

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper is partially shown, and a black leather watch with a silver dial is resting on the desk. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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CONSTITUTIONALISM AND CRIMINAL LAW REFORMS: A CRITICAL ANALYSIS OF INDIA'S NEW CRIMINAL LAWS.

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Abstract

There has been a long-standing demand from all the corners of the country to bring changes in the old regime of criminal laws as many of the provisions has become redundant and they constantly remind us of our sad, long colonial history. In 2024 the Indian Parliament after the long debates and after a long legislative journey has finally introduced “The new criminal laws. “The new criminal laws have been brought and is now become the reality of the criminal justice system of India bring an end to the old criminal laws which reflects the British influence in the Indian laws. In this paper we are going to scrutinize various provisions of the new criminal laws and at the same time we will draw a parallel with old criminal laws in order to evaluate whether the changes brought were positive or negative and analysis their overall impact, whether they able bring with them or not. Thus in the end we will also put these provisions on a litmus test by analyzing their validity on the lines of the Constitution in order to check their constitutionality. In the end, drawing a conclusion by critically examining the new criminal law provisions and their effects.

Keywords- New Criminal Laws, Criminal Justice System of India, Fundamental Rights, Parliament, British influence.

Introduction

The introduction of new criminal laws lays a new founding stone in the Indian criminal justice system. The intention of the Parliament behind the introduction of new criminal laws was not only to bring an end to the old colonial regime but also brought a dawn of a new era. The old

criminal laws which existed back in India date back to 1800's and were made by the Britishers who were the colonizers at that time. They were made with intention not to provide justice but with the sole intentions to punish their Indian subjects so that whenever there is uprising or attempt of any aggression towards British government, they could use their self-serving justice system to serve their interest as we have lots of cases whether it is the trials of Bhagat Singh¹, Bal Ghandhakar Tilak² and many more. Thus, in the Parliament bill has tabled the to amend the laws on 11 August, 2023 by the hon'ble Home Minister Amit Shah in his speech he also mentioned that intention of these three bills were to provide justice and bring an end to all the harsh memories and provisions which were brought by Britishers The new criminal code contains three laws i.e. Bhartiya Nagrik Suraksha Sanhita (BNSS), Bhartiya Nyaya Sanhita (BNS), Bhartiya Sakshaya Adhiniyam (BSA) which replaces Code of Criminal Procedure, Indian Penal Code, Indian Evidence Act respectively. The laws though brought with view to bring complete justice to the Indian citizens shedding all the dead wood that has adorned over the passage of time but still as well said nothing in this world is perfect. Same is the case with these new criminal laws . So, in this paper we are going to critically analyze all the shortcomings in the new three criminal laws . Although for the majority of the provisions it is not wrong to say that it is just the old wine in the new bottle.

Background

The legislative process of the new criminal laws begins in 2020 when Ministry of Home Affairs has constituted a committee under supervision of Prof. Ranbir Singh in order to review the existing framework. The bill was tabled in Parliament on August 2023, where a few suggestions were given. Thereafter, the bill was referred to Parliamentary Standing Committee on Home Affairs for detailed examination. Finally on 25 December, 2023 it received President assent. The new three Acts were enforced on 1 July, 2024 throughout the territory of India.

Critical Evaluation

Negative Aspects

- 1. No recognition to same sex sexual violence-** The new criminal codes do not provide any provision to penalize the non-consensual sexual violence or act inflicted by the same sex person on the other. A protection which was previously present under Section

¹ Bhagat Singh v. King Emperor (1931)33 BOMLR 950

² Emperor v. Bal Gandhakar Tilak (1908)10 BOMLR 848

377 of IPC which was partly and correctly retained by the hon'ble Supreme Court post the landmark judgement of **Navtez Singh Johar**³ in order to preserve an individual's right to dignity. Also, as it is no longer an offence will lead to increase in sexual violence in the LGBTQIA+ community and worst part is that they are no longer entitle to lodge an FIR against it. Thus, making this violence no longer a punishable offence in the eyes of law.

2. **Derecognize bestiality as an offence-** As mentioned in the previous point the legislators have ignored the intention of the Supreme Court in partial retention of the Section 377 delivered by **Navtez Singh Johar**⁴. As sodomy/bestiality (unnatural gratification of lust by the human on the animals) is no longer a punishable offence in India now. Thus, exposing the innocent animals to unreported unnatural sexual gratification.
3. The increase in the time of the police custody from first fifteen days only in section 167 of CRPC to be taken any time in the span of forty and sixty days under section 187. In spite of having the very well knowledge about the infamous police brutality inflicted upon the accused that criminals have to face and were exposed to during the police custody. This does not only violate their fundamental right enshrined under Article 21 of the Constitution but also the basic human right
4. **Absence of Gender-Neutral laws** - "The new criminal laws have failed to avail the opportunity to implement the suggestions made in the **Justice Verma Committee**⁵ which has suggested to provide for more balanced and gender-neutral laws especially in the light of sexual violence like the rape and sexual harassment and other offences like stalking, voyeurism etc. In which they have only recognized men as the sole perpetrator and only women as the victim. They have totally ignored women as perpetrator even against other women also and men can also be the victims. This not only violates their fundamental right but also their intrinsic basic right as a human to report against any sexual violence inflicted upon them.
5. **Derecognize Adultery-** The offence of Adultery is no longer included in The new criminal laws as well agreed and rightly deleted in the light of the **Joseph Shine case**⁶. But India being a country where marriage is taken as a pious social institution from the

