
DECOLONIZING THE PENAL CODE: A REVIEW OF INDIA'S NEW CRIMINAL JURISPRUDENCE

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ABSTRACT

The enactment of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA) in 2023 marks one of the most transformative moments in India's criminal justice system. By replacing the Indian Penal Code of 1860, the Code of Criminal Procedure of 1898, and the Indian Evidence Act of 1872, these reforms symbolize a conscious effort to move away from colonial legacies and towards a justice system more responsive to contemporary needs. While earlier amendments attempted to adapt outdated laws, they often failed to address systemic problems such as procedural delays, rigid trial mechanisms, and insufficient recognition of technological advances.

The article highlights how the new criminal laws attempt to correct these deficiencies by introducing time-bound trials, giving wider acceptance to electronic evidence, strengthening victim-centric provisions, and modernizing the language of criminal statutes. These reforms are also significant in their aspiration to promote transparency, efficiency, and restorative justice. Yet, they raise important questions: Do these laws truly embody decolonization, or do they continue the old framework under a different label? Will procedural stringency ensure swifter justice, or will it burden already strained institutions? These questions lie at the heart of the analysis that follows.

By critically and comparatively analyzing the New Criminal Laws, 2023, this article aims to evaluate their strengths and shortcomings, assess their constitutional validity, and highlight their impact on legal education, citizen rights, and governance. It also situates these laws

within the larger vision of India's evolving democracy — one that aspires to uphold fairness, accessibility, and technological adaptation. Ultimately, the

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success of these reforms will depend on their implementation, judicial interpretation, and institutional readiness.

Keywords: Colonial legacy, Bharatiya Nyaya Sanhita, Criminal Justice Reforms, Comparative Law, Case Law Analysis

Introduction

The criminal justice system constitutes one of the most significant foundations of any constitutional democracy. It performs the dual function of maintaining public order and safeguarding the fundamental rights of citizens. In the Indian context, this framework was, until very recently, governed primarily by three colonial-era statutes: the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC), and the Indian Evidence Act, 1872.² Although these enactments had provided a comprehensive legal structure for the administration of criminal law, they were repeatedly criticized for being outdated, excessively procedural, and heavily influenced by the objectives of colonial administration rather than the needs of a modern welfare state.³

Historically, these laws were designed by the British to establish authority and facilitate efficient governance of their subjects, not necessarily to protect rights or ensure speedy justice.⁴ Over the decades, independent India attempted several amendments to these statutes for instance, reforms concerning custodial violence, sexual offences, and economic crimes. However, these amendments were often piecemeal in nature and failed to bring about a holistic transformation. As a result, issues such as delayed trials, procedural complexities, lack of victim-centric justice, and insufficient mechanisms to address emerging crimes like cyber offences persisted.

In this backdrop, the introduction of the Bharatiya Nyaya Sanhita, 2023 (BNS) to replace the IPC, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) to replace the CrPC, and the Bharatiya Sakshya Adhinyam, 2023 (BSA) to replace the Evidence Act represents a watershed moment in India's legislative history.⁵ For the first time in over 150 years, the criminal law framework has been comprehensively rewritten rather than incrementally modified. These statutes, collectively known as the New Criminal Laws, 2023, seek to align India's legal system

² Indian Penal Code, No. 45 of 1860 (India).

³ K.D. Gaur, Textbook on the Indian Penal Code (6th edn., Universal Law Publishing 2019) 12.

⁴ Upendra Bakshi, The Crisis of the Indian Legal System (Vikas Publishing 1982) 45.

⁵ K.D. Gaur, Textbook on the Indian Penal Code (6th edn., Universal Law Publishing 2019) 12.

with contemporary social realities and constitutional principles. They aim to introduce simplification of procedures, victim-oriented approaches, technological integration, and stricter accountability mechanisms, while also emphasizing decolonization of the criminal justice process.

The significance of this reform lies not only in the replacement of archaic provisions but also in its attempt to strike a balance between swift justice and protection of individual rights. While expeditious trials and stronger punitive measures are envisaged, equal emphasis is placed on due process and constitutional safeguards.⁶ This dual emphasis reflects an effort to address one of the most persistent dilemmas of Indian criminal jurisprudence the tension between efficiency and fairness.

