
TECHNOLOGICAL TRANSFORMATION OF INDIA'S CRIMINAL JUSTICE SYSTEM UNDER THE NEW CRIMINAL LAW

Nabanita Boro, Advocate, Judicial Magistrate First Class Court, Boko

ABSTRACT

Human society is constantly evolving. It has undergone various transformation from traditional to a modern technology driven society. In the context of the criminal justice system, the advancement of modernisation has brought significant changes in the justice delivery system. This modernisation has revolutionised societal structure, making a shift towards the use of technology or digital methods, making the system more efficient, transparent, and accurate.

In India, the new criminal law, i. e Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, Bharatiya Sakshya Adhiniyam, has adopted digital tools including electronic evidence, forensic techniques, and audio-video recording of investigation procedures, aiming to enhance efficiency, transparency, and accuracy in criminal investigation and trial.

However, the use of technological tools has raised constitutional concerns, particularly in relation to the right to privacy, equality, due process and fair trial under the Constitution. This study seeks to examine the balance of technological innovation and constitutional safeguards, evaluating whether the existing legal framework adequately protects individuals' privacy and ensures accountability.

Keywords: Criminal justice system, Technology, Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, Bharatiya Sakshya Adhiniyam, Digital evidence, Forensic Techniques, Right to Privacy, Constitution.

INTRODUCTION

A Society is never a static and with the needs and aspirations of the people it undergoes various changes. These transformations have brought significant benefits to society but also give rise to new form of conflicts and crimes necessitating a responsive and dynamic criminal justice system.

Criminal justice system has played a significant role in maintaining law, order and justice in society but with the presents needs of the society and modernization the traditional methods of crime prevention often become inadequate in dealing with the modern challenges. As law also evolves with the changing needs of society by recognising the limitations of colonial-era law, India introduced new criminal laws, i.e Bharatiya Nyaya Sanhita, Bharatiya Sakshya Adhiniyam, and Bharatiya Nagarikh Suraksha Sanhita, to modernise the justice delivery system, making it more efficient and technology-driven, aligned with contemporary societal realities. The rapid advancement of technology has significantly transformed the functioning of the criminal justice system. Though the modernization of the criminal justice system through technological advancement has improved the efficiency but it has raised a growing concerns with regards to constitutional right to privacy of the individuals under Art 21 and Art 20(3).

While embracing the technological advancement in criminal justice system, it must be operated within the framework of constitutional values. B. R Ambedkar rightly observed that “constitutional morality is not a natural sentiment. It has to be cultivate” which indicates that the technological advancement must adhere to the constitutionals values. Also Dr Bhupen Hazarika through his song profoundly expressed ‘Manuhe manuhor babe, jodihe okonu nebhabe’ which means if human do not think for the welfare of fellow humans, humanity loses its meaning, The song rightly indicates that no matter what “progress and technological advancement must align with constitutional values serving human welfare and dignity. Art 21 of the constitution which deals with fundamental right to privacy necessitates in the case of Justice KS Puttaswamy v. Union of India that technological interventions in criminal justice system must adhere to the constitutional values and also Art 20(3) which deals with the right against self incrimination states that state cannot compel a person who is accused of an offence to be witness against himself even through advanced scientific and digital tools.

EVOLUTION OF TECHNOLOGY IN CRIMINAL JUSTICE SYSTEM

“JUSTICE DELAYED IS JUSTICE DENIED” highlights the major concerns of slows justice

in legal system leading people lose their confidences. The criminal justice system, which is built on the principles of fairness, accountability and truth, has struggled with issues like the backlog of cases and inefficiency, restricting people's access to justice. Over the time technology has transformed the criminal justice system into a modern and efficient system. The development of technology in India's criminal justice system has been influenced by many aspects such as historical, social, economic and political.

India's current legal system has its roots in the colonial era of the British Raj. During their rule they established institutions like courts, police, prisons etc but they had many problems such as inefficiency, corruption, abuse of power. The government introduced several legal reforms from time to time to make the system more efficient, protect fundamental rights and to deliver speedy justice¹. As earlier the system was mainly relied on paperwork, manual processes and traditional methods of investigation they often caused delays, inefficiency and lack of transparency. In the late 20th and early 21st century the criminal justice system started using modern technology to improve its working. With the advent of technology the criminal justice system started using digital tools which help the system work faster, efficiently and transparently. The advent of technology has also brought significant changes through the introduction of new criminal laws in India replacing and modernizing the outdated colonial era rule by using digital tools and scientific methods aiming to improve the efficiency, transparency and speed in investigation and trial. The use of technology such as electronic records, e filling, online procedures, forensic technology has made the system more reliable and accessible. The new criminal law which has granted legal recognition and admissibility to digital evidence has significantly enhanced and considerably strengthen its evidentiary value within the criminal justice system. At the same time these technological advancements are guided by constitutional principles ensuring fairness, justice and protection of fundamental rights.

TECHNOLOGICAL TRANSFORMATION ON NEW CRIMINAL LAWS

The advent of technology has brought great impact on the society including the criminal justice system. In today's digital era technology such as scientific investigation method, artificial intelligence, cyber forensic, digital and electronic records, electronic evidence, video conferencing have changed the way in which the crimes are investigated, prosecuted and

¹ <https://ijarsct.co.in/paper16806.pdf>

adjudicated. Recognizing the problems of outdated criminal law, how traditional methods of investigation hamper the justice delivery system by causing delays and embracing the growing importance of technology in contemporary society the new criminal laws was introduced.

