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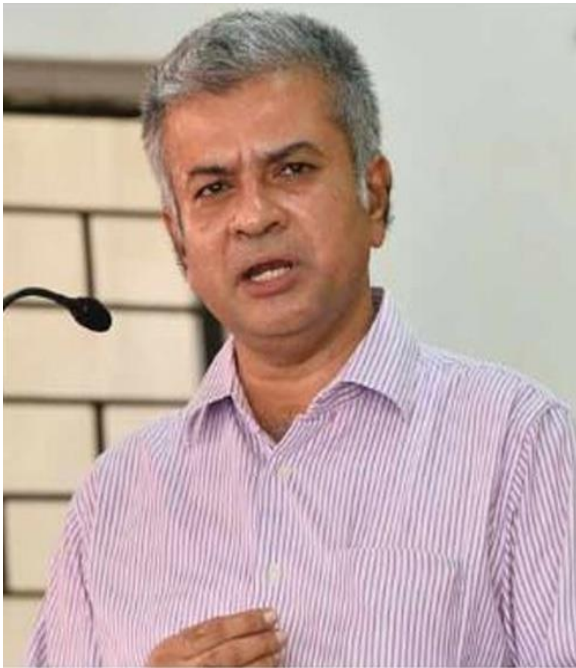
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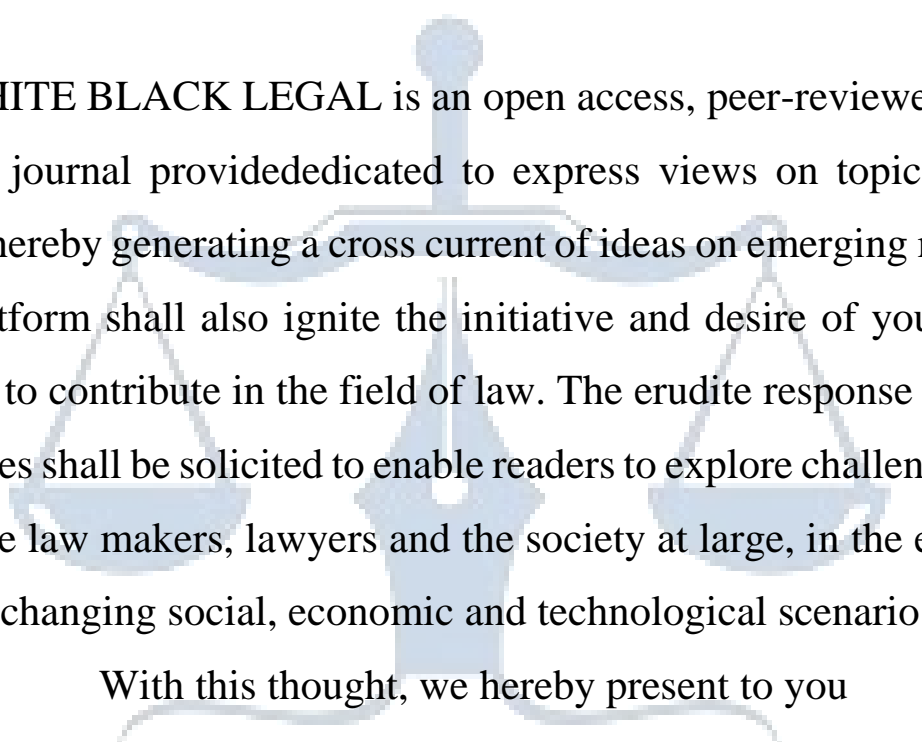


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With this thought, we hereby present to you

W H I T E   B L A C K  
L E G A L

# ANALYSING AND CHALLENGING OF NEW CRIMINAL LAW

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## ABSTRACT

The purpose of this paper is to establish the idea about the new criminal act 2023, This paper focus on the pros and cons of new criminal laws namely Bharatiya Nyaya Sanhita 2023 (NEW IPC), **Bharatiya Nagarik Suraksha Sanhita (NEW CRPC)**, **Bharatiya Sakshya Adhiniyam (NEW EVIDENCE ACT)**. There are several challenges faces by this law, related to Increases days of Police custody, custodial death, torture during investigation time, and independent decision of medical officer during custodial period and codified rule of medical examination 48 hours ones to accused person is suspend, those mentioned points become a rule of *police raj yam* and punishment of hit and run cases, burden of proof related to promise of marry, plucking rights of state governments powers by union government results a violation of federal structure.

As the procedure established by new criminal law – the word sedation was indirectly mentioned as sovereign, secular democratic and integrity of India. This paper also focuses a needs and changes faced by the government in the future and the major amendment made in criminal field is a crucial part of this respective paper. And decisions made by judiciary and law commission reports were also been discussed in this paper.

