

Replacing the Colonial Legacy: An Analysis of the Transition from IPC, CrPC and Evidence Act to Bharatiya Criminal Codes

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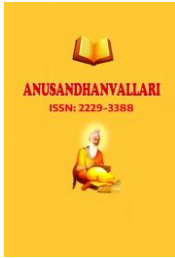
Abstract: The implementation of the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhiniyam, 2023 has been a major shift in the way criminal justice is administered in India. These legislations supersede the colonial era laws such as the Indian Penal Code of 1860, Code of Criminal Procedure of 1973, and the Indian Evidence Act of 1872 which were in force in India for a long period and covered the content of substantive criminal law, criminal procedure, and the evidentiary standards. The transition is the Government's effort to decolonise the criminal justice system and bring it in line with the constitutional morality, technology and needs of society. This article critically analyzes the philosophical underpinnings, structural changes and implications of the new Bharatiya criminal codes. It considers the key changes to the colonial model, such as the replacement of community service and the formalisation of organised crime and terrorism, the digitalisation of the criminal process, the modification of evidence and the improvement of victim-centred approaches. The study also assesses whether the new acts will actually increase accessibility, efficiency and justice or if they simply code language into the laws. The article looks at the doctrinal, procedural, and human rights aspects of the reforms through comparative analysis and also seeks to identify challenges that will likely arise during implementation of the reforms. Finally the paper notes that 'the viability of the Bharatiya criminal codes will be determined by judicial interpretation, institutional readiness and enforcement apparatus'.

Keywords: Bharatiya Criminal Codes, The end of colonial criminal law, Decolonisation of Criminal Law, Criminal Justice Reform, Constitutional Morality, Comparative Criminal Jurisprudence

1. Introduction

The development of criminal law in India is intertwined with the British rule in India. Prior to the codification of criminal laws, India had some regional, religious and customary laws. Disputes and criminal acts were regulated by a variety of laws in various parts of the country, including Hindu law, Islamic law, local laws and princely laws. The British East India Company gradually brought in a uniform legal administration as a measure to strengthen the colonial government and control the political aspects of Indian territories. The codification of criminal law was thus a political act as well as a legal one, with the object of consolidating power and creating uniform administration across British India.

Under the leadership of Lord Thomas Babington Macaulay, the Indian Penal Code 1860 was the first complete criminal code in India. It came into effect in 1862, to establish a comprehensive system of offenses and the punishments for them. The IPC was a Victorian, colonial and utilitarian document. It brought predictability and uniformity to the criminal law, but also represented colonial aims of maintaining good order and suppressing dissent. Sedition under Section 124A was an example of how criticism of the State was made illegal. Likewise, the clauses relating to unlawful assembly, disturbances of the public peace and offences against the State were aimed at the protection of colonial as opposed to democratic freedoms.



The Code of Criminal Procedure has gone through a few stages of development prior to the adoption of the Code of Criminal Procedure 1973. Previous procedural legislation that was passed during the British regime was designed to control police authority, arrests, investigation, trial and court proceedings. The CrPC established a codified procedure for criminal adjudication and established the powers of magistrates, police and courts. But it was frequently the case that the procedures side-lined individuals in the name of state authority. During the colonization period, arrest powers were wide, the practice of preventive detention was commonplace, and the procedures to protect the rights of the arrested were relatively weak. Despite independence, some of the colonial features persisted in the Indian Criminal justice system.

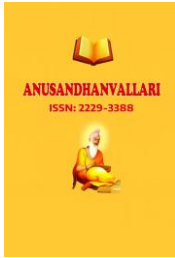
Sir James Fitzjames Stephen has framed the Indian Evidence Act, 1872 which provided a uniform law of evidence for all around India. Prior to enactment, there were some differences in the rules of evidence between communities and presidencies. The Act provided guidelines on the admissibility and relevance of evidence, burden of proof, examination of witnesses, documentary evidence, and presumptions. The law recognized the importance of using evidence in the court proceedings, but it was written in a nineteenth-century context where oral evidence and paper documentation were the primary modes of legal proceedings. The legislation wasn't supposed to foresee the developments of technology, cybercrime, transactions in digital form or digital communications that are now integral to today's litigation practice.

