

Significance Of New Criminal Laws in Today's India – An Analysis**By: Pradipta Nath, Independent Researcher****INTRODUCTION**

The new criminal laws will come into effect from 1st July 2024. The earlier laws namely Indian Penal Code, Code of Criminal Procedure and the India Evidence Act remind us about the British era and their imposed laws on us. New India while showing its leadership skills in the world, it also needs to have its own law which tallied with its culture and vision. In this article I have tried to furnish the main features of the new criminal laws and its significance with the 'India'. The new criminal laws will replace the erstwhile three criminal laws as furnished under: -

Sl. No.	Erstwhile Acts	New Replaced Acts of the erstwhile
1.	Indian Penal Code, 1860.	The Bharatiya Nyaya Sanhita, 2023.
2.	The Code of Criminal Procedure, 1973.	The Bharatiya Nagarik Suraksha Sanhita, 2023.
3.	The Indian Evidence Act, 1872.	The Bharatiya Sakshya Adhinyam, 2023.

It is noteworthy to mention that while giving reply in the debate about these new criminal laws, the Home Minister gave reply that the new laws concentrate in giving justice rather than on imposing only punishment to the offender. The intent of the legislatures was to act on the principle 'Justice delayed is justice denied' and serve justice to the victim at proper time, which is within three years as per the new laws. However, the legislatures debated over bringing these three new criminal laws, but as per the record, it is found that these acts were debated in the house of people when 146 opposition Members of Parliament were on suspension (100 people from Lok Sabha & 46 people from Rajya Sabha)¹. The three bills were passed with the least debate and without any hard time. There was hardly any scope of a good debate available for the opposition to provide feedback to the Government. In a democratic country the opposition plays an important role and without feedback no

¹ https://www.business-standard.com/india-news/new-criminal-laws-90-same-more-rigorous-than-colonial-ones-kapil-sibal-123122500736_1.html

communication is successful or complete. This new criminal law has been passed as per the principle of 'Sovereign Command'. But never to forget that the criticsers of Austinian theory state that not all sovereign command can be termed as law. The big question lies is what if the public or the subjects disobey the laws. In a democratic government only the laws which are recognized and accepted by the maximum number of people may be termed as law, others are always subjected to contentious, litigations, protest or even strike. Laws which arise chaos or disobedience cannot be termed as laws. The 'scope of 'rule of law' in this regard that these are three new legislations are laws at present being received the assent from the President after following the due process. Unless the new criminal laws are declared as 'unconstitutional' by the Court of Highest Standard i.e. the Supreme Court of India it will be law and the people are bound to obey. There is every possibility that we will get a new era of Judicial Activism in this regard keeping in view of the recent trends of Judiciary to serve only the 'Constitution'.

Before moving into the significance of the new criminal laws it is indeed essential to draw out the various features of the three new legislations. Those are laid down as under: -

THE BHARATIYA SAKSHYA ADHINIYAM, 2023 (BSA)

1. The Bharatiya Sakshya Adhinyam, 2023 replaces the Indian Evidence Act, 1972.
2. The BSA consists of 170 sections.
3. The legislatures have amended 23 sections, added 1 section and have repealed 5 sections in the new Act.
4. The legislatures have made changes in the new Act in the provisions related to 'Confessions', 'Relevancy of Facts', 'Burden of Proof'.
5. The new Act introduces admissibility of electronic or digital records as evidence.
6. The Act has expanded the scope of secondary evidence in the Court which now includes copies made from the original document by mechanical processes, counterpart of documents and establishment of oral accounts for documenting content.

7. The legislatures wanted to bring unified rule for admitting evidence in the court of law. The section 2(2) of the Act, states that words which are not defined in this Act, but have been defined in the Information Technology Act, 2000, the Bharatiya Nagarik Suraksha Sanhita, 2023 shall have the same meaning as assigned to them in the said Act and Sanhitas.