**Key word: (Judiciary, criminal laws, police raj yam, Democratic, Government, federal structure).**

## INTRODUCTION

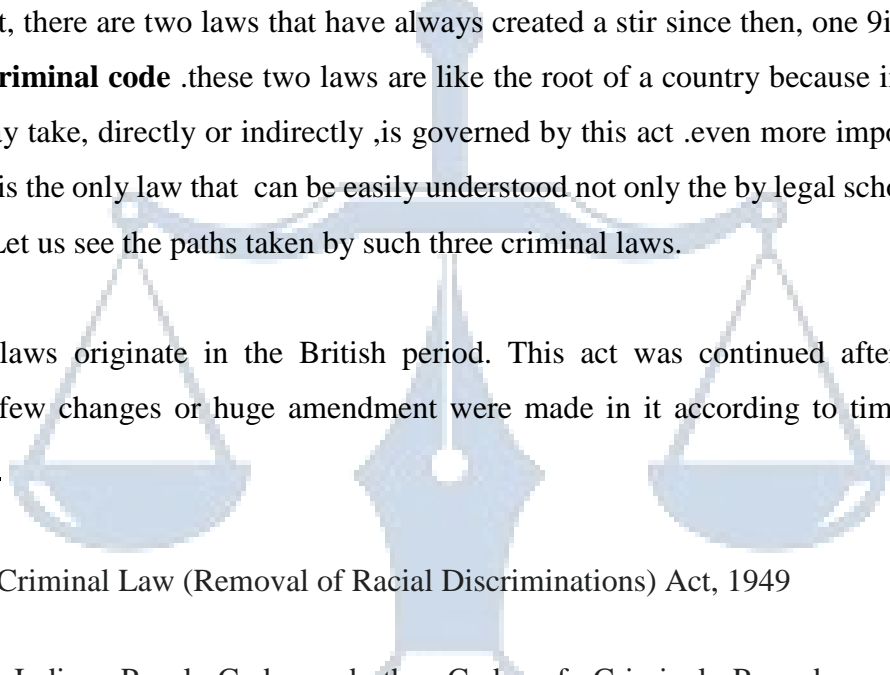
English is there to communicate with the world; So why should Tamils learn Hindi to converse only within India? Do you need a big door for a big dog and a small door for a small dog? I say, let the little dog go through the great door.

- Great Tamil Scholar and Hon'ble Former Chief Minister Government of Tamil Nadu  
Dr. C N Annadurai about Hindi stuffing

In our vast country these days there are many laws are trending such as competition law ,real estate law but, there are two laws that have always created a stir since then, one is civil code and other is the **criminal code** .these two laws are like the root of a country because in one day every action we may take, directly or indirectly ,is governed by this act .even more important if we saw criminal law is the only law that can be easily understood not only the by legal scholars but also by the layman .Let us see the paths taken by such three criminal laws.

Its criminal laws originate in the British period. This act was continued after India became independent few changes or huge amendment were made in it according to time how if see at

### FIGURE 1.1

- 
- |   |      |
|---|------|
| 1. The Criminal Law (Removal of Racial Discriminations) Act, 1949                 | 1949 |
| 2. The Indian Penal Code and the Code of Criminal Procedure (Amendment) Act, 1949 | 1949 |
| 3. The Adaptation of Laws Order, 1950   | 1950 |
| 4. The Repealing and Amending Act, 1950   | 1950 |
| 5. The Part B States (Laws) Act, 1951   | 1951 |
| 6. The Criminal Law Amendment Act, 1952   | 1952 |
| 7. The Repealing and Amending Act, 1952   | 1952 |
| 8. The Repealing and Amending Act, 1953   | 1953 |



9. The Code of Criminal Procedure (Amendment) Act, 1955	1955
10. The Adaptation of Laws (No.2) Order, 1956	1956
11. The Repealing and Amending Act, 1957	1957
12. The Criminal Law Amendment Act, 1958	1958
13. The Trade and Merchandise Marks Act, 1958	1958
14. The Indian Penal Code (Amendment) Act, 1959	1959
15. The Indian Penal Code (Amendment) Act, 1961	1961
16. The Anti-Corruption Laws (Amendment) Act, 1964	1964
17. The Criminal and Election Laws Amendment Act, 1969	1969
18. The Indian Penal Code (Amendment) Act, 1969	1969
19. The Criminal Law (Amendment) Act, 1972	1972
20. The Employees' Provident Funds and Family Pension Fund (Amendment) Act, 1973	1973
21. The Employees' State Insurance (Amendment) Act, 1975	1975
22. The Election Laws (Amendment) Act, 1975	1975
23. The Criminal Law (Amendment) Act, 1983	1983
24. The Criminal Law (Second Amendment) Act, 1983	1983
25. The Dowry Prohibition (Amendment) Act, 1986	1986
26. The Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act, 1988	1988

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27. The Prevention of Corruption Act, 1988	1988
28. The Criminal Law (Amendment) Act, 1993	1993
29. The Indian Penal Code (Amendment) Act, 1995	1995
30. The IT ACT 2000	2000
31. The Election Laws (Amendment) Act, 2003	2003
32. The Code of Criminal Procedure (Amendment) Act, 2005	2005
33. The Criminal Law (Amendment) Act, 2005	2006
34. <u>The Information Technology (Amendment) Act, 2008</u>	2009
35. <u>The Criminal Law (Amendment) Act, 2013</u>	2013
36. The Criminal Law (Amendment) Act, 2018	2018
37. <u>The Jammu and Kashmir Reorganisation Act, 2019</u>	

