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REFORMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM: A CRITICAL ANALYSIS OF THE NEW CRIMINAL LAWS

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ABSTRACT

India's criminal justice system underwent its most significant transformation since independence when the Bharatiya Nyaya Sanhita (BNS), 2023, the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, and the Bharatiya Sakshya Adhiniyam (BSA), 2023 replaced the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872 with effect from 1 July 2024. This paper examines the background, rationale, and principal provisions of these three codes, comparing them against their colonial-era predecessors to identify what has genuinely changed and why. It evaluates the new laws' claim to make the justice system more efficient, technology-enabled, and victim-centric through provisions such as the Zero FIR, electronic FIR, mandatory forensic investigation for serious offences, time-bound trial timelines, and community service as a form of punishment, while also engaging critically with concerns raised by legal scholars, civil liberties organisations, and constitutional petitioners regarding expanded police custody powers, ambiguous drafting, and uneven implementation. Adopting a doctrinal and comparative methodology, and drawing briefly on the United Kingdom's criminal procedure framework for context, the paper argues that legislative reform alone is insufficient: the ultimate success of the BNS, BNSS, and BSA depends on institutional capacity, judicial oversight, and consistent, rights-respecting implementation across India's diverse states. The paper concludes that while the new codes

mark an important structural and symbolic departure from colonial-era criminal law, meaningful reform of the criminal justice system remains a continuing project rather than a completed one.

KEYWORDS

Criminal Justice System; Bharatiya Nyaya Sanhita; Bharatiya Nagarik Suraksha Sanhita; Bharatiya Sakshya Adhiniyam; Criminal Law Reform; Justice Delivery

1. INTRODUCTION

The criminal justice system is the framework through which a state defines wrongful conduct, investigates offences, prosecutes the accused, and delivers justice to victims while safeguarding the rights of the accused. Its legitimacy rests on being fair, timely, and accessible. For over a century and a half, India's criminal justice system operated on three statutes drafted by the British colonial administration: the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC, itself a re-enactment of an 1898 predecessor), and the Indian Evidence Act, 1872. These laws were framed primarily to maintain colonial control and were not designed around the constitutional values of liberty, equality, and dignity that independent India later adopted.

Over time, the shortcomings of this framework became difficult to ignore. Trials routinely stretched across years, sometimes decades; the pendency of criminal cases in Indian courts reached levels in the tens of millions; conviction rates remained low; and undertrial prisoners came to form the majority of India's prison population, many held for periods disproportionate to the offences they were accused of. The laws had also not kept pace with technological change: they contained no meaningful framework for electronic evidence, cybercrime, or digital investigation, despite these becoming central to modern criminal activity.

It is against this background that Parliament enacted the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023, which received presidential assent in December 2023 and came into force on 1 July 2024, replacing the IPC, CrPC, and Evidence Act respectively for offences committed on or after that date. The government has described this as a decolonisation of criminal law and a shift from a punishment-oriented framework to a justice-oriented one.

This paper does not attempt an exhaustive, section-by-section comparison of the old and new codes. Instead, it takes an overview approach, identifying the changes that matter most to how justice is actually delivered, situating them against the problems they were meant to solve, and critically assessing whether they are likely to achieve that objective.

2. RESEARCH QUESTIONS

1. Why were reforms to India's criminal laws considered necessary?
2. What are the major substantive and procedural changes introduced by the BNS, BNSS, and BSA?
3. Do these changes genuinely improve the efficiency, accountability, and inclusiveness of the criminal justice system, or do they largely reproduce the older framework under new names?
4. What challenges affect the implementation of these laws, and what further steps might strengthen them?

3. OBJECTIVES

1. To examine the historical and practical need for reform of India's criminal laws.
2. To identify and analyse the key changes introduced by the BNS, BNSS, and BSA at an overview level.
3. To critically compare these changes with the position under the IPC, CrPC, and Evidence Act.
4. To evaluate the early implementation experience of the new codes, including the concerns raised by courts, scholars, and civil society.
5. To recommend measures that could strengthen the reform's practical impact.

