

An Assessment of Transformative Trends in Criminal Law Reforms: An Indian Perspective

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I. Introduction to New Criminal Law Reforms in India

India has recently implemented significant legislative reforms in its criminal laws by introducing three new and substantial laws. The objective of these reforms is to modernize the judicial system and enhance its ability to address present issues effectively. These new laws are intended to replace the old criminal laws which have been¹prevalent for more than a century, namely the IPC, the CrPC and the Evidence Act. These new criminal laws which are: the Bharatiya Nyaya Sanhita- in place of IPC, Bharatiya Nagarik Surakhsha Sanhita-replacing the CrPC and the Bharatiya Sakshya Adhiniyam replacing the Evidence Act, were passed by the Indian Parliament on the 21st of December 2023. The aim for implementing these new criminal laws is to improve the existing legal system and form type of legislations which are responsive, fair and more appropriate to 19address the changing requirements of society. As per the notification issued by the Ministry

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of Home Affairs the effect of these laws will come into force on 1st July 2024.

The criminal justice system in India has primarily been influenced by laws and regulations that were passed down from the British colonial period². A complex structure of legal development has brought together the historical backdrop of India's history, the Middle Ages, colonialism, and the post-independence era. The legal system in India originated in ancient times and was shaped by significant texts including the Dharma Shastras and Arthashastra, which expounded upon the principles pertaining to morality, governance, and justice. Islamic legal principles derived from the Sharia were amalgamated with pre-existing Hindu laws in the Middle Ages, producing a synthesis that significantly influenced the legal environment²³. British rule in India led to the codification of legislation like the Indian Penal Code and the Code of Criminal Procedure, influenced by English common law principles. After India's independence in 1950, the Constitution strengthened criminal justice rights. Contemporary legislation addresses issues like juvenile delinquency and sexual offences, focusing on human rights and addressing contemporary challenges.

This article similarly aims to analyses the factors, effects and

² Siddharth Desai, India's Landmark Criminal Law Reforms: A New Era Of Justice And Modernization, VERDICTUM, (April 27, 2024, 6:47 PM) <https://www.verdictum.in/columns/bhartiya-nyaya-sanhita-bhartiya-nagarik-suraksha-sanhita-bhartiya-sakshya-adhiniyam-2023-1524399>

^{3 12} Evolution of Criminal Laws in India, VAJIRAM & RAVI, (April 27, 2024, 7:05 PM) <https://vajiramandravi.com/blogs/evolution-of-criminal-laws-in-india/>

implications of the implementation of the new criminal law in the legal landscape of criminal justice system of India by performing a comparative analysis of the old statutes with the newly implemented legislature.

II. Historical Context of Old Criminal Laws

Understanding Ancient India with all of its beliefs, customs, and traditions is necessary before we can comprehend the history and developments of Criminal Law in India. Although the imperative of eradicating evil is emphasized in Vedic writings, no legal framework appears to have been established. The village elders, who would be in charge of the community, would determine how one should be punished in proportion to the degree of the wrong committed. There are obvious clues in the Smritis—Shruti's, even the Manu Smriti—on the need of punishing the offender. Moreover, during Mughal control in India, the culprit had to be brought before the King, who made all of the decisions and whose word was definitive. What penalty the offender will receive was determined by Islamic law.⁴³

Everything underwent change when the British colonial authority established the "Indian Law Commission" in 1833 to examine the laws in force in India, the powers of the courts at the time, and the foundation and guiding ideas of the laws as they stood. The commission was to report and recommend the essential adjustments and modifications that

⁴ Ranbir Singh, Victim Justice: A Paradigm Shift in Criminal Justice System in India, 4J. Nat'l L. U. Delhi 115 (2017)

would be needed to codify Indian laws. The Indian Penal Code was one of the major achievements of the Indian legislation Commission; it was presented by Lord Macaulay in 1837

and, following nearly thirty years of intense discussion, became legislation in 1860⁵. Concurrently, they penned the 1861 Code of Criminal Procedure. After this code arose most procedural legislation.