Source: [www.ministryofhomegov.in](http://www.ministryofhomegov.in) <sup>1</sup>

### HISTORY OF NEW CRIMINAL LAW

After this it is at this time May 2020 year that the central government sets up a criminal reform committee headed by Ranbir Singh. Now, newly enacted these three criminal laws were brought based on the recommendation of this commission. IPC was repealed by the Bharatiya Nyaya Sanhita 2023. CRPC was repealed by **Bharatiya Nagarik Suraksha Sanhita**. **The IEA Was repealed by Bharatiya Sakshya Adhiniyam.**

Subsequently, these three laws were also introduced on August 11, 2023, the last day for the Parliament Monsoon session. Further, it was introduced amid opposition following this it was sent to the parliamentary Standing committee following a series of requests from several representatives.

<sup>1</sup> [www.ministryofhomegov.in](http://www.ministryofhomegov.in) Last access 10 -06-2024.

The bill was referred to the department. Related Parliamentary standing committee on home affairs on August 18 for consideration following that parliamentary standing committee suggestion report submitted if led by Shri **BRIJ LAL** who has +home ministry department as per November 10 ,2023.

Again, this bill was introduced on winter session continue this on December 21,2023 the Rajya Sabha was passed by three criminal laws at similarly the Lok Sabha was passed on December 20,2023. The president was assent on December 25 ,2025 by it laws .at same day Telecommunication act 2023 assent was providing. Moreover, the Home Ministry was notified on February 24,2024. This notification says that July 1,2024 three criminal laws came into force, with the exception of BNS Section 106[2] Punishment of hit and run cases and it ensures the circular, dated May 20, 2024 and Signed by *Bar Council India Secretary*. The circular says that new criminal laws incorporated the academic year 2024-2025 by the legal education system.

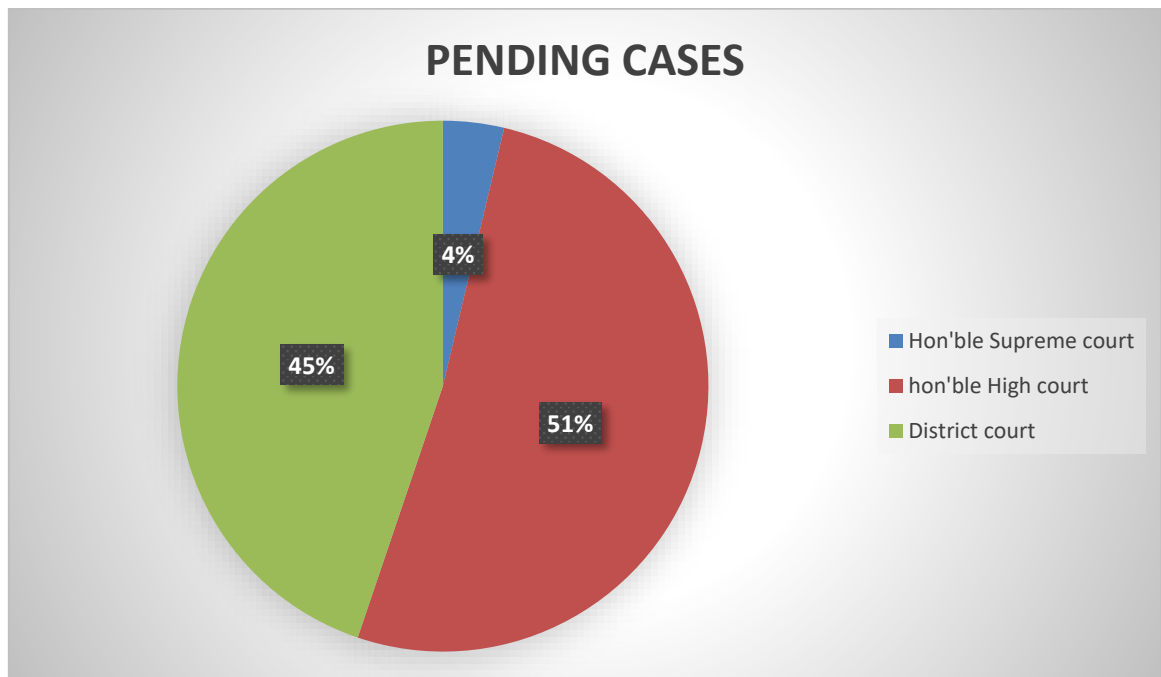
On February 24,2024 the New criminal laws against public interest litigation [PIL] was dismissed by the supreme court. Further May 20,2024 the supreme court of India refused a petition of three criminal laws. And then in the present case a difference was laid by Kerala high court that is in this case was against the **Titles of the act name of three criminal laws.**

### **NEEDS AND OBJECTIVE**

*“TO ABOLISH COLONIAL LAW”*

*THIS IS ONLY TO PUNISH – NOT TO RENDER JUSTICE.*

The primary objectives need three criminal laws: the victim’s person is speedy for justice for that, these three criminal laws are needed. The new criminal laws need so required because old criminal law was **written on 161** years ago and firstly said that, justice it purposes victims should be available for the justice but on the contrary sometimes the victims do not get justice, maybe it will be available but it will be later so “Justice Delayed is Justice Denied”. And for huge numerous of cases was pending can be seeing that *figure 1.2*



Source: Hon'ble Supreme court of India.

