
FROM COLONIAL CONTROL TO CONSTITUTIONAL JUSTICE: AN EVALUATION OF THE IDEOLOGICAL SHIFT UNDER INDIA'S NEW CRIMINAL LAWS

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ABSTRACT

India's criminal justice system has historically been rooted in colonial objectives of control, deterrence, and administrative convenience rather than constitutional values of liberty, dignity, and fairness. The replacement of the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872 with the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023 marks a decisive legislative moment in India's legal history. This article critically examines whether these new criminal laws represent a genuine ideological shift from colonial governance to constitutional justice or merely a symbolic transformation through renaming and selective reforms. Through doctrinal analysis and constitutional scrutiny, the article evaluates changes relating to punishment philosophy, procedural safeguards, victims' rights, evidentiary standards, and the balance between State power and individual liberty.

1. Introduction

The criminal law framework in India has long been criticised for being a colonial relic, designed primarily to preserve imperial authority rather than to secure justice for citizens. Enacted in the nineteenth century, the Indian Penal Code and its procedural and evidentiary counterparts were instruments of governance in a colonial state, premised on obedience, deterrence, and control. Despite the adoption of a transformative Constitution in 1950, criminal law reform remained largely incremental, leaving intact the foundational structure of colonial criminal jurisprudence.¹

The enactment of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam in 2023 is projected as a paradigmatic shift—both symbolically and substantively—towards a justice-oriented criminal law regime. This article seeks to examine whether these enactments truly dismantle colonial ideology or merely replicate existing power structures under a new legislative framework.

2. Colonial Foundations of India's Criminal Justice System

Colonial criminal law was designed as an instrument of governance rather than justice. The Indian Penal Code, 1860 was framed to ensure social control, suppress dissent, and maintain public order in a subject population.² Police powers were expansive, procedural safeguards were minimal, and punishment was primarily deterrent in character.

The criminal process prioritised administrative efficiency over individual liberty. Arrest without warrant, prolonged detention, and evidentiary presumptions favouring the prosecution were normalised features of colonial criminal administration.³ These structures survived independence, resulting in systemic issues such as custodial violence, undertrial incarceration, and delay in criminal trials.

3. Constitutional Vision of Criminal Justice

The Constitution of India introduced a transformative normative framework grounded in dignity, liberty, and equality. Article 21, through judicial interpretation, elevated procedural fairness to the status of a fundamental right.⁴ The Supreme Court progressively infused criminal procedure with principles such as presumption of innocence, speedy trial, fair investigation, and proportional punishment.

However, constitutional interpretation alone could not neutralise statutory frameworks inherited from colonial rule. Legislative reform became necessary to align criminal law with constitutional morality and human rights jurisprudence.⁵

4. Ideological Objectives of the New Criminal Laws

The new criminal laws claim three central objectives: decolonisation, victim-centric justice, and modernisation of procedure. The replacement of the term “penal” with “nyaya” symbolises a move away from retribution towards justice and fairness.

Yet, ideological transformation cannot be assessed through nomenclature alone. A meaningful shift requires a recalibration of power between the State and the individual, particularly in matters of arrest, investigation, and trial.

5. Substantive Criminal Law and Punishment Philosophy

The Bharatiya Nyaya Sanhita introduces changes in offence classification, sentencing rationalisation, and community-based punishments. The emphasis on proportionality and reformatory justice reflects constitutional sentencing principles.⁶

Nevertheless, the retention of severe punishments for broadly worded offences concerning State security raises concerns of excessive discretion. Such provisions risk reproducing colonial tendencies under constitutional cover unless narrowly interpreted by courts.

6. Procedural Justice under the Bharatiya Nagarik Suraksha Sanhita

Procedural reform under the BNSS represents a significant shift. Statutory timelines for investigation, mandatory forensic involvement, and enhanced victim participation aim to improve efficiency and accountability.

However, extensive police discretion continues to characterise the investigative process. Without institutional reform and effective judicial oversight, procedural safeguards may remain aspirational.⁷

7. Evidentiary Reforms and the Digital Turn

The Bharatiya Sakshya Adhiniyam acknowledges the increasing relevance of electronic and

digital evidence. The formal recognition of such evidence reflects contemporary realities of criminality.

At the same time, reliance on digital evidence raises concerns regarding privacy, authenticity, and forensic integrity. Constitutional justice requires that technological advancement strengthens truth-seeking without diluting the accused's right to a fair trial.⁸

8. Victim-Centric Justice: Progress and Concerns

One of the notable shifts under the new criminal laws is the recognition of victims as active stakeholders. Provisions for victim compensation, information access, and participation reflect evolving criminal jurisprudence.

However, victim-centric justice must not undermine due process guarantees. The balance between victims' rights and the accused's constitutional protections remains central to a fair criminal justice system.⁹

9. Continuities with the Colonial Past

Despite progressive reforms, elements of colonial control persist. Broad State discretion, preventive mechanisms, and offences privileging State authority indicate that the ideological shift is incomplete.

The new criminal laws provide an enabling framework rather than a complete transformation. Their constitutional legitimacy will depend on restrained executive action and rights-oriented judicial interpretation.

10. Role of the Judiciary

Judicial interpretation will play a decisive role in realising the promise of constitutional justice. Courts must harmonise statutory provisions with fundamental rights and prevent procedural innovations from becoming tools of oppression.

Judicial insistence on proportionality, necessity, and fairness can transform legislative intent into lived constitutional reality.¹⁰

11. Conclusion

India's new criminal laws mark a conscious departure from the colonial criminal justice framework and signal an ideological movement towards constitutional justice. While they incorporate progressive elements relating to victims' rights, procedural efficiency, and evidentiary modernisation, vestiges of colonial control remain.

True decolonisation of criminal law requires sustained judicial engagement, institutional reform, and constitutional fidelity. The new criminal laws offer an opportunity to realign criminal justice with constitutional values; their success will ultimately depend on how faithfully this opportunity is realised in practice.

Endnotes:-

1. M.P. Jain, *Outlines of Indian Legal History* (7th ed., LexisNexis 2018).
2. Radhika Singha, *A Despotism of Law: Crime and Justice in Colonial India* (Oxford University Press 1998).
3. K.N. Chandrasekharan Pillai, *Criminal Law* (Eastern Book Company 2014).
4. *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.
5. Upendra Baxi, "The Crisis of the Indian Legal System" (Vikas Publishing 1982).
6. *State of Punjab v. Prem Sagar*, (2008) 7 SCC 550.
7. *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.
8. *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473.
9. *Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 SCC 752.
10. *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51.