The laws outlined in these Acts are based on the principles of justice, equity, and good conscience. Although these laws were criticised at the time, when we examine history, we see that they formed the cornerstones of our legal system. Right from penalties for Sati, bride burning, eradicating untouchables, or violating human rights, these laws lifted the impoverished and gave those who were trampled upon a chance at justice⁵⁶. It was purposefully necessary to understand the people for whom these laws were intended. Other laws punishing the aforementioned crimes came into effect as a result of the Indian Penal Code.

To keep them contemporary with the times and culture of today, the Indian Penal Code and the Code of Criminal Procedures have undergone constant revisions throughout the years. Philosophers and jurists have produced a number of criminal law theories. The civil wrong theory, the social wrong theory, the moral wrong theory, and the group confliction

⁵ Shrishti John, History & Evolution of Criminal Laws in India, LAW TIMES JOURNAL, (April 29, 2024, 10:38 AM) <https://lawtimesjournal.in/history-evolution-of-criminal-law-in-india/>

⁶Ibid.

theory are the four theories that Professor KD Gaur⁷ suggests explain how criminal law has developed. As to the eminent philosopher Henry Maine, "*the penal law of ancient society was not the law of crime but the law of wrong.*"

With the historical evolution of the Indian criminal laws over the time it is evidentiary that the colonial past of India has had a profound impact on its legal system. Various statutes were enacted by the British for administrative and regulatory objectives. In order to ensure legal continuity, a number of these laws were preserved after independence, albeit with modifications. Over time, however, it became apparent that the legal framework needed to be updated to reflect contemporary democratic values and discard its colonial legacy. Consequently, a number of antiquated legislations was repealed, including the notorious Section 377 of the Indian Penal Code, which rendered homosexual acts illegal, and Section 497, which pertained to adultery.⁸ These laws' repeal has been implemented as a component of a larger initiative to modernise the legal system in India. Ensuring that laws remain pertinent to the current social fabric while upholding the constitutional values of liberty, equality, and fraternity is the objective. The decriminalisation of homosexuality and adultery, for instance, signifies a transition towards the acknowledgment of individual liberties and rights⁹.⁸ The courts have

⁷ The Indian Penal Code, K.D. Gaur, fourth Edition, Universal Law Publishing Co.

⁸ Supra note 1

⁹ Nisha Sharma and Rohan Shrivastava, India: Salient Features And Significant Changes In New Criminal Laws – An explainer, MONDAQ, (April, 29, 2023, 5:07

played a pivotal role in interpreting the ramifications of abolished legislation. Courts frequently intervene to reconcile the disparity between outdated rules and contemporary values, resulting in significant rulings that establish forward-thinking legal principles. The abolition of certain legislations has also resulted in a decrease in the abuse of legal provisions, which were frequently utilised to suppress marginalised communities.¹⁰

The enduring impact of repealed laws persists in shaping the legal system through continual deliberations and conversations regarding the necessity for additional revisions. It emphasises the ever-changing nature of law as a manifestation of societal values and the significance of a flexible legal system. The abolished laws serve as a testament to the transformation of India's legal framework from a lingering influence of colonialism to a more fair and impartial system.¹¹¹⁰

Home Minister Amit Shah presented the new bills in front of the Parliament by stating that these laws are intended to ensure speedy justice, make the legal process less taxing for the victims and address

PM) <https://www.mondaq.com/india/crime/1395364/salient-features-and-significant-changes-in-new-criminal-laws--an-explainer->

¹⁰ Preetha Nair, Why concerns over revamped criminal laws refuse to go away, THE NEW INDIAN EXPRESS, (31st Dec. 2023) <https://www.newindianexpress.com/explainers/2023/Dec/31/whyconcerns-over-revampedcriminal-lawsrefuse-to-go-away-2646322.html>