[https://njdg.ecourts.gov.in/hcnjdgnew/?p=main/pend\\_dashboard](https://njdg.ecourts.gov.in/hcnjdgnew/?p=main/pend_dashboard)<sup>2</sup>

The old criminal laws have a lot of legal loopholes to say from educator to layman, so a new law is necessary at such a time. The modern government has taken actions in the interest of the nations.

And other aims as per technologies developments accordingly laws are needfully of course *new laws is necessary but does these new laws fulfil the purpose can be seen. the new criminal laws positive aspects and negative aspects.*

#### POSITIVE ASPECTS

##### 1. COMMUNITY SERVICES

- The new criminal law the newly initiative has been taken to correct the wrongdoer towards Community services new form of the punishment in certain offence like public servant unlawfully engaging in trade, misconduct in public by a drunken person and famous term of defamation cases and further **BNS [new IPC] Provision on 226,303[2], 209**. Community service is good thinking because the purpose of prison is to make a person better when he comes back to society. But practically contrary to what is happening, it is a good time to implement community service.

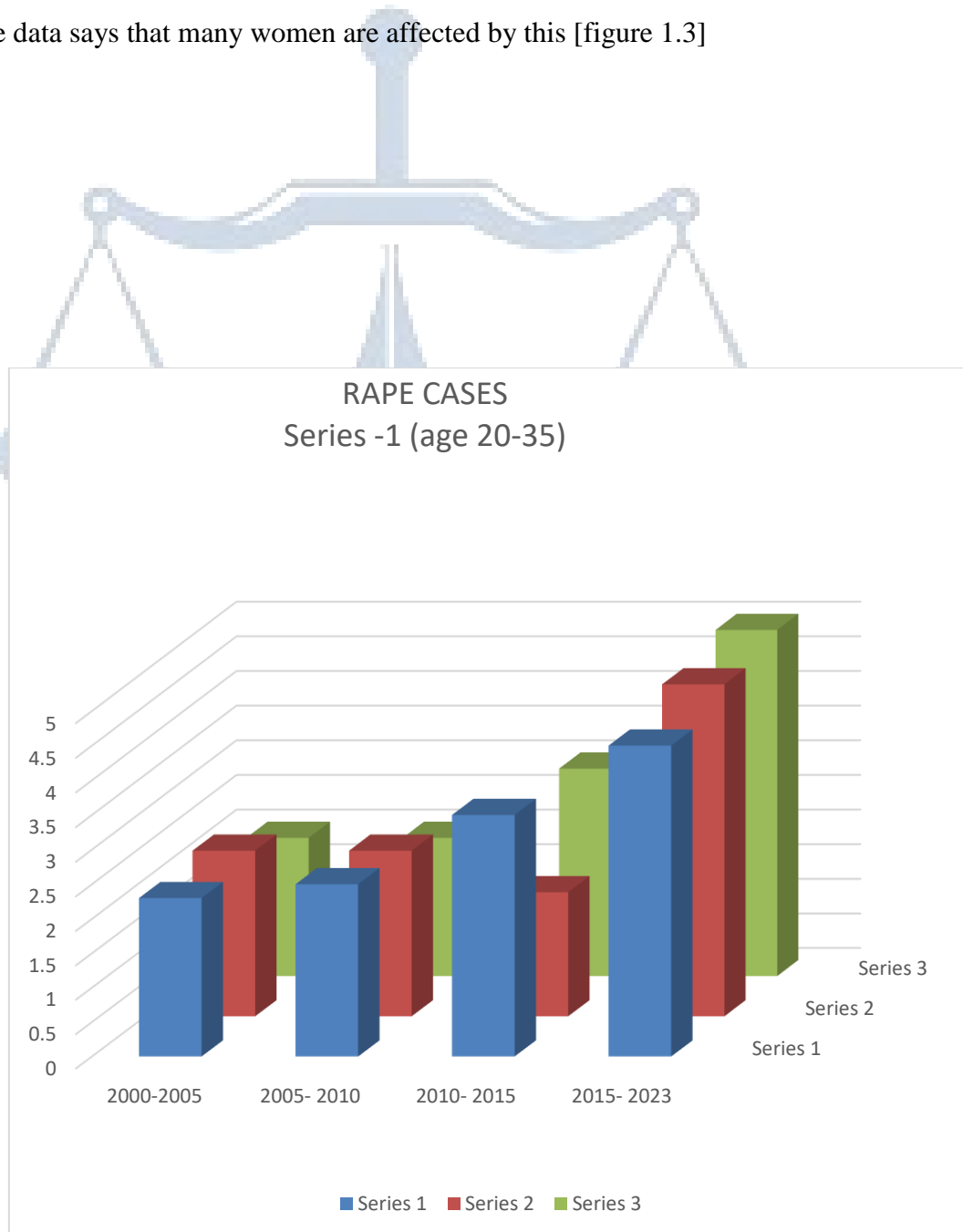
<sup>2</sup> Hon'ble Supreme court of India. [https://njdg.ecourts.gov.in/hcnjdgnew/?p=main/pend\\_dashboard](https://njdg.ecourts.gov.in/hcnjdgnew/?p=main/pend_dashboard) last access 11-06-2024 11.00 am