4. RESEARCH METHODOLOGY

This paper adopts a doctrinal method, relying on statutory text, government notifications, Law Commission and Parliamentary Standing Committee material, judicial pronouncements, and secondary academic and journalistic commentary. It also adopts a comparative approach, briefly situating India's procedural reforms against the criminal procedure framework of the

United Kingdom. Given the overview nature of this paper, the analysis focuses on the most consequential changes rather than a clause-by-clause reading of all three codes.

5. BACKGROUND AND NEED FOR REFORM

India's three principal criminal statutes were products of colonial governance rather than constitutional democracy. The Indian Penal Code, 1860, drafted under Lord Macaulay, was designed substantially to protect colonial authority and maintain public order as understood by an occupying administration. The Code of Criminal Procedure, 1898, later re-enacted in 1973, and the Indian Evidence Act, 1872, were similarly products of that era, built around institutions, technologies, and assumptions that have since changed beyond recognition.

Even after independence, these statutes were retained with incremental amendments rather than being substantially rewritten, and by the twenty-first century, a considerable gap had opened between the letter of the law and the realities of policing, evidence, and trial in a digital, densely populated democracy. Several practical problems made reform difficult to postpone. Case pendency in Indian courts, particularly at the subordinate level, had reached extremely high levels, with criminal matters forming a large share of the backlog. Trials for serious offences routinely took years to conclude, undermining both the presumption of a fair, timely trial for the accused and timely justice for victims. Conviction rates for many categories of crime remained comparatively low, reflecting weaknesses in investigation and evidence-gathering rather than the merits of individual cases. India's prisons held a disproportionately large population of undertrial prisoners, many in custody for periods exceeding what they might have served if convicted, raising serious concerns about liberty and due process.

At the same time, the nature of crime itself had changed. Cybercrime, digital financial fraud, organised crime operating across state lines, and terrorism-related offences required legal tools that colonial-era statutes, drafted before electricity was universal, could not provide. Electronic evidence such as call records, CCTV footage, and digital communications had become central to modern investigation, yet the Evidence Act of 1872 offered only a thin and often contested basis for admitting such material. It was this combination of chronic institutional strain and technological obsolescence that gave the government its stated justification for replacing the three colonial-era statutes with the BNS, BNSS, and BSA.

6. KEY CHANGES INTRODUCED

Rather than surveying every provision, this section highlights the changes most central to how the reformed system is meant to function differently from its predecessor.

Investigation and the Zero FIR / e-FIR: Under the BNSS, the Zero FIR, previously a matter of judicial direction rather than statute, has been given express statutory backing, requiring any police station to register a First Information Report regardless of where the alleged offence occurred, with the case later transferred to the station with jurisdiction. Electronic filing of FIRs and digital recording of statements are also formally recognised, intended to reduce the practical barriers victims previously faced in registering complaints.

Forensic investigation: For offences carrying a sentence of seven years or more, the BNSS makes it mandatory for a forensic expert to visit the crime scene, collect evidence, and have the process videographed. This is a significant shift from a system where forensic examination was often discretionary or delayed, and reflects an attempt to build stronger, more scientifically reliable evidence chains from the outset of an investigation.

Time-bound investigation and trial: The new framework introduces defined timelines at multiple stages, from filing of chargesheets to delivery of judgments, with a stated aim of closing cases within a much shorter window than has historically been typical. Provisions also permit trial in the absence of an absconding accused in certain circumstances, intended to prevent cases from stalling indefinitely.

Electronic and digital evidence: The BSA formally recognises electronic and digital records, including emails, server logs, and messages, as documentary evidence with the same legal standing as paper records, addressing a gap that had made the admissibility of digital evidence uncertain and frequently litigated under the old Evidence Act.

