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REFORMS IN INDIAN CRIMINAL LAWS: AN ANALYSIS OF BNS, BNSS AND BSA

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Introduction

The year 2024 marked a significant turning point in the evolution of India's criminal justice system. After decades of operating under the colonial era's legal framework, the country embarked upon a comprehensive reform of its substantive, procedural, and evidentiary criminal laws. On 1st July 2024, the *Indian Penal Code*¹, 1860, the *Code of Criminal Procedure*², 1973, and the *Indian Evidence Act*³, 1872 were repealed and replaced by the *Bharatiya Nyaya Sanhita, 2023 (BNS)*⁴, the *Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)*⁵, and the *Bharatiya Sakshya Adhiniyam, 2023 (BSA)*⁶, respectively.

The enactment of these legislations represents one of the most significant developments in Indian criminal law since Independence. These three laws were presented as an effort to modernize the current legal framework and reform the criminal justice system by addressing emerging forms of crime, incorporating technological advancements, strengthening procedural efficiency, and aligning the law with contemporary societal needs. At the same time, the transition has generated extensive debate regarding the extent to which these statutes depart from their colonial framework and whether they can effectively achieve the objective of a more accessible, efficient, and justice-oriented legal system. In this context, this article examines the historical evolution of India's criminal laws, analyses the key reforms introduced through the new laws and evaluates the opportunities and challenges associated with their implementation.

¹ Indian Penal Code, No. 45, Acts of Parliament, 1860 (India).

² Code of Criminal Procedure, No. 2, Acts of Parliament, 1974 (India).

³ Indian Evidence Act, No. 1, Acts of Parliament, 1872 (India).

⁴ Bharatiya Nyaya Sanhita, No. 45, Acts of Parliament, 2023 (India).

⁵ Bharatiya Nagarik Suraksha Sanhita, No. 46, Acts of Parliament, 2023 (India).

⁶ Bharatiya Sakshya Adhiniyam, No. 47, Acts of Parliament, 2023 (India).

History of the Old Criminal Laws

Prior to the enactment of the colonial era criminal laws, the justice system in India was fundamentally relied on the diverse personal laws and customary practices applicable to different communities. While these systems provided a legal framework for addressing the offences and regulating the conduct, they lacked uniformity, procedural consistency and codification, which led to the variations in implementation and enforcement⁷.

The evolution of India's criminal law begins with the *Charter Act of 1833*⁸, which centralised the legislative authority in India by vesting law-making power in a unified Legislative Council headed by the Governor-General. The Act created the First Law Commission of India and initiated the process of codification of criminal law for the country. The idea of codification was significantly influenced by the jurisprudential philosophy of the eminent jurist Jeremy Bentham, who consistently emphasized the need for a clear, rational and codified legal system that would be applied uniformly across a jurisdiction.

The British Historian and Parliamentarian, *Thomas Babington Macaulay*, chaired the Law Commission and played a pivotal role in providing shape to India's criminal law framework. Under his leadership, a draft was prepared and submitted in 1837, which sought to reduce judicial discretion, harmonise fragmented local practice and establish a comprehensive legal code applicable throughout British India. The draft underwent some scrutiny by judges and administrators resulting in numerous proposed revisions, especially by *Sir Barnes Peacock*. Thereafter, following some continuous amendments, the draft was presented in Legislative Council in 1857. The draft finally received legislative approval and enacted as the *IPC* on 6th October 1860. The *IPC*, substantive law of the British India, consisted of twenty-three chapters and 511 sections, and drew inspiration from *English common law*, elements of the *Napoleonic Code*, and *Edward Livingston's Louisiana Civil Code of 1825*.

After the enactment of the substantive criminal law, the need for procedural law was felt, which resulted in the codification of the *Code of Criminal Procedure (CrPC)*. Like the *IPC*, the *CrPC* followed a comparable evolutionary path. It was first codified in 1861 and established procedures for the investigation of offences, arrest of suspects, conduct of trial, and the

⁷ Elizabeth Kolsky, *Codification and the Rule of Colonial Difference: Criminal Procedure in British India*, 23 LAW & HIST. REV. 631, 645 (2005).