**2. ONE OF THE PETTY ORGANISED CRIMES IN SOCIETY.**

Good for a few groups but not good for this society one such act `Question paper leak for this offence the new law was providing the seven years for imprisonment so this the good aspects because only if there are such laws will the wrongdoers in the society feel fear and similar crimes at least future such crimes will decrease.

**3. INJUSTICES AGAINST THE WOMEN'S**

To uphold the law for that stricter punishment for certain offence like Rape, Gang rape and rape for minor women against for it such offence should be stricter punishable because data says that many women are affected by this [figure 1.3]



According to the Annual report of *National Crime Records Bureau (NCRB)* 2021

there are **31,677** rape cases were registered all over the country, or an average cases like **86 cases filling daily** police station, **2020** with 28,046 cases in 2019, 32,033 cases are registered.<sup>3</sup>

And the modern world that can be widely spoken matter that false promise to marry such an offence have been happening in recent times. So, this is an important feature in the new law to prevent such offences. By taking such action, the accused can be punished through such a provision under the BNS [new IPC] 64,65,69 and 70.

#### **4. MEDICAL NEGLIGENCES**

The new act further positive aspects of Causing death by medical negligence if it happens there are punishable by two categories. In case particular medical practitioner while performing medical procedure though held even any medical negligence death by, he is punishable for imprisonment two years. But the old IPC deals with death by medical negligence under provision of seven-year imprisonment. In this matter, medical practitioners do their work boldly and fear nothing and imprisonment is reduced on the basis of an Indian medical council association request accepted by the Ministry of Home affairs. but as a medical practitioner he is liable for under the Consumer protection act 2019 and again remembered he is liable for deficiency services.

#### **5. DECRIMINALIZATION ATTEMPT SUICIDE**

It has been declared decriminalized in the new law citing the law commission report and supreme court judgement in this matter of attempt to suicide. because such a decision may be taken due to some issues, so re- punishment of such a person is not fair. further old IPC according to attempt to suicide is considered by offences. But, Mental health care act [MHCA] 2017 section 115 says that decriminalized of attempt to suicide.

#### **6. MINOR CHANGES OF NEW IPC**

Further the new law has made a separate chapter that is “*of offences against woman and child deals with section 63 to section 99 up to*”.

The new criminal law, specifically BNS [new IPC] Minor changes, had for the first time a broadly defined definition for terrorism about it. And a separate section has been introduced. Further, the new law has made it clear what constitutes an organised crime [major crime] section 111 of BNS says about it such as like, robbery, cybercrimes and

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<sup>3</sup> National Crime Records Bureau (NCRB) [www.ncrb.gov.in](http://www.ncrb.gov.in) last acces 13-06-2024

weapons or illicit goods or service. Likewise petty offences [minor offence] section 112 of BNS says about it such as theft, cheating and unauthorised betting or gambling.

#### **7. MISCELLANEOUS REPEAL SECTION**

This has been repealed in the new law like adultery [old IPC section 497], unnatural offences [old IPC section 377] and attempt to suicide [old IPC section 309]. Moreover, this new law has given a new definition to many things like document it also including digital or electronic record. And child means any person below the age of 18.

#### **8. SALIENT FEATURE OF BNSS**

A senior citizen for his welfare considers BNSS [new CRPC] Provision 35[7] according to above sixty years ago if a person is to be arrested, of course the permission is required not below the rank of DSP. Moreover, new law as stated therein as per Provision after the arrest of any person the arresting officer shall give information about that person to the person's family or relatives or a friend or to whomever is named by him to be informed of his arrest. But old CRPC section 50 a [1] as per it not if so to whom he tells to inform the person. In this new provision through by interpret right to choice.

#### **9. ONLINE PROCESS OF INVESTIGATION**

To covid -19 during that period cases are conducted online mode like, Google meet [G-meet] but the new law has made way all trials and inquiries or investigation may be held in electronic mode through by those involved in the investigation you can answer the inquiry or trials at any place and through this the cases can be concluded quickly therefore, so avoid unnecessary reason by such a presenting person during the investigation.