¹¹ Parliament Library of India, Reference Note No. RN/Ref./August/2007/3, "Repeal of Laws: An Overview" (2007), <https://parliamentlibraryindia.nic.in/writereaddata/Library/Reference%20Notes/repeal.pdf>

the situation according to the times.¹² Shah asserted that the implementation of these laws was intended to fortify the British government and solidify their dominion. The purpose of the new legislation, however, is to safeguard the citizens in accordance with the Constitution of this nation. He added, "*It is not to penalise, but to provide justice and the penalties required to prevent the crimes.*"¹³ It was further added by the respected Home Minister that a *citizen centric* approach has been implemented to ensure that the victim receives a copy of the initial information report and is kept updated on the investigation's developments, including through digital channels. In situations involving sentences of seven years or longer, the government shall afford the victim an opportunity to present their case prior to withdrawing the lawsuit. The mandatory use of summary trials has been imposed on minor and less severe offences. The defendants may be subjected to examination via electronic methods, such as video conferencing. Additionally, the magisterial system has been optimized. In light of the evolving times, the recently enacted legislation defines 'evidence' as any data submitted electronically. This provision would enable the participation of experts, victims, witnesses, and accused individuals via electronic channels.

III. Overview of New Criminal Laws and Repealed

¹² Pratul Sharma, Understanding the big revamp of India's criminal laws: Intentions, implications, and deletions, THE WEEK, (August 11, 2023)

<https://www.theweek.in/news/india/2023/08/11/understanding-the-big-revamp-to-india-criminal-laws-intentions-implications-and-deletions.html>

¹³ Ibid

Statutes

The recent ratification of The Bharatiya Nagarik Suraksha Sanhita, The Bharatiya Nyaya Sanhita, and The Bharatiya Sakshya Adhiniyam, 2023 signifies a substantial turning point in the development of the Indian legal system, signifying a transition towards a more adaptable and modernised framework. The Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act (IEA), which were antiquated, have been substituted with contemporary legislation that is specifically designed to tackle present-day issues and cater to the demands of society.

To begin with, **The Bhartiya Nyaya Sanhita, 2023**, places its emphasis on the prudent modification of the penal code in order to ensure the protection of India's sovereignty, unity, and integrity. Significantly, it implements severe sanctions for transgressions that jeopardise these national interests, including but not limited to terrorism and organised crime. This legislation contains provisions that distinguish between serious and minor transgressions, prescribing suitable penalties in accordance with the gravity of the offence. For example, offences that pose a threat to sovereignty or unity may be met with more severe penalties in comparison to those that are of a lesser nature. New offences and provisions are introduced by the new Act with regard to women and children. For instance, Sections 376DA and 376DB of the Indian Penal Code impose penalties on individuals who commit gang rapes against females below the ages of 16 and 12, respectively. For rapes against those under the age of 18, Section 70(2)

stipulates life imprisonment or the death penalty.¹⁴ Engaging in sexual intercourse through deceitful methods or making false promises of matrimony may lead to a maximum prison sentence of ten years. In addition to penalties for employing minors under the age of 18, the proposed code also imposes sanctions for rash or negligently causing death and mob lynching.

In India, the proposed code will for the first time redefine organised crime and trivial organised crime. Organised crime comprises unlawful operations such as vehicle larceny, robbery, and abduction. Such offenders are subject to life in prison or the death penalty, in addition to fines of up to 10 lakh rupees. Thefts of business and domestic property, as well as the pilferage of public examination question papers, are examples of petty organized crimes. A 'terrorist act' is also defined in the code as the deliberate endangerment of the unity, integrity, and security of India. The code also contains provisions pertaining to property larceny not exceeding ₹5,000 in value, aiding and abetting criminal activities from outside India, and snatching.¹⁵

In parliament, the union Home Minister presented a novel code proposing the abolition of the sedition offence, which was formerly penalized under Section 124A of the Indian Penal Code (IPC).¹⁶ Conversely, the aforementioned provision has been reworded, and Section 150 now defines sedition as a crime that "endangers the unity,

¹⁴ Supra note 8

¹⁵ Ibid.

¹⁶ Ibid.

sovereignty, and integrity of India." Additionally, the penalties for negligently causing death, extortion, criminal breach of trust, disobedience to orders, and public malfeasance by an intoxicated individual have been revised in the new code. Additionally, provisions pertaining to aberrant sexual offences, adultery, and suicide attempts are repealed in the proposed code. The explanation for Section 150, however, remains insufficient.