³ AIR 2018 SC 4321

⁴ ibid

⁵ <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary> (last visited 20 April, 2026)

⁶ AIR 1962 SC 955

time immemorial. So, instead of removing the law completely a more balanced law could have been made providing rights to both the partners of file a case against the other in event of their partner having been in the adulterous relationship with the other. As only remedy now available to each of them is to file for the divorce and no criminal liability could be fastened upon each of them

6. **More strict sedition laws** - Section 152 is added in BNS which imbibes the soul of colonial draconian law i.e. of Sedition (previously given under Section 124A of IPC) which act as constant reminder to us that how even after passing of more than the 75 years of independence we are still stuck in the colonial mindset to suppress any sort of dissatisfactions against the government as delivered in **Kedar Nath Singh**⁷ judgement. We reinstate the same law with no to very minuscule changes in the law. In spite of the harsh comments made by the supreme court on existence of such laws in the case of **S.G. Vombatkere v. Union of India**⁸. This clearly exhibits that where world is moving to a more democratic, more liberalized and more free speech era we found ourselves stuck in the old rudimentary regime. Where free speech and expressing legally valid opinions and fair criticism against the government could make one land up in the prison.
7. **Limited application to DNA in evidences** - In BSA or in any other law, leaving the provision to identify the paternity of child born during the marriage⁹ no other provision is added regarding the DNA profiling of the criminals in order to facilitate the investigation which act as major setback for all our agencies in bringing justice especially if a crime is committed by the gang of professional criminals or the serial crime committing criminals causing unnecessary delays when we have access to the technology to make it better. As in the past also many serial crime DNA has helped in solving as well as creating a common link between the cases. Cyanide case driver¹⁰ and women^{11, 12}
8. **Vague Provisions on Constructive Liability**- In the present code (BNS) a very vague description has been provided regarding the constructive liability which if we compare from the IPC was far better elaborated. The present Code though provide for various

⁷ WP (C) 682/2021

⁸ 2022 Livelaw (SC) 470

⁹ Section 116 BSA

¹⁰ <https://www.thehindu.com/news/national/karnataka/cyanide-mohan-gets-life-term-in-last-case/article31918908.ece> (last visited 20 April, 2026)

¹¹ <https://www.thehindu.com/news/cities/bangalore/crime-and-punishment-sensational-investigation/article31899227.ece> (last visited 20 April, 2026)

¹² Verma. K. J. (2024).Bharatiya Sakshya Adhiniyam, 2023 (Evidence): A Commentary Eastern Book Company

provisions regarding the constructive liability like the common intention & similar intention but does not create a substantive link between various sections fastening the liability also the provisions made and placed are not water tight leaves a room for doubt which can be easily be manipulated by the accused to escape the liability. Thus, making it much more difficult for the victims and prosecution to prove their case since burden is upon them to prove beyond reasonable doubt.¹³

9. No changes to Right to Represent - Right to be represented by an advocate and right of legal aid are part of both CrPC and BNSS. But as we have seen earlier there has been less to no implementation of this service to the needy persons. Thus, it was expected in the current Code stricter measures would have employed by making the necessary changes in the existing provisions, but there have been almost no changes made in these provisions. Therefore, the state of Article 39A i.e. free legal aid though provided in the Constitution as directive principle stays abysmal.

10. No guidelines for Bail - Previous provision of Section 438 CrPC provides an elaborative mention of the terms and conditions that has to be kept in mind by the court for granting the anticipatory bail like criminal antecedents of the person applying, nature of offence committed etc. but in the current provision of 482 BNSS all these conditions are omitted. These would lead to unruly use of discretionary power by the courts which can lead to misuse of this provision by the hands of court.¹⁴

11. Unrealistic Timelines- In the current Code a strict timeline is provided for pronouncing the judgment i.e. of forty-five days and also for uploading the same on the government portal within seven days so as to provide easy access to the copies of judgment. This though a welcoming move but given the records of case pendency in India sets unrealistic pressures upon the judicial system in delivering judgements.