#### **10. SECTION 63 CERTIFICATE TO ADMISSIBILITY OF ELECTRONIC EVIDENCE**

Digital India can be considered as the architect of modern India. To ensure this new law becomes the electronic or digital record are admissible is valid. But the old evidence law in that matter was not clear. And the new law according to BSA [new IEA] as per the provision 63 if we read that section, it is clearly given from whom the certificate should be obtained. Further to put it briefly, according to old law [65-B certificate].

In this new law "documents" under section 2[d] of BSA [New Evidence act] are broadly defined. Further the new inserted section 61 of BSA as per electronic or digital record it is admissible evidence and from now on this kinds of evidence are same legal effect,

validity and enforceability as other documents.

### **11. Salient features of BNSS ( NEW CRPC)**

Most importantly, the new criminal law makes it clear that provision 475 of BNSS [new CRPC] as per life imprisonment is 14 years and until the periods mentioned in this provision as the convicted person shall not be released from prison. Compare this matter with old law we all know a one life imprisonment was fourteen years which was not mentioned anywhere in the law. but this new law clearly mentions it .

Similarly, a Zero FIR that concept was there but nowhere in the provision was it mentioned. But a new law if we read it clearly given in section as per 173[1] of BNSS [new CRPC] so through this section Zero FIR featured. Further electronic first information report [E-FIR] concept was introduced by the new law and according to this new law as per provision 173 [2] of BNSS [new CRPC] through this a FIR will be provided free of cost to both the to the informant person and the victim person so, through this transparency emerges if between informant and victim person. But according to the old CRPC only for providing information.

A new inserted section 37[b] of BNSS [new CRPC] as per in every district and all police stations should be recording the information about the arrested person, his names, address and nature of the offences. Further all these should be recorded by manner or digital mode.

To uphold justice, it is for this reason that the new law has been introduced. If we look at it accordingly from on now after completion of arguments the judgement will be announced within 30 days. if the judgement is delayed, the reason should be recorded and shall give a judgement within 40 or 50 days. This will ensure speedy justice to the victim person. This new criminal law is the main reason that if we see “Law should not sit limply, while those who defy it go free and those who seek its protection lose hope “so this situation should change with the new law further dharma must always win in the end.

From now on, more than the seven years relating to offences no more after forensic investigators arrive at the scene of the crime, they gather evidence that is made mandatory in the new law as per.



## **12. NEGATIVE ASPECTS OF BNSS**

Section 18[1] of BNSS [new CRPC] according to **Public Prosecutors and additional public prosecutors in the union territory of national capital** of Delhi if the government advocates are to be appointed themselves, they will be appointed after consultation with the central government and the approval of the central government is required. Further new law as per is given concurrent power of central govt in case of death sentence. In a matter like this, if we look at the power given, it is favourable to the central government and by this section is included in the new law in an attempt to reduce the power of the state government. So such a law is for federal structure.

The opposite is because here there is a state government and that government is elected by the people, so this action against state federal structure in either case is extremely dangerous to democracy. And particularly in the matter of appointment of public prosecutors in the states of Delhi, the central government interference is anti – federal because “India is a union of states”. And before the issue they have already taken action for this. That's it the government of national capital territory of Delhi [amendment] act ,2023 was passed which also took away the power of the Delhi state government. Through this, the central government is indirectly trying to control the state government by keeping the governor. Our honourable supreme court has intervened many times in the issue of problematic cases and especially in many cases the top court has held that the state government elected by the people has the power and the governors do not.

## **13. MEDICAL EXAMINATION**

Medical examination to the arrested person to be conducted once in 48 hours as per old law but, now the new law as per section 53[1] of BNSS [new CRPC] accordingly it is at the medical officer or the registered medical practitioner options if arrestees are to be examined more than once. So, impact to increase the custody death and police torture. Further the supreme court asked that every 48 hours once medical examination by the accused is required.

## **14. NO REPEAL OF SEDITION**

And just only the name has been deleted. The central government has not repealed the sedition act itself but the section number has changed . and this new law has made it very strict .because this is one of the brutal regime in relation to the colonial regime in relation to the sedition law and it has been **76 years since we got independence in our country .our honourable supreme court order in May 2022 , the court asked the central**

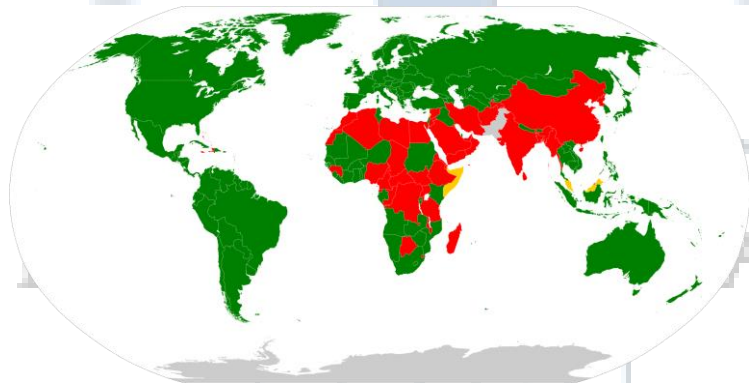
government to review this law regarding this issue.