India's post-Independence (1947) Constitution provided for fundamental rights, equality before law, liberty, dignity and due process. The structure of the colonial criminal justice system, however, largely remained unchanged. Even after the transformation, some of the provisions of the IPC, CrPC and Evidence Act remained to be colonial in nature. Critics said that the criminal justice system continued to be too punitive, police-driven, slow and inaccessible to the common citizen. Postpone investigations, custody-based detention, violence during police custody, procedural complexity and antiquated evidentiary laws highlighted the shortcomings of colonial era laws in present-day India.

The judiciary went over and above its duty and sought to “constitutionalize” the criminal law by reading into the protections offered by Article 21 of the Constitution. The Supreme Court of India gave a liberal meaning to life and personal liberty and highlighted the rights to fair trial, legal aid, speedy trial and prevention of arbitrary arrest. Several areas of criminal procedure and evidence law were changed by landmark decisions. However, the legislative framework perpetuated colonial legislation. With the rise of new challenges like cybercrime, terrorism, organized crime, mob violence, transnational offences and digital evidence, the need for extensive criminal law reforms became prominent in India.

Politically and academically, the call for decolonization of criminal laws came into the world. The reformists contended that it was necessary to have criminal laws in a new India which would embody the ideals of the Constitution of India, democratic ideals, the indigenous tradition of law and the present realities of life. The Government has therefore introduced Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Adhinyam, 2023 which are to replace IPC, CrPC and Evidence Act respectively. These acts are one of the biggest legislations in criminal law in post-Independent India.

The replacement of colonial legislations by Bharatiya criminal codes marks not only replacement of the laws but also a change in the criminal jurisprudence ideology. The reform process is indicative of the State's attempt to modernize criminal justice administration and to symbolically move Indian law away from the colonial history. But the success of these reforms will rely on whether the new legislation truly shifts the philosophy and operation of criminal justice or merely substitutes the old terminology and expanded provisions.



2. Decolonisation and the Philosophy behind the Bharatiya Criminal Codes

The Bharatiya criminal codes have been touted as a revolutionary measure towards decolonizing India's legal system. The term "decolonization" in the legal context implies the elimination of colonial mentalities, systems and law designed to support imperial governance and not democratic constitutionalism. The Government was claiming that the IPC, CrPC and Evidence Act were all colonial products designed to stamp out Indian, and keep the British rule. Hence, the Bharatiya criminal codes were introduced with the goal of eradicating the colonial mentality and establishing a law-dealing system that would cater to the needs of modern India.

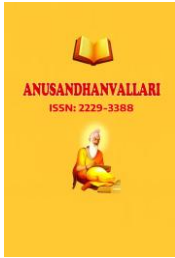
This philosophy of the new criminal laws is closely related to constitutional nationalism and the concept of Indianisation of law. The names Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhinyam represent a move towards building a local identity of the law. Colonial terminology is being replaced and this, supporters claim, represents the Indian legal evolution as a sovereign nation and its cultural independence. The reforms are designed to make legislation citizen-centric, technologically advanced, victim oriented and will ensure efficiency of justice.

The one of the main changes in philosophy highlighted in the Bharatiya criminal codes is the de-emphasis of punishment and the emphasis on administration of justice. The Government pointed out that while the old colonial legislation had emphasized mainly the maintenance of imperial order and penal control, the new acts are designed to emphasize the provision of justice, protection for the victim and promotion of the general welfare of the people. In the example of community service as a punishment for minor offences provided in the Bharatiya Nyaya Sanhita, it is evident that the reformatory approach was envisioned. The use of modern terminology such as organized crime, terrorism, mob lynching and cyber offences also shows that an attempt was made to make the criminal law in line with the social realities of the modern period.

Another important ideological basis for the reforms is the modernization of the procedures with the help of technology. The Bharatiya Nagarik Suraksha Sanhita introduces provisions regarding electronic FIR, digital summons, videography of searches and seizures, electronic communication during investigation, and virtual court proceedings. Such measures are designed to minimise delay, enhance transparency and facilitate access in the criminal justice system. In the same way, the Bharatiya Sakshya Adhinyam also broadens the scope of electronic evidence, and digital recording as primary evidence under certain conditions.