The present study assumes importance as it attempts to critically examine whether the New Criminal Laws, 2023, are capable of remedying the structural deficiencies of the earlier colonial framework.⁷ It goes beyond a descriptive study of provisions to undertake a comparative and evaluative analysis. The scope of this article extends to the historical evolution of criminal laws in India, the distinctive features of the new enactments, their comparative position vis-à-vis the older statutes, constitutional implications, and their likely impact on governance and society at large.⁸

By combining doctrinal analysis with critical evaluation, the article aspires to provide meaningful insights for students, scholars, practitioners, and policymakers. Moreover, as these laws are still in the nascent stage of implementation, this article hopes to contribute to the academic and policy discourse by highlighting both the strengths and potential shortcomings of the reform.⁹ In doing so, it seeks to locate the New Criminal Laws not merely as legislative replacements, but as instruments of transformative justice in the world's largest democracy.¹⁰

Evolution of Criminal Laws in India

The history of criminal law in India is a fascinating journey that reflects the country's social,

⁶ Law Commission of India, 239th Report on Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities (2012).

⁷ The Bharatiya Nyaya Sanhita, No. 45 of 2023; The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023; The Bharatiya Sakshya Adhinyam, No. 47 of 2023.

⁸ Statement of Objects and Reasons, BNS Bill, 2023.

⁹ Justice V.R. Krishna Iyer, "Speedy Trial and Fair Trial" (1979) 2 SCC J-15.

¹⁰ M.P. Jain, *Indian Constitutional Law* (8th edn., LexisNexis 2018) 159.

political, and cultural evolution. It stretches from the ancient religious texts of Hindu society, through the period of Islamic rule, the British colonial era, and finally into the post-independence reforms culminating in the Bharatiya Nyaya Sanhita (BNS), 2023. This section critically traces the evolution of criminal law across these stages, highlighting the pre-existing context, the laws in force, and the impact of reforms in each period.

Ancient Period: The Age of Manusmriti and Dharmashastras

The roots of Indian criminal law can be traced back to the Manusmriti (c. 2nd century BCE–3rd century CE) and other Dharmashastras. These texts were not “laws” in the modern sense but religious codes that laid down rules for personal conduct, morality, and social order. The concept of “crime” was intertwined with the idea of “sin” (paap), and punishment (danda) was both a form of deterrence and a method of restoring cosmic balance.

Pre: Society was governed by caste hierarchy; punishments varied according to varna. Post: Codification of offences such as theft, assault, and adultery set the foundation for later legal systems. Stories from Manusmriti recount that a Brahmin committing theft was fined lightly, while a Shudra could face mutilation for the same offence.¹¹

Mauryan & Gupta Periods

During the Mauryan Empire (4th–2nd century BCE), especially under Emperor Ashoka, criminal law was closely tied with the idea of state authority (rajadharma). Ashoka’s edicts emphasized non-violence (ahinsa) and compassion in justice. Punishments such as imprisonment, fines, and exile became more standardized.

Pre: Harsh corporal punishments (including mutilation) were common before Ashoka. Post: A shift towards welfare-oriented justice, with focus on reformatory punishment. The Gupta period (4th–6th century CE) reinforced Brahmanical law. Royal courts (sabhas) dispensed justice, but local communities also had significant autonomy.¹²

Medieval Period: Islamic Rule

With the arrival of the Delhi Sultanate (13th century) and later the Mughal Empire, Islamic

¹¹ Ratanlal & Dhirajlal, *The Indian Penal Code*, LexisNexis, 36th ed., 2023 (Introductory Chapter).

¹² Romila Thapar, *Ashoka and the Decline of the Mauryas*, Oxford University Press, 2012, pp. 102–110.

jurisprudence (Sharia) became a significant influence. Criminal offences were classified as hudud (fixed punishments for theft, adultery, apostasy), qisas (retaliation), and tazir (discretionary punishments).¹³

Pre: Fragmented local systems of justice with caste- and religion-based punishments. Post: Standardization through Sharia law, though applied unevenly between Hindus and Muslims. For Instance During Akbar's reign, records show that he often remitted death sentences and substituted them with fines or exile, reflecting his policy of Sulh-i-Kul (universal peace).