⁸ Government of India Act 1833, 3 & 4 Will. 4 c. 85 (U.K.).

administration of criminal justice⁹. However, it also underwent continuous amendments in 1872, 1882 and 1892. After India's independence, Parliament drafted a new code of criminal procedures, setting aside the British-era CrPC, to reflect the constitutional values and changing societal needs. The new code was introduced in 1970, enacted in 1973, and came into force on April 1st, 1974.

Before the enactment of *IEA*, India lacked a single and uniform law of evidence. Rules were very inconsistent and heavily based on regional customs, judge's discretion and English laws. Indian Courts directly applied rules of evidence from the English Common Law, but it was very confusing and also faced difficulties in their application to Indian conditions. In 1868, *Sir Henry Maine* drafted the first evidence bill for India but it was not accepted by the courts, because it was considered inadequate and insufficiently aligned with the local Indian customs¹⁰. The British Government handed the task to *Sir James Fitzjames Stephen*, who prepared a fresh draft, based upon the principles of English evidence laws while modifying them specifically to the Indian landscape¹¹. After detailed evaluation by the courts and Legislative Council, the draft was enacted as *the IEA, 1872*, which came into force on 1st September 1872.

These three enactments were introduced during the colonial period, intended to ensure effective administrative control and maintaining public order under British rule, continued to provide the legal foundation for India's criminal justice system for over 150 years, although with numerous amendments and modifications over time.

Rationale for the New Reform

The immediate political trigger for reform emerged from *Prime Minister's* Independence Day address on 15th August 2022, where he introduced the vision of "*Panch Praan*" for the *Amrit Kaal* period leading up to the centenary of India's independence. Among these commitments was the objective of eliminating colonial mindset from Indian laws and institutions¹². The Government subsequently presented the three criminal law Bills as an effort to replace colonial-era legislation with the new laws reflecting Indian constitutional values, contemporary social realities, and technological advancements. *Union Home Minister Amit Shah*, who led the legislative process, emphasized that the new laws are an attempt to shed colonial-era legal

⁹ In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials v. State of Andhra Pradesh, (2021) 10 SCC 598

¹⁰ Vepa P. Sarathi, *Historical Background of the Indian Evidence Act*, 14 J. INDIAN L. INST. 1, 20 (1972).

¹¹ Id. at 21.

¹² A. S. Kowshikaa, *India's Criminal Justice Reform: An In-Depth Look at the New Laws*, 2 J. L. & Legal Rsch. Dev. 21, 22 (2025).

thinking and build a system oriented towards *Nyaya* (justice) rather than *Sazaa* (punishment). He further described the new codes as having been “*conceived by Indians, for Indians, and enacted by an Indian Parliament.*”¹³

One of the most influential contributions came from the *Committee on Reforms of the Criminal Justice System*, commonly known as the *Malimath Committee*, constituted in 2000 and chaired by Justice V.S. Malimath. In its landmark 2003 report, Committee submitted the comprehensive report in two volumes which consisted around 158 suggestions for criminal law reforms in India, highlighting structural deficiencies including delays in investigation, inadequate victim participation, and procedural flaws. The Committee also supported the idea of ‘inquisitorial’ system rather than ‘adversarial’ system, that recognized the interests of victims and society alongside the rights of the accused¹⁴. The Committee recommended the introduction of victim compensation mechanisms, sentencing guidelines, witness protection measures, modernization of investigative techniques, and greater use of scientific evidence¹⁵. Some of the features are reflected in the new codes, particularly those relating to victim-centric justice, forensic investigation, and procedural efficiency.