Victim-centred provisions: The new codes place greater emphasis on victim participation, including rights to be heard and to receive information about the progress of an investigation, and introduce community service as a distinct form of punishment for certain minor offences, an alternative previously unavailable in Indian criminal law.

Offences against women and children, and new categories of crime: The BNS consolidates and, in places, enhances provisions relating to offences against women and children, and introduces or clarifies offences such as organised crime, terrorism (defined for the first time within general criminal law rather than solely under special legislation), and mob violence, reflecting patterns of crime that the IPC did not directly address.

Taken together, these changes reflect a consistent theme: an attempt to make the process of investigation and trial faster, more technologically grounded, and nominally more attentive to victims, while consolidating and renumbering the underlying substantive offences.

7. CRITICAL ANALYSIS

A critical analysis of the BNS, BNSS, and BSA must weigh genuine improvements against legitimate concerns, rather than treating the reform as either an unqualified success or a purely cosmetic exercise.

On the positive side, the emphasis on forensic evidence, electronic recognition of digital records, and defined procedural timelines addresses real and long-standing weaknesses in Indian criminal investigation. Legalising the Zero FIR removes a significant practical obstacle that had previously deterred victims from registering complaints outside their home jurisdiction. The introduction of community service as a sentencing option, while limited in scope, signals at least a partial move away from a purely punitive philosophy. Recognising modern offences such as organised crime and statutorily defined terrorism within general criminal law, rather than leaving them entirely to special statutes, is a reasonable response to how crime has evolved.

At the same time, several concerns have been raised by legal scholars, civil liberties organisations, and litigants before the Supreme Court. A significant point of criticism concerns expanded police custody powers under the BNSS, which permits custody to be sought in parts over a longer overall period than was previously understood to be permissible, a change that critics argue could be used to extend an accused person's detention well beyond what due process ought to allow. Petitions before the Supreme Court have specifically challenged such provisions, along with a new provision addressing acts against the sovereignty, unity, and integrity of India, which critics have characterised as a reformulation of the offence of sedition under a different name, raising free-speech concerns.

Civil society organisations have gone further, arguing that beneath the language of decolonisation, the new codes in places concentrate greater power in the police and provide broader immunities to state officials, potentially weakening rather than strengthening protections such as the presumption of innocence. Legal commentators have also pointed to instances of vague or ambiguous drafting in specific provisions, which could create scope for inconsistent interpretation and, in the worst case, misuse. Critics have additionally questioned

whether the reform amounts to more than a renaming and renumbering exercise in substantial parts of the substantive law, given that many BNS provisions closely track their IPC counterparts.

A further, more procedural criticism concerns the process of enactment itself: several commentators have noted that the three bills were passed with limited public consultation and relatively little parliamentary debate time relative to the scale of the changes, which sits uneasily with the scale of the exercise being described as a foundational rewrite of India's criminal law.

On balance, the new codes appear to combine real and useful modernisation, particularly around evidence and investigation, with unresolved tensions around police power and due process that will likely require continued judicial scrutiny to resolve.

8. COMPARATIVE PERSPECTIVE: THE UNITED KINGDOM

Placing India's reforms in comparative context helps clarify what they do and do not achieve. The United Kingdom's criminal procedure framework, developed over a longer and more incremental process, offers a useful point of comparison given the shared common-law lineage between the two systems.

In England and Wales, the Police and Criminal Evidence Act, 1984 (PACE) and its accompanying codes of practice govern police powers of arrest, detention, and evidence-gathering in considerable procedural detail, with defined custody time limits, mandatory custody records, and independent custody officers responsible for authorising continued detention. This layered system of internal checks, distinct from judicial oversight, offers a contrast to the BNSS framework, where safeguards against extended custody rely more heavily on judicial intervention after the fact than on independent checks built into the investigative process itself.