8. Relevancy of Facts under the Bharatiya Sakshya Adhiniyam, 2023: - Chapter II of the Relevancy of Facts contains the provisions on evidence of facts in issue and relevant facts, relevancy of facts forming part of the same transaction, motive, preparation and previous or subsequent conduct, facts necessary to explain or introduce fact in issue or relevant facts. The substance of these provisions are more or less remains same.

9. The noteworthy changes have been noted with regards to the section 12 of the Indian Evidence Act, 1972 dealing with the determination of damages. The substance of the section remains unchanged, but its language has been modified a bit in section 10 of the BSA, 2023. Similarly, provisions concerning admissions including illustrations have been dealt with minor alterations. For example, section 16 of the BSA, addressing of admission of the party or his agent. Previously this provision was covered in section 18 of the Indian Evidence Act, dealing with admission by party to proceeding or his agent, by suitor in representative character. Although the section has been modified, the substance of the provision is mostly identical.

10. Section 22A of the Indian Evidence Act regarding when oral admission as to contents of electronic records are relevant has been excluded from the BSA.

11. Regarding confession a substantial modification is evident in section 24 of the Indian Evidence Act. It previously stated that confession made by an accused person is irrelevant in criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person. However, in section 22 of the BSA, 2023, while preserving the essence of the former section two provisions previously contained in section 28 and 29 of the Act, 1972 are now included in the provisos of the section 22 of the BSA, 2023. These provisos allow for certain type of confessions to be relevant in the court of law. The first proviso found in section 28 of the Indian Evidence Act. It stipulates that confession can be deemed relevant if as per the opinion of the Court threat, coercion, inducement has been fully removed. The second proviso originally contained in section 29 of the Act, 1972. It states that

a confession does not become irrelevant merely it was made under a promise of secrecy or in consequence of a deception practiced on the accused person for obtaining confession or when the accused person was drunk or because it was made in answer to questions which he need not to have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

12. Section 25 and 26 of the Indian Evidence Act, address confessions made to a police officer have been consolidated in section 23 of the BSA, 2023 with the addition of a proviso. The new proviso provides that whenever a fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer so much of such information, whether it amounts to a confession or not, may be proved.

13. Section 39 of the BSA, previously section 45 of the 1972 Act, pertaining to the opinion of experts has been amended to specify that the opinion of the examiner of electronic evidence referred in section 79A of the Information technology Act, 2000, is a relevant fact for digitally stored information. This was formerly articulated in section 45A of the 1972 Act. Furthermore, 41 of the BSA, 2023 has consolidated the provision related to the opinion on handwriting and digital signature previously contained in section 47 and 47A of the 1972 Act without substantive alteration.

14. The chapter III of the BSA 2023 focuses on the facts which need to be proved. Within this chapter section 52 states deals with facts of which court shall take judicial notice. Section 52(1)(a) of the BSA, replicate section 57 (1) of the 1972 Act.

15. Section 52(1)(b) of the BSA, states that the courts shall take judicial notice on international treaties, agreements, and conventions with countries by India or decisions made by India at international associations and other bodies. Notable section 52 of the BSA excludes seals, proceedings, and sovereign concerning the United Kingdom and limits the scope of similar authority in India.

16. In chapter V of the BSA, specifically section 57 has been made some noteworthy changes regarding documentary evidence. Earlier this was provided under section 62 of the 1972 Act, new explanation has been incorporated in section 57 of the BSA, 2023 regarding primary evidence. These recognized instances where documents made using a uniform process, such as printing, lithography or photography where each is primary evidence of contents of the rest

but where they are copies of original, they are not primary evidence of the contents of the original. The electronic or digital records are recorded or stored; each file is primary evidence. The electronic record or digital record in proper custody produced before the court will be considered as primary evidence unless disputed. Video recording stored in electronic form or transmitted, each of the stored recordings will be primary evidence. An electronic recording stored in multiple storage spaces in a computer resource, each such automated storage including temporary files, is primary evidence.