British Colonial Period

During the British colonial period, the administration of India was governed through statutory instruments enacted by the British Parliament. Following the transfer of power from the East India Company to the British Crown, governance was carried out under the Government of India Act, 1858. One of the principal objectives of colonial rule was to replace diverse and fragmented indigenous systems of justice with a centralized and codified legal framework to ensure administrative efficiency, certainty, and uniformity in the application of criminal law.¹⁴

Codification of Criminal Law under British Rule

The codification of criminal law under British rule was undertaken within the statutory framework established by colonial legislation, particularly the Government of India Act, 1858 and the Indian Councils Act, 1861, which empowered the Imperial Legislative Council to enact laws for British India. The Indian Penal Code, 1860, constituted the foundation of Indian criminal law by codifying substantive offences and prescribing punishments.¹⁵

The procedural aspects of criminal law, however, did not develop simultaneously. Criminal procedure evolved gradually and was influenced by English legal principles, eventually culminating in the enactment of the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1898. While this codification introduced uniformity and predictability in the administration of criminal justice, it primarily reflected colonial administrative priorities rather than a rights-based approach.

¹³ M.P. Jain, *Outlines of Indian Legal History*, LexisNexis, 7th ed., 2018, pp. 52–58.

¹⁴ B.N. Pandey, *The Constitutional History of India*, Central Law Agency, 2014, pp. 92–96.

¹⁵ Ratanlal & Dhirajlal, *The Indian Penal Code*, LexisNexis, 36th ed., 2023, Introduction.

Example: The IPC criminalized “seditious speech” under Section 124A, a colonial tool to suppress Indian freedom fighters. Bal Gangadhar Tilak was famously prosecuted under this section in 1897.¹⁶

Post-Independence Reforms (1947–2023)

After independence, India retained the IPC, CrPC, and Evidence Act, but gradually reformed them. The Law Commission produced several reports recommending modernization. Important amendments included the CrPC, 1973, the Dowry Prohibition Act, 1961, and the Criminal Law Amendments of 1983 and 2013 (after the Nirbhaya case). IPC as a colonial statute with outdated provisions.

Post: Progressive incorporation of constitutional principles like equality, dignity, and human rights. The landmark case of *Maneka Gandhi v. Union of India* (1978) expanded the meaning of “procedure established by law,” ensuring that criminal procedures had to be “just, fair, and reasonable.”¹⁷

Interim Reform Era (1970–2023)

The period between the 1970s and 2023 can be described as the Interim Reform Era of Indian criminal law. This era was marked by piecemeal amendments, judicial activism, and social movements which collectively paved the way for the comprehensive reforms of 2023.¹⁸

During the 1970s–80s, the Law Commission of India produced several important reports such as the 42nd Report, which recommended modernization of the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and the Indian Evidence Act. Although many of its recommendations were not implemented immediately, they shaped subsequent debates.

The Emergency (1975–77) also highlighted the misuse of criminal laws for political purposes, sparking discussions on the need for greater safeguards against arbitrary arrest and detention.

The 1980s–90s witnessed the rise of women-centric reforms. High-profile cases of dowry deaths and cruelty against women led to the insertion of Section 498A (cruelty by husband or

¹⁶ K.D. Gaur, *Criminal Law: Cases and Materials*, Oxford University Press, 9th ed., 2019, pp. 45–47.

¹⁷ M.P. Jain, *Indian Constitutional Law*, LexisNexis, 8th ed., 2018, pp. 1085–1088.

¹⁸ Law Commission of India, 42nd Report on the Indian Penal Code, 1971.

relatives) and Section 304B (dowry death) into the IPC. The Juvenile Justice Act was also introduced, focusing on child rights and protection. This period reflected a shift towards victim protection and recognition of gender justice within criminal jurisprudence.¹⁹

In the 2000s, the rise of terrorism and insurgency brought new challenges. Special laws such as the Terrorist and Disruptive Activities (Prevention) Act (TADA) and the Prevention of Terrorism Act (POTA) were enacted, although later repealed due to concerns of misuse. The Unlawful Activities (Prevention) Act (UAPA) became the primary anti-terror legislation, with amendments expanding its scope over time.