## **15. HANDCUFFS RELATED JUDGEMENT IS GIVEN THE SUPREME COURT**

1. In case of Prem Shankar Shukla VS Delhi administration [1980] in this case the court held that the use of handcuffs is an anathema on Human dignity is violated of article 21 of the Indian constitution . According to the new law brought by the central government in this regard as per section 43[3] of BNSS [new CRPC] Handcuffs using for the related matter more than 15 crimes.so this is a human rights issue and the court should intervene in this matter.

## **16. MARTIAL RAPE**

Most expected they will declare Martial rape is a offences. In the end, the opposite happened martial rape is not offences as per new law of BNS [new IPC] under section 63 exception clause 2 “ sexual intercourse or sexual acts by a man with his own wife “ through by women right to privacy , right to life and liberty, right to dignity and right to choice is violated that article 21 of the Indian constitution . Despite in this matter law commission report recommendation martial rape is offence. figure 1.5



- ■ *Marital rape illegal* ■ *Marital rape legal* ■ *'Marital rape' legal, but forced marital sex still punishable.*

Source: [www.un.org](http://www.un.org)<sup>4</sup>

## **17. HIT AND RUN**

The new law as per section 106[2] of BNS [new IPC] accordingly if a person causes an accident while driving without knowing it, the punishment for that person is ten years in

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<sup>4</sup> report recommendation martial rape [www.un.org](http://www.un.org) last access 12-06-2024.

this new law to compare old new punished at two years. This section is one of the most unfair in this new law. That is why this law will not come into effect from July 1<sup>st</sup> This new law that particular section instils fear.

India reported under **460,000** road accidents in the year of 2022, up to 12% has been increased from previous year. According to the hit-and-run accidents official form of **67,000**. All over, India **53** road accidents and **19** deaths every goldarn hour to be amendment.

18. **Police custody** was providing the old law only 15 days but according to this new law which have been brought in now police custody was increase 60 days or 90 days. so, through these impacting police torture of custody oy custody death and this will create police, Raj. Are such laws good for the society a question arises whether it is not good, Therefore the central government should consider this amendment. More about this in detail

<u>Particulars</u>	<u>YEAR</u>	<u>CUSTODIAL DEATH</u>	<u>STATUS</u>
<u>1.</u>	<u>2017- 2018</u>	<u>146</u>	<u>Increased</u>
<u>2.</u>	<u>2018- 2019</u>	<u>112</u>	<u>Decreased</u>
<u>3.</u>	<u>2020- 2021</u>	<u>100</u>	<u>Decreased</u>
<u>4.</u>	<u>2021- 2022</u>	<u>175</u>	<u>Increased</u>
-	<u>TOTAL</u>	<u>533 ( 2017- 2022)</u>	

#### 19. RECOMMENDATION;

First of all, welcome to three new criminal laws. Before bringing this law, to consult the advocates and judges further, public suggestion and after parliament could have brought this law after listening to all the opposite representation members debate that completed. That is the beauty of a healthy government. But without doing any of this, it went a step further and temporarily suspended 143 members of parliament and passed this act. Such a move would tarnish the sanctity of democracy.