17. Under section 58 of the BSA, previously section 63 of the 1972 Act, has been expanded and amended. Now it includes additional categories such as oral admissions, written admissions, and evidence of a person examining a document within the meaning of secondary evidence.

18. Section 61 of the BSA, formerly section 61 of the 1972 Act, on electronic and digital record simplifies the existing definition. It provides admissibility of an electronic or digital record, on the grounds that it is an electronic or digital record, shall have the same legal effect, validity, and enforceability as per paper records.

19. In the modification of section 74 of the new Act, it now covers both public and private documents. This effectively combines section 74 and section 75 of the Indian Evidence Act, 1972 while remaining identical in substance.

20. Section 81 of the BSA, 2023, regarding presumption as to gazettes in electronic or digital record has adopted the broader version of the earlier section 81A of the 1972 Act. An explanation has been added to clarify the term 'proper custody'. 21. Section 82 of the 1972 Act which deals with presumption about documents admissible in England, has been excluded from the new BSA 2023.

22. Section 88 of the BSA 2023 modifies the scope of section 86 of the 1972 Act which pertains to presumption as to certified copies of foreign judicial records. This modification excludes reference to the Great Britain dominions and adopts nomenclature indicating documents from any country beyond India.

23. Section 90 of the BSA 2023 as opposed to section 88 A of the 1972 Act, outlines the presumption concerning to the electronic messages as opposed to telegraphic messages as specified in section 88 of the 1972 Act.

24. Examination of Witnesses: Section 142 of the BSA 2023 pertaining to examining of witnesses, draws its essence from section 137 of the Indian Evidence Act, 1972. Despite difference in structure, their substantive content remained identical.

25. Leading Questions: Section 146 of the BSA 2023 pertaining to leading questions has undergone modifications. It now specifically states circumstances which will lead to leading questions. This marks departure from the more generic approach of section 141 of the 1972 Act which relied on the same suggestive nature of questions.

26. Production of documents: Section 165 of the BSA 2023, previously section 162 of the 1972 Act, regarding production of documents have been subjected to modification. The amendment introduces a proviso prohibiting the production of any privileged communication between ministers and the President of India.

THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 (BNSS)

1. Thia Bhartiya Nagarik Suraksha Sanhita, 2023 supplanted the erstwhile Code of criminal Procedure, 1973. This Sanhita 2023 comprises 531 sections which is a notable expansion of 484 sections found in the preceding Cr.Pc.

2. This Sanhita 2023 has amended 177 sections incorporating 9 additions and repealing 10.

3. The noteworthy deletions includes section 8, 10, 16, 17, 18, 27, 144A, 153, 197(3B), 355 from the code of criminal procedure 1973. In Parallel section 86 on identification and attachment of property of proclaimed person and 479 regarding bail and bail bond has been incorporated in the Bhartiya Nagarik Sanhita, 2023. These changes have been made to fit into the contemporary context of today's world.

4. Chapter I of the Sanhita 2023, section 2 introduces the provisions audio-video electronic and electronic communication, under the definition clause.

5. Chapter II of the Sanhita 2023, section 20 regarding directorate of prosecution previously section 25A of the Cr.Pc, here their power and function have been introduced.