The 2010s were significantly shaped by the Nirbhaya case (2012), which triggered nationwide protests and led to the Criminal Law (Amendment) Act, 2013. This amendment expanded the definition of rape, introduced new offences such as stalking and voyeurism, and made punishments more stringent. It also spurred the creation of fast-track courts and greater attention to victim rights. Further, the Juvenile Justice (Care and Protection of Children) Act, 2015, introduced harsher treatment of juveniles in heinous crimes.²⁰

Between 2015 and 2023, there was a growing recognition of the need to align criminal laws with technological and social changes. Digital evidence, forensic methods, and victim-compensation schemes gained prominence. Bail reforms and discussions on reducing the burden on undertrial prisoners also gathered momentum. These reforms reflected a transitional phase, preparing the ground for the comprehensive overhaul of 2023, when the IPC, CrPC, and Evidence Act were replaced by the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA).²¹

Thus, the Interim Reform Era was crucial in bridging the colonial-era criminal codes with the new framework of 2023. It demonstrated how incremental reforms, judicial pronouncements, and social movements collectively paved the way for systemic transformation. The Manusmriti and Dharmashastra texts laid down the earliest rules of crime and punishment in ancient India. Kautilya's Arthashastra further systematized criminal administration, emphasizing espionage, punishment, and state security. During the Mughal period, criminal law was largely shaped by Islamic jurisprudence and compilations like the Fatwa-i-Alamgiri. The British

¹⁹ V.N. Shukla, *Constitution of India*, Eastern Book Company, 13th ed., 2017, pp. 274–276.

²⁰ Justice J.S. Verma Committee Report on Amendments to Criminal Law, 2013.

²¹ Supreme Court of India, *In Re: Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700

codified Indian criminal law through the Indian Penal Code of 1860, drafted under the leadership of Lord Macaulay. Post-independence reforms were guided by Law Commission Reports and key judgments of the Supreme Court. The Supreme Court in *Maneka Gandhi v. Union of India* expanded the scope of due process within Article 21. The Nirbhaya case triggered the Criminal Law (Amendment) Act, 2013, which introduced new offences and harsher punishments. The interim reform era also saw the rise and repeal of special anti-terror laws such as TADA and POTA. The Bharatiya Nyaya Sanhita, 2023, replaced the Indian Penal Code after over 160 years of application.²²

The New Criminal Laws, 2023 (BNS, BNSS, BSA)

The Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA) replaced the IPC, CrPC, and Evidence Act respectively. These reforms claim to “decolonize” Indian criminal law by focusing on victim-centric justice, speedy trials, and technological adaptation.

Pre: Persistent colonial legacy despite piecemeal amendments.

Post: Aspirations of modernization, but concerns remain regarding overburdening of courts, procedural rigidity, and continuity of colonial structures under new names.²³

Features of the New Criminal Laws, 2023

The New Criminal Laws, 2023 represent a paradigm shift in India’s criminal justice framework by attempting to modernize procedures, strengthen victim rights, and incorporate technological advancements. These reforms reflect an effort to harmonize criminal jurisprudence with constitutional values and contemporary societal needs.

Firstly, the decolonisation of criminal law is a significant ideological shift. Colonial criminal laws were designed to maintain imperial control and suppress dissent, often prioritizing state authority over individual liberties. The new statutes attempt to replace colonial terminology and philosophy with language and principles rooted in Indian constitutionalism and democratic governance. This change is not merely symbolic but also seeks to redefine the relationship

²² Ministry of Home Affairs, Government of India, Statement of Objects and Reasons, Bharatiya Nyaya Sanhita, 2023.

²³ Bharatiya Nyaya Sanhita, 2023 (India).

between the State and citizens in criminal jurisprudence.

Secondly, the victim-centric approach marks a major departure from the traditional adversarial model, where victims were often sidelined once the State took over prosecution. By ensuring victim participation, information rights, and compensation mechanisms, the new laws aim to enhance restorative justice. This approach aligns with international standards such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Thirdly, the introduction of time-bound investigation and trial procedures aims to address the chronic problem of judicial delays and undertrial detention in India. By prescribing statutory timelines, the laws seek to improve efficiency and accountability among investigating agencies and courts. However, the practical success of these provisions will depend on infrastructural capacity, judicial strength, and administrative support.

Fourthly, technological integration is one of the most transformative aspects of the reforms. The recognition of electronic evidence, digital documentation, virtual hearings, and online FIR registration reflects the realities of the digital age. This modernization is crucial for combating cybercrime and improving access to justice, particularly for citizens in remote areas.²⁴

Fifthly, the shift towards reformatory punishment demonstrates an evolving penological philosophy. The inclusion of community service and other non-custodial measures for minor offences reflects a move towards rehabilitation and social reintegration rather than purely punitive incarceration. This is expected to reduce prison overcrowding and promote humane criminal justice administration.