In *Lalita Kumari v. Government of Uttar Pradesh*, the Hon’ble Supreme Court held that registration of a First Information Report is mandatory where information discloses about the commission of a cognizable offence, while permitting preliminary inquiry only in limited categories of cases¹⁶. This judgment emphasized the necessity of procedural clarity and accountability in criminal investigations, principles that are also reflected in new laws. In *Joseph Shine v. Union of India*, the Hon’ble Apex Court struck down *Section 497* of the *IPC*, holding that the offence of adultery violated constitutional guarantees of equality, dignity, and personal autonomy¹⁷. Similarly, in *Navtej Singh Johar v. Union of India*, the Court read down *Section 377* of the *IPC* to the extent it criminalized consensual sexual relations between adults and reaffirmed the constitutional principles of privacy, dignity, equality, and non-discrimination¹⁸.

¹³ Id.

¹⁴ Prof. (Dr.) Paramjit S. Jaswal & Prof. (Dr.) Vijay Kumar Singh, *A Review of Criminal Law Reforms in India: Shaping the Future of Criminal Law in India*, 2 SRMUH L. REV. 1, 11 (2024).

¹⁵ *Committee on Reforms of Criminal Justice System*, Ministry of Home Affairs, Government of India, Report of the Committee on Reforms of the Criminal Justice System vol. I, 259-262 (2003).

¹⁶ *Lalita Kumari v. Government of Uttar Pradesh*, AIR 2014 SC 187.

¹⁷ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

¹⁸ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321.

These judicial pronouncements exposed the inconsistency of several colonial criminal provisions with contemporary constitutional values, and shaped, directly or indirectly, specific provisions of the new codes.

Key Reforms Introduced by the New Codes

The transition from the *IPC*, *CrPC*, and *Evidence Act* to the *BNS*, *BNSS*, and *BSA* is not only limited to nomenclature but it extends far beyond that, each statute introduces substantive reforms that require separate attention, even as they operate together as a single restructured criminal justice system.

The Bharatiya Nyaya Sanhita restructures the substantive criminal law inherited from 1860, seeking to modernize the penal framework by addressing new forms of criminality and reorganising several categories of offences. It reduces 511 sections of the IPC to 358 through consolidation and rationalisation. It enhances clarity and accessibility by adding a dedicated new chapter for *offences against women and children* which was previously scattered across the Code. Within this consolidation, it eliminated the age-based distinction that existed under the IPC in cases of gang rape, prescribing a uniform sentence of life imprisonment or death, rather than the graded punishment, where the victim is below 18 years of age.¹⁹ The BNS also introduces offences the IPC could never have anticipated, *mob lynching*, defined as murder committed on grounds of race, caste, community, sex, or similar identity markers²⁰, is criminalised for the first time punishable with life imprisonment or death. This provision reflects a legislative response to the Hon'ble Supreme Court's observations in *Tehseen S. Poonawalla v. Union of India*²¹, where the Court emphasised the need for preventive, remedial, and punitive measures to combat mob violence. The BNS contains the provision for *organised crime* and terrorist acts, that were initially addressed through special legislations. Another noteworthy reform under the new code is the introduction of *Community service* as a form of punishment for certain minor offences, signalling the movement towards reformatory justice rather than traditionally punitive one. Perhaps the most debated reform of the BNS is the treatment of *sedition*. Section 124A of the IPC, which was widely criticised as the colonial way to suppress political dissent, has been formally repealed and replaced by Section 152 of the BNS, which penalises acts "endangering the sovereignty, unity, and integrity of India"²²,

¹⁹ Bharatiya Nyaya Sanhita, § 70, No. 45, Acts of Parliament, 2023 (India).

²⁰ Bharatiya Nyaya Sanhita, § 103(2), No. 45, Acts of Parliament, 2023 (India).

²¹ *Tehseen S. Poonawalla v. Union of India*, AIR 2018 SC 3354.