Additionally, **The Bharatiya Nagarik Suraksha Sanhita, 2023**, aims to promote a more humane criminal justice system through the implementation of investigative timelines, improved accessibility, and linguistic refinement that is more relatable to the general public. The stipulations that require forensic team visits in instances of heinous crimes guarantee the comprehensive gathering of evidence. The objective of this legislative strategy is to strengthen investigations, thereby enhancing the precision and dependability of criminal proceedings. The proposed Indian criminal code encompasses several provisions that pertain to the following: establishing police control rooms; identifying and seizing the property of proclaimed offenders; recording searches and seizures via audio-visual electronic means; seizing property derived from criminal activity; permitting investigations to be conducted in countries other than India; facilitating trials in absentia; establishing a Witness Protection Scheme; permitting electronic trials via video conferencing; and permitting electronic trials. Additionally, it requires law enforcement personnel to communicate with victims regarding the status of investigations within a period of 90

days, and to conclude inquiries without superfluous postponement. Additionally, the code clarifies the police custody period by permitting police custody for 15 days. It obviates the necessity for punitive measures when prosecuting public officials for transgressions, such as sexual offences. The new code is intended to increase the effectiveness and efficiency of the criminal justice system.¹⁷

The Bharatiya Sakshya Adhiniyam, 2023, concludes by recognising the critical importance of technology in legal proceedings. The legislation expands the scope of electronic evidence to include a wide variety of digital data formats, including but not limited to emails, text messages, and multimedia files. The integrity and authenticity of electronic evidence are emphasised in particular provisions that safeguard its credibility. Moreover, the act enhances the acceptance of expert opinions and DNA evidence, thereby bolstering the effectiveness of the legal framework in contemporary circumstances.¹⁸ The Bharatiya Sakshya Bill aims to replace the Indian Evidence Act, 1872 with 170 provisions, focusing on streamlining electronic evidence. Key highlights include expanding the scope of secondary evidence, making electronic evidence certificates more meaningful, and clarifying that electronic and digital records have the same legal effect, validity, and enforceability. The Bill also

¹⁷ Supra note 1

¹⁸ Arpinder Singh, Modernizing Criminal Law: a step towards legal reforms, EY, (Jan. 10, 2024) https://www.ey.com/en_in/forensic-integrity-services/modernizing-criminal-laws-a-step-towards-legal-reform

proposes a change in Section 57 of the Indian Evidence Act, which provides for specific facts for the Court to take judicial notice. This change aims to make evidence more accessible and relevant to the Indian court system.¹⁸

A distinguishing characteristic of these statutes is the implementation of independent directors of prosecution in every district, with the intention of augmenting prosecutorial impartiality and equity at the community level. These forward-thinking initiatives emphasise a dedication to fortifying the criminal justice system, fostering public confidence, and bringing legal structures in line with changing societal demands¹⁹.¹⁹

In conclusion, the implementation of these novel criminal legislations represents a paradigm shift in India's legal system towards one that is more modern, accessible, and equitable. Through their efforts to tackle present obstacles, adopt technological advancements, and prioritise equity, these reforms indicate a positive transition towards a justice system that aligns with the ever-evolving values of the country.

IV. Impact and Implications of Reforms

The adoption of gender-neutral legislation concerning sexual offences in India represents a substantial transformation in the country's legal framework, as it rectifies entrenched inequalities and fosters inclusiveness throughout the criminal justice system. In previous times,

¹⁹ Ibid

legislation was gender-specific, acknowledging offences and victims that were limited to male-to-female interactions.²⁰ The recently implemented reforms ensure that all genders are afforded legal protection, in accordance with the constitutional tenets of nondiscrimination and equality (gender neutral laws concerning sexual offences). This reform not only signifies advancements in society but also addresses prior legal omissions by recognising the wide range of sexual exploitation and assault experiences.