Sixthly, enhanced punishments for heinous and emerging crimes signify the State's response to rising concerns about organized crime, terrorism, and crimes against vulnerable groups. These provisions aim to strengthen deterrence and ensure greater protection of women, children, and society at large.

Seventhly, simplification and rationalisation of criminal law language aim to reduce ambiguity and complexity. Clearer statutory drafting improves legal certainty and makes criminal law more accessible to citizens, law enforcement agencies, and legal professionals.

²⁴ Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

Finally, the inclusion of safeguards against arbitrary State action and the emphasis on constitutional alignment demonstrate a commitment to fundamental rights. By balancing investigative powers with procedural safeguards, the new laws attempt to uphold the principles of due process, proportionality, and fairness enshrined in the Constitution of India.

Overall, while the New Criminal Laws, 2023 introduce significant reforms, their effectiveness will depend on implementation, judicial interpretation, and institutional readiness. These features collectively indicate a transition towards a modern, technology-driven, and rights-based criminal justice system.

De-colonisation and Indigenisation

One of the most significant features of the New Criminal Laws, 2023 is the conscious effort towards de-colonisation and indigenisation of criminal law. The earlier criminal laws were largely based on colonial ideology, designed to protect imperial interests rather than the rights of citizens. The new framework seeks to eliminate such colonial remnants and replace them with provisions reflecting Indian constitutional values, democratic principles, and contemporary social realities. The repeal of the offence of sedition and its substitution with provisions dealing with acts endangering the sovereignty, unity, and integrity of India symbolises this ideological shift. This transformation indicates a movement away from suppressive governance towards a rights-based and nationally rooted criminal justice system.²⁵

Victim-Centric Approach

Another prominent feature of the new criminal laws is the adoption of a victim-centric approach. Traditionally, criminal proceedings in India focused primarily on the accused and the State, often marginalizing the victim. The new laws recognise victims as key stakeholders in the criminal justice process. Provisions have been introduced to ensure that victims are informed about the progress of investigation, filing of charge-sheets, and trial proceedings.

²⁶Emphasis has also been laid on victim compensation and participation, thereby promoting a more humane and balanced system of justice.

²⁵ Ministry of Home Affairs, Government of India, Statement of Objects and Reasons, Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023.

²⁶ Law Commission of India, 154th Report on the Code of Criminal Procedure, 1996

Time-Bound Investigation and Trial

Delay in investigation and trial has long plagued the Indian criminal justice system. To address this issue, the Bharatiya Nagarik Suraksha Sanhita, 2023 introduces statutory timelines for various stages of criminal proceedings, including investigation, filing of police reports, and commencement of trial. Time-bound procedures aim to reduce pendency of cases and prevent prolonged detention of under trial prisoners.²⁷

Integration of Technology

The extensive integration of technology is a key reform under the new criminal laws. Recognizing the growing role of digital tools and electronic communication, the laws permit online registration of FIRs, electronic issuance of summons, digital recording of statements, and virtual hearings. The Bharatiya Sakshya Adhiniyam, 2023 expressly recognizes electronic records and digital evidence as admissible, subject to prescribed safeguards. This technological shift enhances efficiency, transparency, and accessibility while also enabling the criminal justice system to respond effectively to modern forms of crime.²⁸

Reformative Punishment

The new criminal laws reflect a reformative philosophy of punishment by moving beyond excessive reliance on imprisonment. The introduction of community service as a form of punishment for certain minor offences demonstrates a focus on rehabilitation rather than retribution. Reformative punishment seeks to correct the behavior of offenders and facilitate their reintegration into society as law-abiding citizens. This approach also helps in reducing overcrowding in prisons and aligns Indian criminal jurisprudence with modern penological theories.²⁹

Enhanced Punishments for Heinous and Emerging Crimes

Another notable feature is the strengthening of provisions relating to heinous and emerging crimes. The new criminal laws prescribe stricter punishments for offences against women and children, organised crime, and acts threatening public order. By specifically addressing

²⁷ PRS Legislative Research, Criminal Laws (BNS, BNSS, BSA), 2023: Key Changes and Analysis.

²⁸ Ministry of Home Affairs, Government of India, Key Features of Bharatiya Nagarik Suraksha Sanhita, 2023.