6. Section 25 of the Sanhita 2023 earlier section 31 of the Cr.Pc, deals with sentences of cases of conviction of several offences at one trial. The court now decides that the punishment should run concurrently or consecutively weighing the gravity of the offences.
7. Chapter V section 35 formerly section 41 of the Cr.Pc addresses when the police may arrest without warrant. Now if the offence is punishable less than 3 years, permission from the DSP is required.
8. Section 43 of the 2023 Sanhita, previously section 46 of the Cr.Pc deals with arrest how made now simplifies the procedure for making arrest especially for cases when it comes to handcuffing.
9. Section 51 of the Sanhita, 2023, formerly section 53 of Cr. Pc dealing with examination of accused by medical practitioner at the request of police officer. A new provision mandates that the medical examination report is to be forwarded to the investigating officer by the medical practitioner without any delay.
10. Chapter VI section 63 of the 2023 Sanhita, previously 61 of the Cr.Pc deals with the forms of summon and the provision of electronic commissions of summons is now included.
11. Chapter XI section 157 of the 2023 Sanhita, formerly section 138 of the Cr.Pc now as a provision stating that proceedings under section 157 shall be completed within 90 days may be extendable to 120 days reasons to be recorded in writing.
12. Chapter XIII section 193 of the Sanhita 2023, formerly section 173 of the Cr.Pc deals with the report of the police officer on completion of investigation. A time limit of 90 days is fixed for filing of the chargesheet and after this the investigation can only be conducted for another 90 days.
13. Chapter XVII section 230 of the 2023 Sanhita, formerly 207 of the Cr.Pc talks about supply to the accused of a copy of the police report and other documents. A new provision is inserted regarding the supply of documents in electronic form.
14. Section 232 of the BNSS 2023, previously section 209 of the Cr.Pc deals with commitment of cases to the sessions court when offence is exclusively triable by it. The new provision states that the proceeding under this section shall be completed within a period of ninety (90) days from the date of taking cognizance, and such period may be extended by the

Magistrate for a period not exceeding one hundred and eighty (180) days for the reasons to be recorded in writing.

15. Chapter XIX section 250 of the BNSS 2023, formerly section 227 of the Cr.Pc deals with the provision on discharge of the accused person, which states that the accused may prefer an application of discharge within a period of 60 days.

16. Section 251 of the BNSS, 2023 formerly section 228 of the Cr.Pc deals with framing of charge and a provision is inserted with a time limit for the court for framing of charges is given that is sixty (60) days.

17. Chapter XXVI section 360 of the BNSS previously section 321 of the Cr.Pc deals with withdrawal from prosecution. The new rule is no withdrawal is allowed without an opportunity of being heard to the victim.

18. Chapter XXIX section 392 of the BNSS 2023, formerly section 353 of the Cr.Pc states with a fresh provision that the judgement must be pronounced within 45 days after the trial and they have to be got uploaded in online within 7 days of the judgement delivery date.

19. As per the BNSS 2023 the Police will have to register a FIR within three (3) days of the complainant. Further for cases with punishment between 3-7 years the police will register FIR after a preliminary investigation.

20. Chapter XXXIV section 474 of the BNSS, earlier section 433 of the Cr.Pc talks about power to commute sentences. Now the provision is inserted regarding limitation of power of the government to commute sentences.

21. Chapter XXXVI section 499 of the BNSS, formerly section 451 of the Cr.Pc which deals with the order of custody and disposal of property pending trial in certain cases. Now the provision includes that the court is under obligation to prepare a description of the property within 14 days.

THE BHARATIYA NYAYA SANHITA, 2023 (BNS)

1. The Bhartiya Nyaya Sanhita 2023 replaces the old Indian Penal Code, 1860 marking a consequential transition.

2. This replacement comprises 356 sections a notable reduction from the 511 sections of the IPC.

3. In the process of this transition substantial modifications have been made. A total of 175 sections have undergone alternation and 8 provisions have been newly introduced. Additionally, 22 sections have been repealed. Certain sections such as section 14, 18, 29A, 50, 53A, 124A, 103(2), 153AA, 264-267, 309-311, 376DA, 376DB, 377, 444, 446 and 497 have been removed from the erstwhile. On the other hand, section 48, 69, 116(3), 152, 226, 304, and 358 have been added to the BNS. These changes have been made to transform the legal code by a meticulous approach to address the contemporary legal intricacies and aligning with the system with evolving societal needs.