12. Trial In absentia- The BNSS permits the prosecution and adjudication of trials against proclaimed offenders in their absence. While aim of this new provision is to deter fugitives from fleeing and stall justice, but at the same time it fundamentally restricts the right of the accused person to defend themselves. Thus, violates the basic intrinsic human right of audi altrem partem.¹⁵

¹³ Verma. K. J. (2024).Bharatiya Nyaya Sanhita, 2023 (Offences and Penalties): A Commentary. Eastern Book Company

¹⁴Verma. K. J. (2024). Bharatiya Nagarik Suraksha Sanhita, 2023 (Criminal Procedure) : A Commentary. Eastern Book Company

¹⁵ id

13. Vague provision “terrorism”- The BNS provides for the new provision of "terrorist acts"¹⁶ to curb the terrorist act but leaves a room of discretion upon the officer (not below the rank of Superintendent of Police) to decide whether the general provisions i.e. BNS or the stringent provisions under Unlawful Activities (Prevention) Act (UAPA) would be invoked against the accused person without providing any guidelines on which such decision shall be based upon. This provision would not only draw a parallel provision i.e. with UAPA but also because of the discretionary power therein causes a high possibility of misuse of this provision especially at the time of bail. Thus, becomes a dangerous wildcard in criminal litigation

Positive Aspects

- 1. Reformatory Punishments** - The introduction of the community service¹⁷ as a new form of punishment which provides an opportunity to the culprit to serve the society and also provides a fair chance to reform himself. So, later can blend back in the society which could never have been achieved by the sending such person to the prison. This practice also progressive step towards the reformatory theory of punishment.
- 2. Deletion of Redundant provisions** - The provisions of the thugs were removed. The objective behind such removal might be because thugs no longer exist (a provision which otherwise also has become very redundant) and because to provide relief to De notified Tribes (DNTs) although there is lesser to no cases filed on these provisions. Still, it could be seen as welcoming move for the removal of any stereotypes attached with it.
- 3. Inclusion of IT provisions** – Inclusion of Information & technology Act provisions in many parts of the Code especially in BNSS whether in the form of the Audio-Video recording of the investigation site, while police visiting any place for the purpose of collecting the evidences and information. This is a welcoming move because it does not only help the justice system in proving the guilt of the accused but also helps the wrongfully accused persons to prove their innocence. Presence of the accused through audio video means¹⁸. Submission of the case for the confirmation before the high

¹⁶ Section 113 BNS

¹⁷ Section 4 BNS

¹⁸ Section 335 BNSS

court.¹⁹ The trial and proceeding also could be conducted through audio-video means²⁰ Making a win-win situation for both the parties. Nevertheless, maintaining a balance in the laws.

4. **Victim Centric Approach** - A new provision is added regarding the Witness Protection Scheme which provides protection to the witnesses from any threat coming from the accused from giving the evidence. This protection becomes very necessary in a high-profile case like in Asaram Babu case, Ram Rahim and other like cases where any witness who came forward to provide their testimony were either mysteriously disappeared or have withdrawn themselves as witness. Though the responsibility to do the same has been given to the state government. This protection would not only provide a statutory protection but also would encourage more people to come up in the case and provide their testimony in the case. Thus, help improve the justice system in India. This change especially provides for more victim centric approach to legislation.
5. No withdrawal could be made of any case unless an opportunity of being heard has been provided to the victim of the case; the discretion of which previously lies upon the state government and is often misused and stays unchecked for the benefit of the politically influenced accused. This new addition though not guarantees the adequate use but definitely puts a check on the use of this provision.²¹
6. Mercy petition ²²can be filed by the person convicted within thirty days of receiving notice from the jail superintendent regarding the dismissal if their Supreme court appeal or death sentence confirmation. Also, if there are multiple convicts then all can file within sixty days. This section corresponds to Article 72 and further provides statutory recognition of the same.
7. Introduction of new offences like organized crimes and petty organized crimes addresses and acknowledges the shift in modern criminality operations

Suggestions

1. The provisions should be more reflective of the democratic spirit rather be on the lines of the autocracy.
2. The laws should be neutral, providing remedy to both the genders equally.

¹⁹ Section 412 BNSS

²⁰ Section 530 BNSS

²¹ Verma. K. J. (2024). Bharatiya Nagarik Suraksha Sanhita, 2023 (Criminal Procedure): A Commentary. Eastern Book Company

²² Section 472 BNSS

3. The laws like that of adultery should not have been removed completely but be made equally available.
4. Similarly, there should not have been the complete strike down of Section 377.
5. In BNSS the police power should not have been increased arbitrarily but some checks and balances have introduced.
6. The due recognition should have been given to the DNA and related forensic technologies in the BSA.
7. There false filing of the women related cases should also have been introduced.
8. There should be minimum recognition be given to the men sexual and privacy rights in the new laws.
9. A great opportunity has been missed to revive the old dead provisions which could be a water shed moment like that of the right to represent.
10. Timelines should be introduced keeping view the long backlog in the system and even some provisions could have been introduced to reduce them.

Conclusion

In the end we can conclude that The new criminal laws played a major role in redefining the crimes and updating the old punishments. They aim to strike a balance between efficiency in criminal control and protection of individual rights. They have overthrown and changed many redundant provisions and punishments. But as we have discussed above there have been few missed opportunities which legislators could have ventured to carve out a more efficient criminal laws. New laws on one hand addresses a modern perspective by incorporating latest technologies and on the other hand they imbibe old law values in them as majority of the provisions are brought almost no to very few changes in existing ones. Overall new laws were brought not to revolutionaries the criminal justice system as proposed but a legislation brought to adapt to the new changes brought in the society in order to keep in pace with existing crimes. Thus, it is not wrong to say that though we have won a battle by introducing new criminal laws but still there is long war in enforcing these laws effectively.