²⁹ Malimath Committee on Reforms of Criminal Justice System, Government of India, 2003.

organised criminal syndicates and violent offences, the laws aim to provide stronger deterrence and enhanced protection to vulnerable sections of society. This reflects responsiveness to evolving criminal patterns and societal concerns.³⁰

Simplification and Rationalization of Criminal Law

The new criminal laws adopt clearer language and a more systematic classification of offences. Redundant and overlapping provisions have been removed, and offences have been rationalised to avoid ambiguity. Simplification of legal language makes the law more accessible to citizens, police authorities, and legal practitioners. This feature enhances legal certainty and improves effective implementation of criminal law.³¹

Safeguards against Arbitrary State Action

While expanding investigative powers, the new criminal laws also incorporate safeguards to protect individual liberty. Provisions relating to arrest, custody, and investigation are balanced with accountability mechanisms. This ensures that state power is exercised within constitutional limits and that fundamental rights under Article 21 of the Constitution are protected.³²

Constitutional Alignment

Overall, the New Criminal Laws, 2023 seek to align criminal justice administration with constitutional principles such as dignity, equality, fairness, and proportionality. Emphasis on due process, transparency, and victim rights reflects adherence to constitutional mandates.³³

Transitioning from Punitive to Justice-centric Jurisprudence

Background and Legislative Shift

India's criminal justice system for more than a century was governed by colonial-era legislations, namely the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872. Over time, these laws were criticized for being outdated, rigid,

³⁰ Bharatiya Nyaya Sanhita, 2023 – Provisions relating to organised crime, terrorism and heinous offences.

³¹ Standing Committee on Home Affairs, Review of Criminal Laws, 2023; PRS Legislative Research, Analysis of Bharatiya Nyaya Sanhita, 2023.

³² INDIA CONST. art. 21.

³³ Kartar Singh v. State of Punjab, (1994) 3 SCC 569 (India).

and inadequate to address modern forms of crime, technological advancements, and contemporary constitutional values. In 2023, Parliament introduced a comprehensive overhaul of the criminal justice framework by enacting three new laws: Bharatiya Nyaya Sanhita, 2023 Bharatiya Nagarik Suraksha Sanhita, 2023 Bharatiya Sakshya Adhiniyam, 2023 These legislations aim to restructure substantive criminal law, criminal procedure, and evidentiary rules respectively. Rather than making piecemeal amendments, the legislature opted for a complete replacement, indicating a fundamental shift in approach towards crime control, investigation, trial, and punishment³⁴.

One of the noticeable changes in the new criminal law regime is the re-organisation and rationalisation of offences. Several offences have been redefined, reclassified, or renumbered to ensure clarity and coherence. Certain acts which earlier existed as scattered provisions have now been consolidated, while redundant or obsolete offences have been removed. The new laws attempt to ensure that criminal liability is attached more precisely to the nature and gravity of the offence. The emphasis has shifted towards categorizing offences based on: Severity of harm caused Impact on society and public order Nature of intent and mens-rea This re-organisation aims to reduce ambiguity and improve consistency in interpretation by courts³⁵.

The new criminal law framework places greater emphasis on crimes that threaten social stability and national integrity. Offences such as organised crime, mob-related violence, and acts endangering sovereignty and unity have been elaborated with clearer definitions and stricter consequences. The concept of organised crime has been given statutory recognition at the national level. Activities involving syndicates, habitual offenders, and structured criminal groups are now addressed with enhanced punishment provisions. Similarly, crimes involving large-scale violence, public disorder, and threats to state security have been reframed to meet present-day realities, including cross-border and technologically facilitated crimes.

The earlier offence of sedition under the Indian Penal Code was one of the most controversial provisions, often criticised for misuse and vagueness. Under the new criminal law, the approach towards offences against the State has been altered. Instead of focusing on disaffection or criticism, the new provisions focus on acts that: Incite armed rebellion Endanger

³⁴ Ministry of Home Affairs, Government of India, Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; and Bharatiya Sakshya Adhiniyam, 2023, legislative texts replacing IPC, CrPC, and Indian Evidence Act.

