accommodating technological changes, and guaranteeing enhanced protection of the rights of citizens. These reforms are bound to influence not only the police and the judiciary but even the public at large. The new laws would work towards making the system more transparent and accountable, hence more

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effective, by introducing digitalisation of processes, videography in search and seizure, and forensic science integration into the Criminal Justice Delivery System.

HISTORICAL CONTEXT OF CRIMINAL LAWS IN INDIA

Before the inception of IPC, CrPC, and CPC to dole out justice in India, Hindu personal laws, Muslim personal laws, and local customs were being followed. These were later replaced because these principles were incoherent and non-codified, and their application used to consume a lot of time. Moreover, during that period, India was a colony of the East India Company, which wanted to establish its supremacy over Indian jurisprudence. Therefore, IPC, CrPC, and CPC were brought in. Thomas Babington Macaulay, a British historian and politician, came to India to propagate Western education and legal reforms. The First Law Commission headed by him prepared a draft of the Indian Penal Code in 1834.

In 1837, the first draft of the IPC was brought in front of the then Governor-General, Lord Canning. After twenty years of amendment and revision, it came before the Legislative Council.

In 1856, the first formal draft of the IPC reached the Legislative Council, but because of the Revolt of 1857, it was not able to be enacted.

The IPC was finally enacted in the year 1860 and thereby was enforced in 1862 to become the true substantive criminal law of the land.

The first CrPC was enacted in 1861 following the enactment of the IPC in 1860. Once the IPC came into being, there was a felt need for a procedural law on trials, investigations, and punishments; in fact, this was also serving the interests of the British in suppressing protests against colonial rule. The 1861 CrPC met those needs. Later it was amended in 1872, 1882, and in 1898. And in 1973, CrPC as enacted in the colonial era was replaced by a new one upon the recommendations of the Fifth Law Commission's Forty-First Report.

Meanwhile, the Indian Evidence Act had been brought into force as early as 1872 by Sir James Fitzjames Stephen, a judge knowing procedural law inside out.

Hence, between 1860 and 1872, three major legal frameworks were set: the IPC, CrPC, and the Indian Evidence Act.

Post-independence, the year 1947 gave wide scope for modernization and adapting of the IPC, CrPC, and Indian Evidence Act according to the need evolving in Indian society.

Between 1955 and 2018, there were major criminal law reformations.

These laws, for the first time in history, faced an entire makeover in 2023 and were replaced by *Bhartiya Nagrik Suraksha Sanhita*, *Bhartiya Nyaya Sanhita*, and *Bhartiya Sakshya Adhiniyam*.

THE PROCESS OF CHANGING IPC, CRPC AND IEA

Change to the Indian criminal laws began to take shape when the Law Commission recommended changes necessary for bringing modernization to the existing laws by reforming them and making them relevant. Thereafter, suggestions were set aside for review by senior legal professionals like retired judges, senior lawyers, and legal scholars so that modernization was complete and well-rounded.

It therefore gave the task of drafting new laws to the retired Vice Chancellor of NLU Delhi, Ranbir Singh. He led a Committee for Reforms in Criminal Laws, that did severe revisions and improvements in the laws. After doing a lot of research and consulting, it submitted the recommendations to the Ministry of Home Affairs in the year 2022.

On August 11, 2023, Union Home Minister Amit Shah put new laws before Parliament, including *Bhartiya Nyaya Sanhita*, *Bhartiya Nagrik Suraksha Sanhita*, and *Bhartiya Sakshya Adhiniyam*. Therefore, the first draft received some semblance of scrutiny and was withdrawn thereafter for some much-needed amendments.

The Laws were so redrafted with essential amendments. They thus came into effect on 1 July 2024, ushering in a sea-change in the criminal justice administration of India.

PROBLEMS IN OLDER CRIMINAL LAWS

Backlog of cases: The Indian judiciary is now burdened with about 47 million cases or 4.7 crore at various levels. It places a solid burden on the Court. Many due to this colossal backlog, many deprived of justice, and it is also decreasing the efficiency of the judiciary. Though appointments to the Bench have not been adequate, inefficiencies in the procedural mechanisms are the reasons behind such piling up of cases.

Inadequate Resources and Infrastructure: The Indian legal system, as it stands today, suffers from an inadequacy of budgetary allocation, a shortage of skilled manpower, and insufficient infrastructure. This is still affecting the quantity and quality of disposed-of cases.

Poor investigation and prosecution are brought up by poorly trained and unequipped investigation officers, most of whom do not follow the right procedures culminating in a deficient or biased investigation. Seriously, inadequacy in investigation affects fair trials. A proper investigation requires thorough, impartial, and professional handling so that justice is done.

Human Rights Violations: Most of the challenges to human rights violations in the Indian criminal justice system include custodial torture, extrajudicial killings, false arrests, illegal detention, forced confessions, unfair trials, and disproportionately severe sentences. This diminishes public trust in the government and police.

