



सत्यमेव जयते

CONFERENCE OF GOVERNORS

2-3 AUGUST 2024

RASHTRAPATI BHAWAN, NEW DELHI



उत्तराखण्ड राज्य

Paper on Implementation of Three Criminal Laws



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New Criminal Laws 2023

Introduction

Since the inception of the Indian Constitution, which pledged justice social, economic, and political for all, we have seen continuous efforts, spanning 75 years, through various legislations and amendments to address contemporary issues. Now, the Parliament recognizes the necessity for **Indianizing the criminal justice system** while preserving its fundamental provisions that serve the cause of justice. Many provisions have been retained due to their alignment with our constitutional framework and their efficacy in serving the larger objective of justice.

The introduction of new criminal laws is a much needed **paradigm shift** for an Independent India as even after the 76 years of Independence, an obsolete criminal law of the British era was being practiced in Indian courts. The new regime introduces the **reformative approach** through **legislative enactments**.

Continuing the status quo is an easy option, but changing the status quo requires courage and conviction.

In the history of any nation, comes a time when you have to shift from old to new, before **Independence, we were governed by the laws which were meant to rule us and not to give us the rule of law**, we inherited that law and series of other laws in 1947, when the country was craving and demanding that now there would be a Indianised version. **The effective decision maker Hon'ble Prime Minister, Home Minister and the will of the people has led to this change.**

These reforms represent a profound jurisprudential shift, reflecting the aspirations of a modern, democratic India and adhering to the constitutional mandate of ensuring justice, equality, and the rule of law.

Why New Criminal laws?

The old criminal laws of the country and more specifically, the Indian Penal Code, 1860 and Indian Evidence Act, 1872 were often touted as being shrouded with a strong colonial color and pre-independence mindset which was reflected from the bare reading of certain provisions. After much debate and criticism and to do away with the colonial mindset from the British era, the three new criminal laws viz., the Bharatiya Nyay Sanhita ('BNS'), Bhartiya Nagrik Suraksha Sanhita ('BNSS') and Bharatiya Sakshya Adhinyam ('BSA') replaced the Indian Penal Code, 1860, Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872 respectively on 1 July 2024.

The older regime was conceptualized and implemented during the colonial era. While several amendments occurred post independence, the colonial era laws were proving to be cumbersome for effective and quick judicial dispensation. The multilayer laws now find **alignment** to the **present societal realities** and work towards a uniform enforcement. These reforms aim to create a more efficient and equitable legal system. Under the new regime additional offences has been **included** like **mob lynching, terrorist act, snatching, organized crime** and sexual intercourse by deceitful means.

Overall, the new laws bring in some positive changes particularly from a procedural point of view by introducing timelines and formalizing the use of technology in certain investigative and judicial processes. In the BNS which replaces the IPC, offences which are similar in nature have been consolidated thereby streamlining the statute, and a few new offenses such as organized crime, mob lynching and terrorist acts have been introduced.

Major overhaul in the law

a) Key changes in the penal provisions

The transition from '**Dand**' to '**Nyaya**', BNS does not entail sweeping changes in law from the former Code, that was predominantly concerned with deterrence of crime. The present Sanhita restrains this deterrence aspect but introduces provisions which focus on providing justice to all stakeholders. Out of a plethora of changes ushered-in by the new laws, a few key changes pertain to sentencing reforms wherein under the new laws, there are provisions for fixed punishments as well as restorative justice provisions like imposition of community service or rehabilitation.

In terms of defining the penal provisions and their respective punishments, the BNS encapsulates **more specific definitions** in terms of defining offenses and avoiding ambiguity. The new penal code i.e. BNS now **recognizes organized crime** such as kidnapping, extortion, contract killings etc. as a member of a criminal syndicate which punishes such offenses and has been the need of the hour. To secure fundamental right of the citizens to express their views freely and their personal liberty the offence of sedition has been omitted.

To secure the **best interests of national security**, the BNS has introduced a specific provision which **penalizes terrorist acts** which are intending to or likely to threaten **India's unity, integrity, security, sovereignty** or have economic implications covering both, violence and non-violence acts which may be in the nature of financial implications. The BNS has also recognizes the offense of disseminating false information whether through spoken words, signs, representations or electronic means.

It reclassifies offences to **encompass cybercrimes, financial frauds, and gender-based violence**, demonstrating a **proactive approach** to contemporary

challenges. The BNS introduces a nuanced approach to sentencing, ensuring penalties are proportional to the gravity of the offence, with alternative sentencing options such as community service and rehabilitation programs. **This proportionality in sentencing reflects the constitutional principle of fairness and justice. By decriminalizing minor offences, the BNS aims to reduce the burden on the criminal justice system, enabling it to focus on serious crimes. Emphasizing correctional measures, the BNS promotes rehabilitation and reintegration of offenders into society, marking a shift towards a more humane and rehabilitative justice system, as envisioned by the constitutional ideals of reformatory justice.**

b) Key changes in the procedural provisions

BNSS in terms of constitutional mandate

The BNSS is meticulously designed to **simplify and expedite** criminal procedures, thereby aligning with Article 21 of the Indian Constitution, which guarantees the right to a speedy trial. The key features of the BNSS include **streamlining the process of filing First Information Reports (FIRs)** to enhance accessibility and reduce bureaucratic red tape. By prioritizing the use of digital records, online filing, and virtual hearings, the BNSS aims to mitigate delays and enhance transparency, thereby upholding the constitutional value of efficiency in the administration of justice. Additionally, the BNSS **enhances protection for victims**, ensuring timely compensation and support services, and promoting a victim-centric approach. This victim-centric perspective aligns with the constitutional principles of justice and equality, ensuring that the rights of victims are adequately safeguarded.