³⁵ Law Commission of India, Reforms of Criminal Laws, Report No. 277 (2018), recommending modernization of colonial criminal laws to align with constitutional values and contemporary crime patterns.

sovereignty, unity, or integrity of India Encourage separatist or violent activities This marks a shift from penalising speech to penalising conduct that poses a real and tangible threat to the State.³⁶

With rapid technological growth, traditional criminal laws struggled to address modern crimes. The new criminal law framework recognises and addresses emerging forms of criminality, such as: Cyber-enabled frauds Digital impersonation and identity theft Online harassment and coercion Use of electronic means in organised crime Electronic and digital evidence has been integrated more systematically into criminal investigations and trials, ensuring that law enforcement agencies can respond effectively to technology-driven offences.³⁷

The Bharatiya Nagarik Suraksha Sanhita introduces several procedural reforms aimed at improving efficiency and accountability in criminal proceedings. a) Timelines in Criminal Procedure Specific timelines have been introduced for various stages of investigation, filing of charge sheets, and commencement of trials. This is intended to address the problem of undue delay, which has long plagued the criminal justice system. b) Use of Technology in Procedure The new procedural law allows for: Electronic registration of FIRs Digital submission of documents Video conferencing for certain stages of investigation and trial These changes are particularly significant in reducing logistical barriers and improving access to justice.³⁸

The new criminal law seeks to strike a balance between strengthening police powers and ensuring accountability. While investigative agencies have been provided with greater operational flexibility, safeguards have been incorporated to prevent abuse. Provisions relating to arrest, detention, and remand have been revisited to ensure conformity with constitutional principles under Articles 20, 21, and 22 of the Constitution of India. The role of senior police officers in supervising investigations has been emphasised to enhance transparency and professionalism.³⁹

The new laws provide greater recognition to victims within the criminal justice process.

³⁶ Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955, Supreme Court of India, interpreting sedition and limits on penalizing speech versus acts threatening state security.

³⁷ State of Punjab v. Gurmit Singh, (1996) 2 SCC 384, Supreme Court of India, emphasizing victim rights and victim-centric criminal justice approach.

³⁸ Bharatiya Nagarik Suraksha Sanhita, 2023, ss 173(1), 530 (electronic FIR, digital records, video conferencing); State of Maharashtra v Dr Praful B Desai (2003) 4 SCC 601 (validity of video conferencing in criminal proceedings).

³⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, ss 35–41 (arrest and detention safeguards); Constitution of India, arts 20, 21, 22; DK Basu v State of West Bengal (1997) 1 SCC 416 (guidelines on arrest and custodial safeguards).

Victims are no longer treated merely as witnesses but as stakeholders whose rights and interests must be considered. Provisions have been introduced for: Informing victims about progress of investigation Ensuring victim presence and representation during certain stages Facilitating compensation and rehabilitation mechanisms This reflects a shift towards a more inclusive model of criminal justice. The new procedural framework revisits bail provisions, particularly in cases involving serious and non-bailable offences. While maintaining judicial discretion, the law attempts to bring uniformity and clarity in bail-related decisions. Custodial safeguards have been strengthened by reaffirming the importance of legal representation, medical examination, and production before a magistrate within the prescribed time. These measures aim to prevent custodial excesses while ensuring effective investigation.

The punishment framework under the new criminal law reflects a nuanced approach towards sentencing. While stringent punishments have been prescribed for heinous and organised crimes, alternative sentencing mechanisms have also been explored for less serious offences. Community service has been formally introduced as a form of punishment in certain cases, reflecting an attempt to incorporate reformatory justice within the penal system. The sentencing structure attempts to ensure proportionality between offence and punishment, aligning with constitutional jurisprudence developed by Indian courts.

The Bharatiya Sakshya Adhinyam replaces the Indian Evidence Act and modernises evidentiary rules to accommodate contemporary forms of proof.⁴⁰ Electronic records, digital communications, and technological data are now explicitly recognized as admissible evidence, subject to prescribed safeguards. The law simplifies procedures relating to the authentication and admissibility of electronic evidence, reducing technical barriers that often resulted in acquittals despite substantive proof.

A significant development under the new criminal law is the enhanced role of forensic science in investigation and trial. The law encourages scientific methods of investigation, particularly in serious offences. Mandatory forensic examination has been prescribed in specified categories of crimes, ensuring greater reliability and objectivity in evidence collection. This shift reflects a move away from confession-based investigations towards evidence-based policing.

⁴⁰ Bharatiya Sakshya Adhinyam, 2023, ss 61–65 (electronic records); Anvar P.V. v P.K. Basheer (2014) 10 SCC 473 (admissibility of electronic evidence); Indian Evidence Act, 1872 (repealed).