Outdated Laws and Procedures: Most of the laws are archaic and not in tune with contemporary times. In most cases, existing laws can't curb modern crimes like cybercrime, terrorism, and mob lynching. This warrants an overhaul of the outdated framework to suit recent criminal challenges and bring about justice.

The police-public relationship has been strained since its inception, marked with dissatisfaction and suspicion. Most of them do not find the police responsive or satisfactory in their role; therefore, they rarely approach them for help. Improvement in police-public relationships indeed is urgent and essential for effective law enforcement that builds mutual trust.

MAJOR CHANGES IN NEW CRIMINAL LAWS

The Bharatiya Nyaya Sanhita, replacing the Indian Penal Code, cuts the number of sections from 511 to 358, besides adding 20 new crimes and omitting 19 sections. Notable changes include prison sentences for 33 crimes, increased fines in 83 cases, and putting minimum punishment for 23 crimes. These new criminalised acts include "fraudulent" promises of marriage, mob lynching- with punishment extending to a death sentence or life imprisonment and organised crime. It repeals Section 377 to decriminalize homosexuality and deletes adultery as an offence to align with the recent Supreme Court verdicts.

In another key provision, the BNS also suggests community service as punishment for six petty offences to avoid prison congestion caused by a large number of undertrial prisoners. Instead of imprisonment, minor offenders will now have to do some unpaid social work. Conforming to the changed scenario over time, the law has expanded the definition of sedition under "deshdroh" and brought a more general definition of terrorism. The law also incorporates harsher punishment for causing death by negligence and publishing fake news as a criminal offence. Although it retains the IPC's provisions on rape and sexual harassment, the law proposes to accord protection to men and transgender persons over time.

Bharatiya Nagarik Suraksha Sanhita replaces CrPC with the number of sections increasing from 484 to 531 with 177 provisions revised, 44 new sections added and 14 repealed. Much that BNSS borrows relates to the need to hasten the process of justice by, among others, introducing strict timelines for 35 sections where courts have to pronounce judgments within 30 days from the conclusion of arguments extendable to 45 days and charges framed within 60 days. Similarly, appeals are required to be filed within 60 days of the judgment. This aims at eliminating delays associated with the previous system and hence hastening justice.

The BNSS has also used technology to make police-related work more contemporary, initiated audio-video recordings during investigations at 35 locations, and permitted e-FIRs to be filed without concern for jurisdiction. It has also made forensic investigations compulsory in offences punishable with seven years or more imprisonment, besides initiating electronic summons, videography of crime scenes, and community policing. It also tends to make the judicial system more effective by integrating technology into the system and despite scepticism, if the infrastructure in the country is good enough for these changes. It also empowers police officials with the extension of police custody in parts or as a whole by up to 15 days during judicial custody, ends the misuse of anticipatory bail, and manages custody effectively.

This is instead of the Indian Evidence Act, which is now Bhartiya Sakshya Adhiniyam with 170 provisions, 24 amendments, and six repealed. The most important reforms include recognizing electronic records as legal evidence with parity with paper documents; similarly, oral evidence can also be given electronically under the law. It also says an electronic record shall be considered to be secondary evidence, with data stored on memory devices or communication equipment. It tries to deal with concerns of electronic record tampering in investigations, though the issue of certification and admissibility is still pending. Keeping

abreast with trends in these times, the law has made provisions for joint trials of more than one accused and trials in absentia for fugitives.

This new set of laws is victim-centric; it ensures investigations are informed to the victim within 90 days for greater transparency and accountability, while in the previous system, victims would seldom, if ever, know what the status of their case was.

Other reforms have stripped archaic provisions like Section 310, which dealt with thugs, and introduced forensic experts in cases where the sentence exceeds seven years to maintain evidence integrity. It also strengthens police powers to attach properties during investigations of terror financing, lynching, and organized crime.

While progressive, these reforms have also been quite controversial during their rollout. There have been numerous demands for a more consultative approach, demands from opposition leaders and the Bar Council of India for a review before full implementation. Whatever may be said, these are landmark laws in many respects, as they lay great emphasis on contemporary crimes, such as terrorism, killing at mobs, and false promises of marriage, which have otherwise been driving judicial authorities to very late delivery of justice. Therefore, it is expedient on the part of the government to get speedier and fairer justice.

POSITIVE AND NEGATIVE OUTCOMES OF NEW CRIMINAL LAWS

Positive Outcomes

1) From Punishment-Centric to Justice-Centric Approach

The biggest shifts in the new criminal laws have indeed been a movement away from an exclusively punitive framework toward a justice-oriented approach. In origin, the IPC was colonial and tended toward deterrence by advocating rigorous punishment. The new laws have reversed this focus by underlining rehabilitation, victim rights, and restorative justice. This shift thus aims at ensuring that in criminal justice, the sentence is not limited to punishing the accused but also assisting the victim and has a larger focus on societal reformation.