²² Bharatiya Nyaya Sanhita, § 152, No. 45, Acts of Parliament, 2023 (India).

making it a narrower provision directed towards the conduct that threatens the nation's sovereignty and integrity.

The Bharatiya Nagarik Suraksha Sanhita, subsequently, reforms the procedural framework of criminal justice system. Its most visible and significant reform is the introduction of *Zero FIR*, allowing a complaint to be registered at any police station irrespective of territorial jurisdiction, which eliminates the barriers that caused frequent delays in reporting of offences²³, complemented by the option of reporting an offence electronically without an initial visit to a police station at all.²⁴ The BNSS also emphasizes on the use of technology and lays down provisions relating to electronic summons, digital transmission of documents, audio-video recording of statements and electronic communication. Additionally, it makes forensic investigation and videography of crime scenes mandatory for offences punishable with imprisonment of seven years or more²⁵. The BNSS also applies some strict statutory timelines such as, charges must ordinarily be framed within sixty days²⁶, adjournments are allowed a maximum of two²⁷, judgment must follow within forty-five days of the conclusion of trial, victims are entitled to receive information regarding the progress of their case within ninety days and both the accused and the victim are entitled to receive copies of the FIR, chargesheet, and other documents within fourteen days. The BNSS also provides procedural safeguards for victims and witnesses, relying on principles laid down by the Hon'ble Supreme Court in *Mahender Chawla v. Union of India*²⁸, which approved the Witness Protection Scheme, 2018, and creates a more secure environment for witnesses whose testimony is often crucial to successful prosecution. Another notable reform of the BNSS is the examination of vulnerable persons during investigation, which provides that no male person below the age of fifteen years or above sixty years, no woman, and no person suffering from mental or physical disability or acute illness shall be required to attend any place other than the place where such person resides for the purposes of police investigation,²⁹ and permits such person to appear at a location of their choice.

²³ Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(1) (India); see also Press Information Bureau, *Main Features of the New Criminal Law, Government of India*, (AUG. 20, 2025, 4:39 PM), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2158411®=48&lang=2>

²⁴ Id.

²⁵ Bharatiya Nagarik Suraksha Sanhita, § 176(3), No. 46, Acts of Parliament, 2023 (India).

²⁶ Bharatiya Nagarik Suraksha Sanhita, § 251(1), No. 46, Acts of Parliament, 2023 (India).

²⁷ Bharatiya Nagarik Suraksha Sanhita, § 346, No. 46, Acts of Parliament, 2023 (India).

²⁸ *Mahender Chawla v. Union of India*, (2019) 14 SCC 615.

²⁹ Bharatiya Nagarik Suraksha Sanhita, § 179(1), No. 46, Acts of Parliament, 2023 (India).

The Bharatiya Sakshya Adhiniyam completes the reform framework by modernising the law of evidence. While most of the structure of previous Act is retained, it seeks to simplify language and provide clarity regarding the admissibility and evidentiary value of electronic material. It recognises the electronic and digital records including emails, text messages, and multimedia files as primary evidence³⁰, rather than the secondary or merely corroborative evidence, which was often accorded under the act. This change is significant for the prosecution of offences like cybercrime, financial fraud, organised crime, and online harassment, in which digital communication is frequently the only available evidentiary record. The BSA further permits witness testimony to be recorded by video conference, easing the examination of witnesses who are vulnerable, distant, or otherwise unable to appear in person. The BSA also integrates with the BNSS's forensic investigation framework, by making corresponding provision for the admissibility of DNA and other forensic material gathered during investigation.³¹

Critical Concerns and Implementation Challenges

Despite these reforms, several provisions have continued to attract criticism. While the reforms introduce technological transformation, procedural improvements, and victim-centric measures, several provisions continue to raise concerns regarding individual liberty, equality, due process, and the potential expansion of State power. One of the most controversial aspects of the *BNS* is that it retains the exception excluding *marital rape* from the definition of rape, a matter that still remains sub judice before the Judiciary. Furthermore, criticism has also been directed to the *provision relating to sexual intercourse by a separated husband*, which requires that aggrieved woman must personally file the complaint, while classifying the offence as bailable. The removal of the *Section 377 framework* has also generated concern, as the omission without a corresponding gender-neutral sexual assault framework has created potential gaps in protection. Critics contend that *male and transgender victims of sexual violence* may not receive the same degree of statutory protection available to female victims under the existing rape provisions. Similar concerns have been expressed regarding *acts of non-consensual bestiality*, which no longer fall within a clearly defined statutory framework.