The enactment of new criminal laws is expected to influence judicial interpretation significantly. Courts will be required to reinterpret established doctrines and principles in light of the new statutory framework. Earlier precedents under the IPC, CrPC, and Evidence Act will continue to have persuasive value but may need reassessment where statutory language has changed. This transitional phase will play a crucial role in shaping the practical application of the new criminal laws.

The replacement of century-old laws poses substantial challenges in terms of implementation. Law enforcement agencies, judiciary, and legal practitioners must adapt to new provisions, terminology, and procedures. Training, infrastructure development, and public awareness will be essential to ensure smooth transition and effective enforcement of the new criminal law framework.⁴¹

Conclusion

The New Criminal Laws enacted in 2023 represent a pivotal step in the evolution of India's legal system, reflecting both the need for modernization and the necessity to respond to emerging societal challenges. Over the years, criminal legislation had faced criticism for being outdated, often unable to address contemporary forms of crime, including cybercrimes, corporate fraud, and offenses against vulnerable sections of society. The 2023 reforms aim to bridge these gaps by introducing provisions that strengthen accountability, enhance protection for marginalized groups, and incorporate modern technological and forensic considerations into the framework of criminal justice. By doing so, the laws not only aim to streamline legal procedures but also seek to ensure that justice is delivered more effectively and equitably across the country.

One of the most significant aspects of the New Criminal Laws is their focus on protecting vulnerable populations, including women, children, and persons belonging to marginalized communities. The inclusion of specific provisions addressing sexual offenses, domestic violence, and crimes targeting socially and economically disadvantaged groups highlights the legislature's recognition of evolving societal realities. Such reforms are crucial in a diverse country like India, where historical inequities and social hierarchies have often hindered access to justice. The laws attempt to create a balance between individual rights and societal interests,

⁴¹ United Nations Office on Drugs and Crime (UNODC), Handbook on Police Accountability, Oversight and Integrity (2011), highlighting forensic science and accountability in criminal justice.

ensuring that victims receive adequate protection while maintaining the principles of due process for the accused.

Another noteworthy feature is the incorporation of modern investigative and technological tools to enhance law enforcement capabilities. With the rise of cybercrime, digital fraud, and sophisticated criminal networks, traditional investigative methods were often insufficient to address the complexities of contemporary offenses. By integrating provisions related to digital evidence, surveillance, and forensic analysis, the new legislation empowers law enforcement agencies to tackle crimes more efficiently, without compromising the rights of individuals or the integrity of the judicial process. This approach reflects a global trend where legal systems adapt to technological advancements to maintain relevance and effectiveness in a rapidly changing environment.

Comparative analysis of the 2023 reforms with previous legislation indicates that India is gradually aligning itself with international standards of criminal justice. Many provisions draw inspiration from global best practices, particularly in areas such as victim protection, restorative justice, and procedural safeguards. While these changes are progressive, careful implementation remains essential. The success of these reforms will depend not only on the clarity of the legal provisions but also on the readiness of judicial institutions, law enforcement agencies, and society at large to embrace these changes. Training, awareness, and monitoring mechanisms will play a critical role in ensuring that the intended benefits of the reforms reach the ground level.

Furthermore, the 2023 laws attempt to address long-standing criticisms of the criminal justice system, such as delays in trials, low conviction rates, and procedural inefficiencies. By streamlining processes, reducing ambiguities in the law, and providing clearer guidelines for investigation and prosecution, the legislation seeks to enhance both the speed and quality of justice delivery. These measures are expected to contribute significantly to public confidence in the legal system, which is crucial for maintaining social order and trust in governance.

In conclusion, the New Criminal Laws of 2023 represent a comprehensive effort to modernize India's criminal justice framework. They reflect a careful balance between progressive reform and respect for established legal principles, aiming to create a system that is responsive, equitable, and capable of addressing contemporary challenges. While implementation will be key to realizing the full potential of these reforms, the legislation lays a strong foundation for

a more just and accountable society. By incorporating measures that protect vulnerable populations, enhance investigative efficiency, and align domestic laws with international best practices, the 2023 amendments mark a significant milestone in the continuing evolution of criminal law in India. These reforms are not merely legislative changes but a reflection of the broader societal commitment to justice, fairness, and equality, setting a precedent for future developments in the legal landscape.