On digital evidence, UK courts have for some time treated electronic records as admissible subject to established authentication rules under the Police and Criminal Evidence Act and related evidence law, a settled position the BSA now moves India closer to by formally recognising electronic records as documentary evidence. In terms of trial timelines, the UK's Criminal Procedure Rules similarly emphasise case management and target timeframes, though these operate within a system with comparatively far lower case volumes and stronger existing

judicial and forensic infrastructure than India's, a difference that matters considerably when assessing whether similarly ambitious Indian timelines are realistic in practice.

The comparison suggests that the direction of India's reform, greater reliance on technology, more structured timelines, and formal recognition of digital evidence, is broadly consistent with international practice. What differs is implementation capacity: procedural safeguards that function adequately in a system with substantial forensic and judicial resources cannot be assumed to function identically in a system still building that capacity at scale.

9. IMPLEMENTATION CHALLENGES AND RECOMMENDATIONS

The gap between statutory design and practical implementation is where the success of the BNS, BNSS, and BSA will ultimately be determined.

Judicial vacancies and infrastructure remain a persistent constraint: India's subordinate judiciary continues to operate well below its sanctioned strength in several states, and ambitious statutory timelines are difficult to meet without a proportionate increase in judges, courtrooms, and administrative staff. Police training presents a related challenge; while the government has reported large-scale training programmes covering the new codes, independent commentary suggests that training at the ground level has often been superficial, with officers in many stations reporting difficulty applying nuanced changes, particularly around arrest documentation and custody calculation.

Forensic capacity is central to the reform's credibility, given the BNSS's mandatory crime-scene visit requirement for serious offences. While the number of mobile forensic units has expanded, forensic laboratories in many states remain under-resourced relative to the volume of cases now requiring scientific evidence, creating a risk that a legally mandatory step becomes a practical bottleneck. The digital divide compounds this problem: the shift toward e-FIRs, video-recorded searches, and real-time evidence upload assumes a baseline of digital infrastructure and literacy that is unevenly distributed between urban and rural India. Finally, the absence of comprehensive, uniform guidance from the Ministry of Home Affairs and inconsistent interpretation across different High Courts on questions such as bail and custody calculation has created uncertainty at precisely the stage where clarity matters most for personal liberty.

Several recommendations follow from these gaps. Judicial appointments should be accelerated in line with the timelines the new codes themselves impose, since procedural deadlines are meaningless without the judicial capacity to meet them. Police training should move from one-time orientation sessions toward sustained, scenario-based capacity building, particularly on digital evidence handling and custody documentation. Investment in forensic infrastructure, including laboratories and personnel and not only mobile units, should be treated as a prerequisite for enforcing the mandatory forensic visit requirement rather than an optional supplement. Closing the digital divide in police infrastructure, particularly in rural and semi-urban stations, deserves dedicated funding rather than being left to general digitisation schemes. The Supreme Court and High Courts should be encouraged to develop consistent guidance on contested questions such as custody calculation, to prevent the same provision being interpreted differently across jurisdictions. Finally, a periodic, transparent review mechanism, potentially involving a parliamentary committee, would allow issues such as vague drafting or disproportionate police powers to be corrected through evidence rather than only through prolonged litigation.

10. CONCLUSION

The Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam represent the most significant restructuring of India's criminal justice framework since independence, replacing statutes that had outlived both their colonial origins and their practical usefulness. The new codes make genuine advances in recognising electronic evidence, mandating forensic investigation, legalising the Zero FIR, and introducing more victim-conscious and technologically grounded procedures. At the same time, they carry forward, and in some respects deepen, concerns around police custodial powers, ambiguous drafting, and the pace at which such sweeping change was enacted.

This paper has argued that the answer to whether these reforms make the criminal justice system more diverse, accountable, and effective cannot be given by reading the statutes alone. Legislative text sets the framework, but institutional capacity, judicial oversight, and consistent implementation across India's states will determine whether that framework translates into lived experience for victims, accused persons, and investigators alike. Enacting new laws was, in that sense, only the first step. Meaningful criminal justice reform in India will ultimately be judged not by how the BNS, BNSS, and BSA read on paper, but by how fairly, quickly, and consistently they are applied in practice.

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