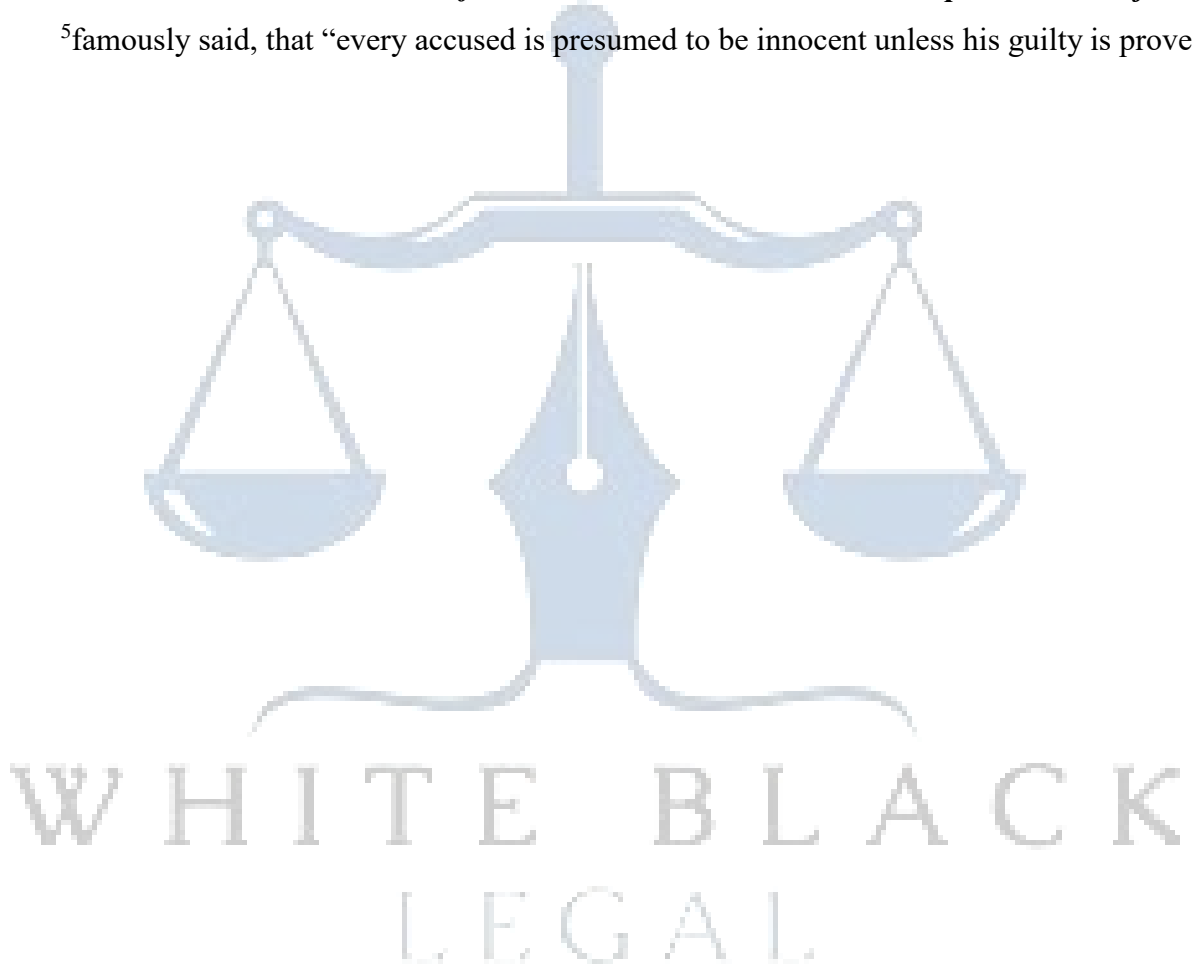
20. Secondly, the major issues with this act “Titles” is also Hindi and Sanskrit language. So, this violates the article 348 of the Indian constitution. So how can lawyers from non – Hindi speaking states pronounce this. In this regard the central government immediately changed the name in English.

21. The parliamentary standing committee members of opposite party suggestions are not considered the central government. But instead, it passed the law again in December, amending only for **five sections. So, this is not good for a democracy.**
22. **Community service it is a good thing that the government should issue some guidelines in this regard as there is currently ambiguity in this matter.**
23. **We welcome that this law of “Promise to marry” has been brought** in the interest of women. but to prove not guilty in this matter it is a difficult task. Many people have the misusing and own advantage, almost like section 498 a of the Indian penal code it should not be like that.
24. In our society how long will women be enslaved in this matter of marital rape. In the recent judgement of the honourable Kerala high court held that “Right to choose the life partner of an adult woman is independent”. Even in the current period sexual intercourse after marriage is not their own choice. It is enforced and “Marriage is not a license for physical relationship “so the central government should bring a law in this matter.
25. The respective central and every state government enact, and enforce the concept of electronic first information report [E- FIR] and zero first information report [ 0 FIR] with proper awareness to public and **particular authorities**
26. **This new criminal law conflicts with many state laws** and many special laws. For example, BNS VS Maharashtra organised crimes acts in this regard.
27. The Police custody of suspects from 15 days to 60 days is violating the rights of a particular person even though an offence is not proved in the court. According to the statement there is a violation of article – 14,15,21 of the Indian constitution. And Hit – Run cases the government should reduce the punishment year in this matter.
28. State status to be given for union territory of New Delhi. The new law should be reviewed on the procedure for appointment of public prosecutors and additional public prosecutors in the Delhi high court and similarly, the power to decide on the death sentence in this matter should be fully given back to the state government
29. In court, order to raising serious concerns about the “Misuse of 498 A of the Indian penal code [IPC]’ in relation to this section, the supreme court and many high courts held that re – look for the parliament to bring out necessary changes for this particular provision and the central government should more attention in this section a decision must be made because, it is the imperative of time
30. The Medical examination and handcuffs by the arrested person in these two matter the old IPC procedures should be followed.

## **CONCLUSION**

As the final statement of this paper is to maintain the rule of law according to the new criminal law to **the public and to render justice for them and the censes behind in the form of more pending cases in particular courts that leads professional ethics of bar and bench. According to the bar data only 0.10 % people has professionally enrolled as advocate in an India.** In the view of society about suspected person without guilty – making guilty by society people now a days ,

In the matter of *state of UP v. Naresh Kumar hon'ble Supreme court of India*<sup>5</sup>famously said, that “every accused is presumed to be innocent unless his guilty is proved”.



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<sup>5</sup> Air 8509 408- 2001 hon'ble Supreme court of India