2) Cultural Reflection and Identity

Naming the police law as Bharatiya Nyaya Sanhita in Sanskrit instead of IPC shows respect for Indian cultural heritage. Sanskrit has been considered the language of Indian scriptures and

ancient legal texts like Manusmriti and Arthashastra. It aligns the functioning of the law with the traditional values of India. This symbolic renaming is hailed for its linking of modern legislation to India's historical legacy and makes the latter less colonial, and more indigenous.

3) Flexibility to handle new crimes

This new legal regime is also more responsive to the emergence of new crimes, especially in the area of technology. The increasing numbers of cybercrime, identity theft, and digital fraud require more stringent and specific legal responses. BNs and BNSS specifically acknowledge the existence of crimes such as cybercrime, which has become a very prevalent crime in today's world of information and technology. Crimes have changed with time and developing scenarios; hence, the new laws are designed to be more flexible, leaving room for further amendments whenever needed in the future.

4) Over-amendment prevention

The rationale for introducing new laws instead of merely amending old ones is explained by the fact that the IPC, CrPC and the Evidence Act have been amended countless times, resulting in a lot of messy and not always consistent legal jurisprudence that has accrued over time. After over 150 years of amendments, mere amendments to the old laws would have run the risk of adding chaos without resolving any structural defects. Thus, a fresh start offers a more coherent legal code.

Adverse Consequences

1) Lack of Case Law and Precedents

The immediate challenge is the lack of established case law for these new statutes. All these years, legal practitioners, courts, and students of law relied upon centuries of judicial precedents based on the IPC and CrPC. Much of this precedent will have to be reinterpreted as a result of the introduction of BNS and BNSS, therefore slowing down the pace of the judicial process. The hard question of the ways of putting these new laws into practice, particularly in complex cases, can be burdensome to lawyers and judges. Difficulty for

2) Legal Professionals

Those who interpreted and applied their trade for years under the old laws will feel badly inconvenienced by transitioning into this new system. Many legal scholars, lawyers, and judges have gained expertise in IPC and CrPC, so the mere coming in of an entirely new legal code means that they would need to learn all the nuances again of these very laws. It not only adds extra burdens to the legal professionals but may cause confusion in the courts during the initial few years.

3) Language Barriers and Regional Issues

It has also revived Sanskritized nomenclatures like BNS, BNSS, and BSA. Southern states, along with other areas not well-versed in Sanskrit, have started grumbling. Whereas English was a common medium and comprehended by all regions and languages, Sanskrit terms are bound to alienate people from the non-Hindi-speaking regions. The critics go on to say that legal terminology should be as universally comprehensible as possible, especially in a linguistically diverse country like India.

4) Perception of a Hindu-Centric Nation

The use of Sanskrit names, invoking ancient Indian tradition-all this has raised criticism that the new laws are advancing a Hindu-centric vision of India. Critics say this could alienate religious minorities and eventually dent India's secular identity. A fear exists that these laws may symbolize a movement toward majoritarianism in which the beliefs of one cultural group are being forced upon the entire population.

5) Debate Over Amendment versus Replacement

Another criticism relates to whether new laws, in their entirety, were at all necessary, instead of making amendments to the existing framework. Many feel that IPC, CrPC, and the Indian Evidence Act had sound structural bases and could be updated through amendments rather than replacement. It is an added layer of complexity when citizens, law enforcement agencies, and the judiciary are made to learn a new set of rules.

Transitional Challenges

This will entail enormous paperwork to introduce the completely new set of criminal laws; retraining the police, judges, and lawyers. The cases continuing from the previous legal system may also be in jeopardy due to legal miscommunication and delay because the courts would take their time to build habits of applying the new regime. Such a transition could also cause temporary delays in the administration of justice.

FUTURE DIRECTION

The potency of newly enacted criminal laws in India is of utmost importance in serving justice while providing cohesive social order in a modernizing society that's becoming more complex. As we approach the year 2024 reforming where required is important to provide the potency of these laws - one of the critical areas that needs enhancing is the use of technology in the judicial process. By using digital platforms for case management and evidence collection the court process can be faster at reducing case backlogs and improving access to justice for marginalized communities. As an example, courts could use an e-filing system to track, manage and create administrative options while allowing the judge and lawyers to focus on the substance of the case.

Also, extensive training programs for law enforcement are recommended to ensure they have adequate knowledge of the nuances of new legislation. If law enforcement does not understand the law, or misinterpret individual pieces of legislation, individuals could be wrongfully convicted or it could cause an act of violence in the decrease of enforcement. Spending some of these funds towards ongoing professional development programs would also address human rights and ethical behaviour during policing by helping establish a culture of accountability among law enforcement organizations.

Lastly, the public awareness campaign is one of the better methods of ensuring all citizens are aware of their rights under newly established criminal law provisions. Conducting communications with communities utilizing hybrid channels will empower individuals to act according to their prescribed rights and also hold those in positions of authority for the responsibilities they are entrusted with. Government entities with civil society organizations will be a driving factor in pushing for public awareness.

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