4. Section 2 of the BNS covers everything from section 6 to 52A of the erstwhile IPC. Section 2(10) defines the concept of gender. It states that “gender”—The pronoun “he” and its derivatives are used of any person, whether male, female or transgender. Explanation—“transgender” shall have the meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019.

5. Section 3 of the BNS addresses the general explanation and expressions, consolidating the aspects spanning from section 6 to 38 of the erstwhile IPC.

6. Section 4 of the BNS addresses the subject of punishment drawing inspiration from the erstwhile section 53 of the IPC. Notably community services have been introduced as a viable form of punishment. Furthermore section 11 of the BNS regarding solitary confinement a concept previously deal within section 73 of the IPC.

7. Section 20 of the BNS pertains to act of a child under seven of age. Previously section 82 of the IPC, have address the same provision.

8. Section 36 of the BNS, states provision regarding right of private defense against act of a person with mental illness. Previously this was provided in section 98 of the IPC. A noteworthy change has been made in this section is the introduction of the ground of mental illness.

9. Section 57 of the BNS states abetting commission of offence, by public or by more than ten persons. This is in consistent with the earlier provision section 117 of the IPC. Its worth

noting that the provision for providing punishment has been increased which may extend to seven years which is a departure from the previous provision of the IPC where the punishment could extend to 3 years.

10. Section 61 of the BNS, addresses criminal conspiracy, a subject previously covered in section 120A and 120B of the IPC.

11. The BNS has introduced a new chapter which is chapter V related to offences against women and children of sexual offences. This chapter serves as a consolidated repository about all offences pertaining to women and children streamlining the classification that was previously dispersed across various chapters.

12. Section 63 of the BNS pertains to offences of rape. This provision was previously situated in section 375 of the IPC. As per the exception, sexual intercourse or sexual act by a man with his own wife, the wife not being under 18 years of age is not rape. However, under the previous IPC, age of wife for not to constitute rape was 15 years. In 2017, the Supreme Court in the judgement of Independent Thought Vs. Union of India², read 15 years of age of this exception to section 375 of the IPC as 18 years of age for a minor wife within the ambit of rape offence.

13. Section 73 of the BNS, address the challenges pertaining to printing or publishing any matter in relation to any proceeding before a court with respect to offences relating to rape, sexual intercourse by a husband upon his wife during separation, sexual intercourse by a person in authority, sexual intercourse by employing deceitful means, etc, gangrape without the previous permission of the Court, shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to a fine. The explanation to this section explicitly clarifies that the printing or publishing of judgement from any High Courts or the Supreme Court does not constitute an offence.

14. Section 80 of the BNS specifically deals with the dowry death previously found in section 304B of the IPC. This provision represents an essential component of the Act comprehensive approach to addressing offences against women and children.

15. Section 100 of the BNS pertains to culpable homicide as provide in section 299 of the previous IPC. Section 101 of the BNS addresses to the subject matter of murder, aligning

² (2017) 10 SCC 800

with the provision of section 300 of the IPC. A noteworthy development resulting from the criminal law amendment involves the incorporation of the 'Terrorist Act' into section 113 of the BNS. This encompasses actions executed with intention of threatening or likely to threaten the economic security of India. Such actions which are causing or have the potential to cause damage to the monetary stability of India, through the production, smuggling or circulation of counterfeit Indian currency, coins, or other material fall within the purview of Terrorist Act. Furthermore, acts that pose a threat to unity, integrity, sovereignty, and security of India, inducing terror in the populace are also encompass by this offence. This act encompasses instances of death or property damage resulting from the use of bombs, explosives, firearms, or lethal weapons as well as poisonous, noxious gases or chemicals or any other hazardous substances whether biological, radioactive, nuclear or otherwise of hazardous nature. The section prescribe punishment as death or imprisonment for life. Those engage in conspiracy, abetment, incitement, or those knowingly facilitates terrorist acts may be subjected to imprisonment not less than 5 years extendable to life imprisonment.