From a societal standpoint, these reforms signify an abandonment of conventional gender biases and strengthen the dedication to legal equality. Gender neutral laws concerning sexual offences align the legal framework with the realities experienced by all segments of society, regardless of gender identity, by acknowledging transgender individuals and men as potential targets of such offences. In order to combat discrimination and advance social acceptance and inclusiveness, this transition is vital.

The laws that were repealed had the effect of perpetuating gender specific stereotypes and imposing restrictions within the justice system (Gender neutral laws concerning sexual offences). Their failure to consider the complete range of victims and perpetrators resulted in the perpetuation of systemic biases and the neglect of specific types of sexual exploitation. Through broadening the legal definitions of offenders and victims, the new reforms address these

²⁰ Samarth Sansar & Shreya, Criminal law reforms in India: Expectations & Prospects, 6, IJL, 9, 9-10, (2020)

deficiencies, ensuring that all individuals are protected by the law and facilitating access to justice.

The reforms exhibit a proactive stance in tackling current issues by implementing gender-neutral laws that are specifically designed to address sexual offences and strengthen legal safeguards. The reforms are consistent with recent societal trends and court rulings that favour greater acceptance and inclusivity by acknowledging the widespread occurrence of sexual exploitation among males and transgender people. Furthermore, these reforms establish a legal framework that can be utilised to tackle emerging concerns like same-sex assault, thereby fostering a justice system that is more all-encompassing and fair (gender neutral legislation concerning sexual offences).

In general, the legal domain has been profoundly affected by these reforms, as sexual offences are now governed by a more progressive and inclusive code of conduct. These modifications are strides in the direction of nurturing a more tolerant and equitable society in which every person is afforded equal legal protection. Through the acknowledgment and resolution of current issues and deficiencies in the law, these reforms enhance the resilience and effectiveness of the criminal justice system in India.

V. Implementation Challenges and Lessons Learned

The implementation of new criminal legislation might present numerous obstacles that require meticulous attention to guarantee effective adoption and enforcement. A major obstacle emerges from the

legal limitations involved in substituting current laws with new legislation. The process of transitioning can result in gaps or uncertainties in legal provisions, requiring meticulous writing and improvement of the new legislation to encompass all essential offences and situations.²¹²¹ Resistance to change is a possible obstacle that may arise, as legal experts and the public can be acclimated to the old laws and sceptical of the necessity for change. Furthermore, the successful enforcement of new legislation frequently necessitates comprehensive instruction and education for law enforcement officers, solicitors and judges to guarantee their accurate comprehension and application of the revised legal structure²². Interpretation difficulties may develop when new laws are open to alternative interpretations, resulting in inconsistent application across different circumstances.²³

Ensuring coherence and consistency across the legal framework is essential when integrating new laws with current legislation. However, this process can be intricate and may include making revisions and adjustments.²⁴²⁴ Sufficient infrastructure and resources

²¹ Surya Kumar, Unveiling Legal Constraints: Limitations and Challenges of New Criminal Bills, BNBLEGAL, (Jan. 8, 2024) <https://bnblegal.com/article/unveiling-legal-constraints-limitations-and-challenges-of-the-new-criminal-bills/>

²² Confusion and delay surround implementation of new criminal law bills in India, NATIONAL HERALD, (2 May, 2024) <https://www.nationalheraldindia.com/national/confusion-and-delay-surround-implementation-of-new-criminal-law-bills-in-india>

²³ Namit Saxena, New trinity of criminal laws need a slow and steady push, DECCAN HERALD, (Jan. 7, 2024) <https://www.deccanherald.com/india/new-trinity-of-criminal-laws-need-a-slow-and-steady-push-2838352>

²⁴ Ibid.

are crucial for effectively implementing new legislation. However, these resources may not always be easily accessible, which presents further obstacles to enforcement.²⁵ Moreover, it is crucial to enhance public consciousness regarding the new legislations in order to ensure their successful execution, since the comprehension and adherence of the public are pivotal to the operation of the criminal justice system.