The concept of a victim-centered approach to justice has also been increasingly focused within the new criminal codes. In times gone by, the Indian criminal justice system was faulted for being too state-centric with a limited role for the victims following the prosecution has commenced. The Bharatiya reforms try to enhance the role of the victim, witness protection, and ensure timely investigation in a timely trial. The time-bound investigation procedures, mandatory forensic examination in serious offences, and digital case management systems are geared towards the efficiencies and decrease in pendency.

Though these goals, a number of scholars have doubted that the reforms are a true decolonization. Many of the controversial colonial provisions have been carried over so in essence they are not being altered. The new framework retains the principles of preventive detention, the police powers and the state security provisions which are so specific and the great powers of the executive. For example, although sedition has been removed from the IPC, new sections have been added under which any act which poses a threat to the sovereignty and integrity of India is punishable, leading to debates about how these sections might be misused against dissent and free speech. For this reason, critics argue that decolonization is not achieved merely by symbolically changing the words used. Thus, it is argued by critics that a symbolic shift in language is not enough for decolonization to occur if there is no corresponding shift in relationship between the state and the citizens.



A second issue is the growth of State authority in criminal administration. Under the Bharatiya criminal codes, a few provisions empower investigative powers and surveillance. Human rights experts are concerned about the over-monitoring, information misuse and procedural abuse that can occur when privacy protections are missing from technological integration. Likewise, the Bharatiya Nagarik Suraksha Sanhita's prolonged police custodial duration have been criticized for their potential to escalate custodial violence and arbitrary police arrest.

A discussion on the philosophy of decolonization also has to be located within the concept of constitutional morality. The dignity, equality, liberty, due process and rule of law are essential to the constitutional morality behind criminal law. Thus, the effectiveness of the Bharatiya criminal codes requires not only the replacement of the colonial codes but also to be compatible with the rights enshrined in the Constitution and democratic accountability. The ways in which the law is enforced must be balanced with the protection of civil liberties in the process of legal reform.

The shift to criminal codes of Bharatiya origin also mirrors the broader political and cultural discussions on Indian national identity, the sovereignty of law, and institutional overhaul. Backers are seeing the reforms as a much-needed redressing of colonial history, but opponents warn that the reforms could lead to too much central control. In the end, the meaning and impact of the changes to philosophy will be decided in court, through practice and in everyday life in the criminal justice system.

3. Comparative Analysis of IPC and Bharatiya Nyaya Sanhita, 2023: Redefining Crimes and Punishments

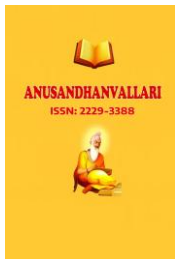
The Bharatiya Nyaya Sanhita, 2023 is the successor of the Indian Penal Code, 1860 which had been the substantive criminal law of India for over 150 years. The IPC was seen as one of the most enduring acts of colonialism and was the backbone of Indian criminal jurisprudence. The Bharatiya Nyaya Sanhita aims to update and modernize the substantive criminal law, while accommodating new forms of crime in today's society. While the structure and some aspects of the IPC remain the same, there are significant conceptual, procedural and punitive changes within the BNS.

Organised crime and terrorism are separate offences on the BNS and this is one of the most important features of the BNS. The IPC did not extensively focus on organized criminal syndicates or transnational criminal networks. The BNS acknowledges the escalating danger of organised crime, such as trafficking, contract killings, financial crimes and criminal enterprises using cyber technology. Likewise, there is explicit recognition of terrorist acts for purposes of national security within substantive criminal law. These measures are a response to the State's concern about security issues that are changing in a globalized world.

The BNS also introduces mob lynching as one of the criminal offences. The rise in the frequency of religious, caste, rumour and social tension-related mob violence over the past few years raised concerns among the public over collective violence and lawlessness. The BNS has single-handedly called for more robust legislation against extra-judicial violence and vigilantism by designating mob lynching as a crime. Overall, this reform serves as an expression of the country's responsiveness to social realities at the time that were not foreseen at the time of IPC preparation.