Procedural reforms under the *BNSS* have also attracted criticism, as *Section 173(3)* which grants police the discretion to conduct a preliminary inquiry, rather than register an FIR outright, for offences punishable between three to seven years, is critically argued that the

³⁰ Bharatiya Sakshya Adhiniyam, §§ 2(1)(d), 61, No. 47, Acts of Parliament, 2023 (India).

³¹ Bharatiya Sakshya Adhiniyam, §§ 39, 45, No. 47, Acts of Parliament, 2023 (India).

provision may dilute the principle established by the Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh*³², which emphasised the mandatory registration of FIRs where information discloses a cognizable offence, and could be misused to delay justice or obtain unlawful favours from both the complainants and accused. Additionally, under the *CrPC*, police custody was generally confined to the first fifteen days after the arrest, but the *BNSS* permits *these fifteen days of police custody to be utilised in segments* during the initial period of detention, depending on the nature of the offence³³. Although the Government has defended the provision as necessary for the effective investigation of complex offences, critics argue that the expanded custody framework may create greater opportunities for coercive interrogation and weaken protections against custodial abuse. Also, the repeal of *Section 124A IPC* was presented as a move away from colonial-era criminal law, the provision replacing it has attracted considerable scrutiny. Critics argue that terms such as acts endangering the sovereignty, unity, and integrity of India are broad enough to permit varying interpretations, raising concerns about potential misuse. As a result, conduct that were previously prosecuted under the sedition law could still be brought within the ambit of the new provision.

Beyond these significant concerns, the effectiveness of the reforms depends heavily upon institutional capacity. The criminal justice system continues to struggle with case backlogs, inadequate forensic infrastructure, shortages of trained personnel, and significant vacancies within police forces. The successful implementation of mandatory forensic investigation, digital evidence management, videography requirements, and technology-driven procedures will therefore require sustained investment in infrastructure, training, and administrative support. Ultimately, the effectiveness of these reforms will depend not only on the changes introduced in the law but also on the ability of institutions to implement them effectively.³⁴

Conclusion

Where Macaulay's Penal Code was primarily designed to maintain colonial authority through punishments and deterrence, the BNS, BNSS, and BSA places greater emphasis on *Nyaya* (justice) over *Sazaa* (punishment). This shift is not merely rhetorical but is also reflected in the new framework. The recognition of Zero FIR and electronic reporting replaces a system demanding physical presence and territorial jurisdiction, while the mandatory forensic investigation and reliance on digital evidence acknowledges the realities of contemporary

³² Supra note 16.

³³ Bharatiya Nagarik Suraksha Sanhita, § 187(3), No. 46, Acts of Parliament, 2023 (India).

³⁴ PRS Legislative Research, *Overview of Criminal Law Reforms*, PRS INDIA, <https://prsindia.org/billtrack/overview-of-criminal-law-reforms> (last visited July 12, 2026).

crime. Similarly, the strict introduction of timelines seeks to address the delays that have long plagued criminal proceedings and weakened public confidence in the justice delivery system. At the same time, the reforms do not represent complete transformation from the past. The BNS still shields marital rape, as the IPC did, the repeal of Section 377 leaves the same gender-neutral gaps, expanded police discretion under Sections 173(3) and 187(3) revives. The new codes therefore represent an important evolution of India's criminal justice system but they also retain several features that continue to attract legal and constitutional scrutiny.