16. Section 130 of the BNS pertains to assault correlating with the provisions of section 351 of the IPC. Following this section 138 of the BNS addresses the provision regarding offence of abduction aligning with the stipulation of section 362 of the IPC.

17. Section 139 of the BNS pertains to kidnapping or maiming the child for the purpose of begging with maximum prescribed punishment as life imprisonment.

SIGNIFICANCE OF NEW CRIMINAL LAWS IN TODAY'S INDIA

The criminal law reforms are not a new concept. The judiciary through its judgement or the legislatures have been time to time made reforms in the criminal law. However, these new criminal laws are not only reforms but also a shift from the colonial laws into desi laws. There have been amendments made due to happening of certain important events like Mathura rape case, Nirvaya etc. we have also noticed change in the year 1973 where the code of criminal procedure was drastically changed.

These criminal laws have been reforms because of the following reasons: -

1. Modernizing the laws as per the present society. Human being is an important aspect of the democratic country. Despite the constitution guarantees certain right to the individual in Part III of the constitution, there have been a trend for the last decade that these rights were systematically removed. The State or the system were the main factor towards this removal. The reinstatement of the individual freedom as guaranteed by the constitution was very important from the aspect of criminal law. These new criminal laws ensures that the laws are better suited with the modern society than the erstwhile.
2. Accountability of the institutions and the investigation agencies.
3. Fair Procedure and fair investigations are the first step towards ensuring proper justice. Proper and fair investigation will lower the burden of criminal cases by unearthing the fact on false accusation. Fair investigation also ensures the right of the victim as well as the accused.
4. The provision on speedy Justice has been provided in the new laws to ensure speedy disposal of criminal cases. This is a fundamental right which have been often highlighted by the Supreme Court in many judgements.
5. The new criminal laws also took note on the victimology and contains many beneficial provisions with this respect which have been discussed here above.

CHALLENGES TO IMPLEMENT OF THE LAWS

1. There is no infrastructure of adequate training to the stakeholders.
2. The courts lacks proper infrastructure like computer, manpower, etc.
3. The rule of law vs human right eg. Handcuffing under the new law, Policing State etc.
4. The prosecutors are mostly in their mid-50s. These age group men may find difficulty to learn computer, digital evidence etc. Further the new laws and the old laws will be running parallel to each other will make the stakeholders to put an extra effort.
5. It is quite natural that when some drastic changes took place with regards to a law, mass protest is inevitable. Ther mind set of the people must be quite accommodative to bear and sustain the changes.

6. It will take time to justify that whether the loopholes are sufficiently addressed or not. To justify this mainly three parameters are there i.e., how far or for how many cases timely justice as provided in the new BNSS have been served, secondly does the accused get a fair trial or not? And thirdly whether the victim has been provided with enough compensation?

7. The BNS mandate to inform the police officer or the magistrate if death is caused by a driver of a person by rash and negligent driving or else the accused will be imprisoned up to 10 years. The legislature did not take mob lynching into consideration of the accused person or other accompanied family members. Further the magistrates are always not accessible and there are chances that the accused person if goes before the Magistrate to inform, he will be taken into custody or take suo moto cognizance of the criminal case.

CONCLUSION

The name of the new codes is in Sanskrit and the language inside the act is in English. Sanskrit is our language. The new laws concentrate in justice and not on punishment. The new laws comprised some good provisions like digitization, involvement of forensic science investigators, strict timeline for submission of chargesheet, video recordings of the statements etc. In furtherance of all these good laws, we also need to think that whether Indian Judiciary especially the subdivision courts have the requisite infrastructure to accommodate the implementation of the new provision. Further the from sub-division courts to all the High Courts they don't usually takes up the delegated matters of the absentee judge else the bail matters and automatically next date is provided to the litigants which means delayed justice. This situation is more pathetic in subdivision and District courts and has not been addressed in the BNSS.

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