One other significant reform is the implementation of community service as a penalty for minor offenses. They used mainly imprisonment, fine, and death penalty as their means of punishment. Community service is incorporated into the criminal justice system and demonstrates the approach of reformative and restorative justice. It aims to alleviate the prison overcrowding and foster social responsibility and rehabilitation among criminals being charged with minor offenses. This shift is meant to humanise the criminal justice system, to try and de-emphasise over-reliance on imprisonment.

There are also a number of changes in the BNS that alter some crimes against women and children. The provisions relating to sexual offences have been strengthened, including provisions on exploitation, trafficking and crimes



against minors, with a gender-sensitive approach taken. Criminal law reforms aim to include the commitment to dignity, equality and protection of vulnerable groups. But there are ongoing discussions about the strength of protection for marital rape and the need for sexual offence provisions to be gender neutral.

This is one of the contentious issues, namely offences against the State. Sedition under Section 124A of IPC has been formally removed but the BNS introduces a new section that criminalises actions that are prejudicial to the sovereignty, unity and integrity of India. Some critics say that the measures could be similar to the restrictions that the sedition laws imposed and could limit freedom of speech and political opposition. Some provisions are very broadly worded, causing concerns about their potential use against activists, journalists, and opposition.

The BNS also focuses more on cybercrime and electronic communication. In today's digital era, issues such as electronic manipulation, electronic harassment, online impersonation and digital fraud are becoming more relevant. Aside from special laws like the Information Technology Act, the BNS merges a number of issues of cyber into the body of the criminal law. This shows that criminal law is a law that needs to evolve with the change of the technology.

Nevertheless, some researchers note that there is a significant degree of continuity between the IPC and the BNS. Many provisions continue to be essentially the same, with different numbers, wording or categories. Some critics thus claim that the BNS is a half-step reform not a full step revolution. There's also a question about whether stricter punishments and greater criminalization does the right thing for justice delivery or just makes it easier for the state to enforce punishment.

There is continuity and change when comparing IPC and BNS. The BNS brings up-to-date some elements of substantive criminal law and includes new crimes not covered by nineteenth-century legislation. Represents changing social issues around technology, organized crime, national security and victim protection. But the issues of civil liberty, overcriminalization and security vs freedom are still subject to debate. The success of the BNS will rely on how it is applied, interpreted and adopted by the judiciary, and whether it fits in with the principles of the Constitution.

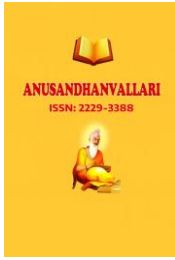
4. Procedural Transformation under Bharatiya Nagarik Suraksha Sanhita, 2023: Technology, Investigation and Fair Trial

The Bharatiya Nagarik Suraksha Sanhita, 2023 supersedes the Code of Criminal Procedure, 1973 and makes sweeping changes to the procedure of the system, aimed to bring it up to date. While keeping a core procedural framework of the CrPC, the BNSS has put emphasis on technological integration, efficiency, transparency, and on a victim-centred investigation. Some of the key changes under the bill include electronic FIRs, digital summons, videography of searches, virtual hearing and the requirements of forensic investigation.

The one of the greatest reforms is the acknowledgment of electronic communication in the entire criminal procedure. Complaints can be filed by citizens through electronic means and zero FIRs have to be registered by police authorities in certain cases without regard to the jurisdiction. The objective of digitalization is to make it easier to access services and to avoid any procedural hurdles which are experienced by victims, and especially women. The same applies to audio-video recording on search and seizure, which aims to enhance accountability and minimise allegations of fabricated evidence and custodial abuse.

The BNSS also requires forensic investigations for crimes punishable by seven years or more of imprisonment. It represents a case-management approach to crime adjudication based on evidence and that is meant to minimize wrongful conviction resulting from problematic investigation practices. Prosecution is expected to be bolstered and become more reliable thanks to scientific methods of investigation.

But there have been concerns over the broadening police custody and greater executive discretion. Enhanced procedures, however, should not infringe on protections against arbitrary arrest, custodial violence or abuse of



power, human rights advocates say. The right to fair trial as guaranteed under Article 21 of the Constitution will continue to be at the heart of BNSS procedural reforms' legitimacy appraisal.