The Indian new criminal laws aims to modernize the criminal justice system with a commitment to ensuring justice that suits with changing needs of the society.

MAJOR CHANGES UNDER INDIAN NEW CRIMINAL LAW

BHARATIYA NYAYA SANHITA

Bharatiya Nyaya Sanhita 2023 gives importance to the crime committed through technology and added a new crime under section 111 which deals with organized crime that extended to cyber crime and also added terrorist act under section 113 where technology is often used.

BHARATIYA SAKSHYA ADHINIYAM

The Bharatiya Sakshya Adhiniyam 2023 has introduced various provision which are technology driven. The new adhiniyam has expanded the definition of evidence under sec 2(1)(e) by adding statement given electronically. It has also expanded the definition of documents under sec2(1)(d) by adding electronic and digital records. This includes elements like server logs, documents on computer, laptop or smart phone, messages, websites, locational evidence and voicemail messages stored digitally.

The Bharatiya Sakshya Adhiniyam creates consistency between the digital law and evidence law in India by aligning with the Information Technology Act 2000. Section 57 which deals with primary evidence now includes electronic records also, thereby expanding the scope of technology in the law of evidence.

Sec 61 of BSA is newly added providing electronic and digital records having same legal effect, validity and enforceability as other documents. Sec 63(2) of BSA provides clear guidelines for admissibility of electronic records. Sub section 4 of sec 63 says that certificate must be submitted while presenting electronic evidence in the court. This ensure integrity and authenticity.²

² BHARATIYA SAKSHYA ADHINIYAM, 2023

In the case of Arjun Pandit Rao v Kailash Kushanrao, the supreme court held that compliance of sec 63 BSA is essential to admit the electronic records as evidence. This certificate is like proof of authenticity that the electronic record is real, taken from proper custody, not changed, and the device was working properly during the course of the business. The certificate must have a signature of a person having official responsibility managing and operating the relevant device.³

BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

The Bharatiya Nagarik Suraksha Sanhita 2023 has brought many changes in India's criminal justice system by incorporating technology and scientific techniques into investigation and trial procedures with an aim to enhance efficiency, accessibility and the administration of justice. A few sections are discussed below.

I) Sec2 (1) (a) has been newly added in BNSS defining audio video electronic mean and also electronic communication under sec 2(1)(i) reflecting technology driven change.

II) The form of summon and serving of summon can also in electronic mean. This reduces delay in trial, improves efficiency and promotes speedy justice.

III) Sec 105 of Bnss provides that recording of search and seizure can be made through audio video electronic mean and the recording should be forwarded by police officer without delay to District Magistrate, Sub Divisional Magistrate and Judicial Magistrate first class. This is a significant reform that modernizes investigation by integrating technology, transparency and accountability.⁴

IV) Sec 173 of BNSS enables the citizens to file an FIR through electronic communication regarding information of commission of a cognizable offence irrespective of the place where it is committed, which shall be taken on record on being signed by the informant within 3 days.⁵

V) Sec 176(3) of BNSS promotes scientific and technology-based investigation by mandatory use of forensic examination in serious offences which are punishable with imprisonment of

³ <https://lawbhoomi.com>

⁴ BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

⁵ Ibid

seven years or more.⁶

VI)Sec 530 of BNSS provides that trial and proceedings are to be held in electronic mode, making the criminal justice system more technology-friendly.⁷

CONSTITUTIONAL ANALYSIS

The constitution of India is the supreme law of land and provides the fundamental framework within which the criminal justice system operates. It guarantees essential rights. With the introduction of the new criminal laws and the increasing use of technology in criminal investigation, prosecution and trial the Indian criminal justice system is undergoing significant transformation. While these technological reforms aims to improve efficiency, transparency, and access to justice they also raise important constitutional concern relating to privacy, due process, equality and protection of fundamental rights.

Art 21 of the Constitution says that no person shall be deprived of his life or personal liberty except according to the procedure established by law.⁸ Court have used this article to protect people from unfair use of surveillance and technology. Technological reforms in criminal justice must be implemented in a manner that protects privacy ensures a fair trial and follows a just fair and reasonable procedure. The Supreme Court, in the case of Justice KS Puttaswamy v. Union of India, held that the right to privacy is a fundamental right under art 21.⁹

Art 20(3), which deals with protection against self-incrimination, says that no person accused of an offence shall be compelled to be a witness against himself. This article protects the accused from involuntary use of techniques such as NACRO analysis, polygraph test and brain mapping test during criminal investigation to extract truth. Involuntary subjection of a person to undergo these test is a violation of Art 20(3). It also violates right to life under article 21 also infringe right to privacy and health. In the case of Selvi v state of Karnataka the court held that compulsory administration of certain techniques violates right against self incrimination and held that no test should be done without consent.¹⁰

⁶ Ibid

⁷ Ibid

⁸ Dr. J. N. PANDEY, CONSTITUTIONAL LAW OF INDIA, 59TH EDITION 2022.

⁹ Ibid

CONCLUSION

The technological transformation under the new criminal laws depends not only on the innovation but also ensuring that constitutional values remain at the centre of the criminal justice process. A balanced approach that integrates technological progress with the protection of fundamental rights will help achieve a fair, efficient, and constitutionally compliant criminal justice system in India.