For instance, a timeline for the implementation of new criminal laws, including infrastructure development, software upgrades, human resources training, and the complete computerization of tribunals, has been announced by the Indian government. Nevertheless, the concurrent execution across states and Union Territories has proven to be a formidable task, as emphasised by a high-ranking government official who emphasised the necessity for a cohesive strategy. There has been noticeable perplexity within police stations due to the absence of official training or modifications to the case registration software. Although the laws have been notified, their enforcement is anticipated to take several months, according to The Times of India. Over 99% of police stations utilise the Crime and Criminal Tracking Network System (CCTNS) software;²⁶ therefore, revisions will be required to accommodate the new FIR sections. Uncertain are the circumstances surrounding supplementary chargesheets and the fate of cases initiated under the IPC subsequent to the implementation of the new laws. Furthermore, the legislation poses distinct obstacles in Nagaland and

²⁵ Supra note 22

²⁶ Ibid.

the tribal areas specified in the sixth schedule of the Constitution.

In order to tackle these issues, it is crucial to have a carefully organised and step-by-step implementation approach. This process should involve extensive stakeholder input to anticipate problems and collect feedback, as well as comprehensive training programmes to educate and equip law enforcement authorities and legal professionals. Public education campaigns are crucial for disseminating information to citizens regarding their rights and responsibilities under the new laws, hence promoting extensive awareness and adherence. To ensure a successful transition to the new legal framework and maximise its impact on justice and societal well being, authorities should approach these difficulties in a methodical and inclusive manner.

VI. Conclusion

"An Assessment of Transformative Trends in Criminal Law Reforms: An Indian Perspective" examines the significant transformation that has occurred in India's legal domain as a result of recent legislative modifications. The implementation of The Bharatiya Nyaya Sanhita, The Bharatiya Nagarik Suraksha Sanhita, and The Bharatiya Sakshya Adhiniyam, 2023, represents a substantial deviation from legislation from the colonial era. This development encapsulates an all encompassing endeavour to redefine and update the criminal justice system.

The recently enacted criminal legislation embodies a sophisticated strategy in penalising transgressions, accommodating present-day concerns such as organised crime and terrorism, while also differentiating between serious and minor offences. The reforms seek to rectify historical exclusions and promote inclusivity within the legal framework by redefining sexual offences in a gender-neutral manner. This adjustment is in line with evolving societal values and constitutional principles.

These reforms are not simply modifications to the law; rather, they are revolutionary endeavours that enhance the effectiveness, fairness, and resilience of the legal system. Conscious of the significance of forensic evidence and technology in contemporary legal proceedings, the Bharatiya Nagarik Suraksha Sanhita places an emphasis on promptness and compassion in investigations.

Furthermore, the Bharatiya Sakshya Adhiniyam recognises the significance of expert opinions and electronic evidence in establishing the credibility and dependability of courtroom testimony. The implementation of independent directors of prosecution at the district level serves to fortify the prosecution system, promoting impartiality and equity at the grassroots level.

The implications of these reforms transcend mere legal intricacies; they symbolise a societal dedication to equity that aligns with the ever-evolving ethos of India. Through the implementation of reforms that emphasise victim protection, evidence-based investigations, and equitable prosecution, India's legal framework is brought into

alignment with modern-day challenges and aspirations.

The recent modifications to criminal law in India have had a profound and wide-ranging effect on society. The reforms exemplify a transition towards a system of justice that is democratic, inclusive, and responsive to the Constitution. In addition to shaping the legal framework of India, they establish a model for progressive reforms in criminal justice administration that prioritise fairness, accessibility, and efficiency. This shift in paradigm highlights a more extensive societal dedication to justice that aims to overcome past limitations and adopt modern principles, ultimately cultivating public confidence and trust in the developing legal system.

In summary, the repeal of specific criminal legislation in India has significantly influenced the legal framework, promoting the development of a more progressive and equitable society. The enduring impact of these legislations indicates India's progress towards establishing a legal system that is inclusive, safeguards individual rights, and adheres to the rule of law. The recent reforms hold the potential to advance this heritage, guaranteeing the continued strength and applicability of India's legal system amidst the changing demands of society.