Digital Evidence and Modern Justice is the fifth book in the series titled “Evidentiary Reforms under Bharatiya Sakshya Adhiniyam, 2023.”The fifth book of the series on “Evidentiary Reforms under Bharatiya Sakshya Adhiniyam, 2023” is titled Digital Evidence and Modern Justice.

Bharatiya Sakshya Adhiniyam, 2023 is the new Evidence Act 2023 which is to supersede the previous Evidence Act, Indian Evidence Act 1872 and aims to modernize the evidence law in line with technological advancements. The colonial Evidence Act was designed in a day and age when the primary source of evidence was oral and written documents. Today, however, digital communication, electronic transactions, surveillance systems, social media and cyber infrastructure are all more and more relied upon by the contemporary society. The BSA is working to meet the challenges of these realities in part by broadening the scope of electronic evidence.

The new Framework gives a greater evidentiary status to electronic and digital records. Emails, text messages, server logs, digital signatures, cctv footage, electronic communications and cloud-based records have more weight. The act also aims at streamlining the admissibility procedure with regard to electronic evidence.

The reform will ease the efficient prosecution of cybercrime, financial crime, and the prosecution of digital offences in which electronic evidence is the primary evidence, as well as the prosecution of offences of terror. Meanwhile, authenticity, tamper, privacy and data protection concerns are still of great importance. This balance between technology admissibility and standards of procedural fairness and reliability are issues which have to be carefully considered by the courts.

5. Constitutional challenges, Human rights concerns and future of the criminal justice system in India

The Bharatiya criminal codes pose important constitutional and human rights issues. The reforms aim to change and modernize the country, while also pursuing decolonization, but there are some aspects that could possibly be at odds with civil liberties and democratic freedoms. There are issues that need a constitutional analysis of expanded police powers, ubiquitous national security measures, privacy and surveillance issues, and the discretion of police procedures.

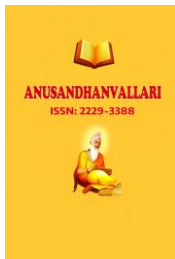
The right to life and personal liberty guaranteed under Article 21 of the Constitution includes the right to a fair trial, the rule of law, dignity and protection from arbitrary state actions. Hence, all the Bharatiya criminal codes need to be uniform with the constitutional morality. The role of judicial interpretation will become very important in this regard to ensure that criminal justice reform is not to the detriment of the fundamental rights.

Another major difficulty is the preparedness of the institutions. Technological and procedural changes need to be implemented successfully by police, prosecutors, forensic experts, judges and legal practitioners, who must be properly trained. Modernization of the legislative is important but without the right infrastructure, digital capacity and accountability mechanisms, this may not lead to meaningful change.

A key challenge for the future of India's criminal justice is to seek a balance between efficiency and liberty, security and constitutionalism, and modernization and protection of human rights. The Bharatiya criminal codes are a historic step in law and yet their efficacy will only be tested in practice.

6. Conclusion

The abolition of IPC, CrPC and Indian Evidence Act and their replacement by Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam was one of the most important changes in the criminal law system in independent India. This shift is an effort to decolonization of the legal system, modernize administration of criminal justice and bring criminal jurisprudence to line with technology and current realities of



society. The new enactments bring new reforms on the topics of organized crime, terrorism, digital evidence, electronic procedure, forensic investigation and victim-centric justice.

Meanwhile, the reforms have prompted extensive discussion about both constitutional and human rights issues. Issues such as freedom of speech, police powers, surveillance, procedural protections, and executive rights continue to be a key part of the debate about the legitimacy of the new criminal codes. But critics say that while everything has changed in the nomenclature and organization, some colonial elements remain alive.

The mere enactment of the Bharatiya criminal codes is not sufficient to make them successful; they will be successful only if they are effectively implemented and interpreted, institutional preparedness and constitutional accountability. Legislative changes alone are not enough to change criminal justice if it is not accompanied by clear policing, fair and independent judicial system, forensic services, legal awareness and security of civil liberties. The Bharatiya criminal codes are thus not only an opportunity, but a challenge to the developing constitutional democracy in India.

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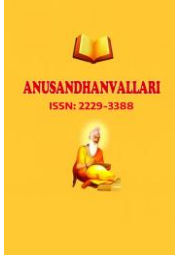
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