Fixing timeline for judgements/remedies

The key differences between the old and new law in terms of procedure introduced by the BNSS is primarily reflected from the timelines. The BNSS

provides a **time limit for pronouncement of verdict** within 30-45 days from the closure of arguments and now allows for only two adjournments in the trial.

Information to the Victim / Informant by the Police

The BNSS casts an obligation on the police to inform the victim or informant of the progress of investigation including by electronic modes within a period of 90 days and further permits investigation after the charge sheet but only until a period of 90 days which may be extended with the permission of the court. Further, the police have been mandated to register the First Information Report ('FIR') within fourteen days if it finds merit in a preliminary investigation. **The concept of zero FIR has now been codified by the BNSS which allows the victim or the informant to go to any police station and lodge a zero FIR. This provision is particularly beneficial for victims in urgent or threatening situations, facilitating immediate police action and aiding in the timely preservation of evidence.**

Age Specific Arrest Provisions

In relation to arrests, where the offense is punishable for less than three years and such person is infirm or above sixty years of age, the arrest cannot be made without prior permission of an officer not below the rank of the Deputy Superintendent of Police.

Victim Centric Approach

BNSS emphasizes for the Victim compensation scheme, witness protection scheme and rehabilitation of victims. **The use of word Suraksha is not only symbolic, but the provisions are slated towards fairness, justice and reasonableness.**

c) Key changes in provisions relating to evidence

New Approach to Law of Evidence:

The BSA brings significant changes to the law of evidence, adapting to technological advancements and procedural fairness. Recognizing the critical

importance of digital evidence, the BSA includes comprehensive provisions for its admissibility and evaluation. Strengthening measures to protect witnesses from intimidation, the BSA ensures their safety and the integrity of their testimonies. Through the relevance and reliability of evidence, the BSA aims to prevent the admission of irrelevant or prejudicial evidence that could compromise the fairness of trials. Simplifying the process of evidence collection and presentation, the BSA seeks to reduce procedural delays and enhance the efficiency of trials. These measures align with the constitutional mandate to ensure fair trial procedures and uphold the integrity of the judicial process.

Electronic / Digital Record as Evidence:

The BSA provides for a comprehensive certificate in **electronic evidence** in the schedule which is expected to bring uniformity to the current landscape. The definition of authorized signatory of the certificate has been considerably broadened which will now include operators/ managers i.e. person in-charge of the computer or communication device and an expert of the electronic device to have power to sign on the certificates.

The constant endeavors towards **digitizing courts** have been reflected through the statutory recognition of substantive stages in criminal trials such as framing of charges, adjudicating discharge applications filed by the accused, examination of witnesses and recording of **evidence through the audio-visual mode**. Lastly, the definition of secondary evidence has also been widened which allows oral and written admissions and evidence of a person who has examined the document to be produced as secondary evidence.

Implementation of the new criminal laws and transitional phase

Whenever old regimes give way to new ones there are some bumps on the roads and headwinds. New regimes take their time for familiarity and adoption in the judicial framework especially as to when the old regime continues to operate. While the promulgation of the new criminal laws has taken a magnitude of effort

from the legislative draftsman, it will be an equally uphill task for the law enforcement agencies to grapple with the new laws. The manner of registering criminal complaints and FIR was widely understood by each stakeholder. Trial courts which will be the focal point of implementing the new legal regime will be expected to smoothly transit its working in the new regime and bring about the efficiency/effectiveness, the intended purpose of enacting BNS, BNSS and BSA.

Similarly legal professionals in court and advisory work will have to **spearhead this transition** including that of assisting Hon'ble Courts with bringing out a parallel between the old regimes and new regimes at crucial stages of trial/evidence/appeals. Data conveys that the pendency of criminal cases is higher than that of civil cases in India. Therefore, all efforts have to be put in by legal colleagues to **facilitate smooth implementation** of the new legal regime leading to increase the disposal rate and effective judicial dispensation.

The courts will now have to be mindful about the two parallel criminal justice delivery systems in India which is primarily regulated from 01 July 2024 onwards. The practice and procedure of conducting criminal trials will be tested on first principles of law such as natural justice and protecting life and liberty while bearing in mind the strict timelines introduced under the new laws.

To maximize effective implementation as a first step, the investigation agencies will be expected to fairly and intelligibly apply a new regime. In order to do so the state agencies are expected to dispense appropriate and robust training. **Here it is worth mentioning that in the state of Uttarakhand training of new criminal laws have been imparted for more than 97 percent of police officers. More than 77 percent of the Judges of District Judiciary, 57 District Government Councils (DGCs)/ADGCs, 12 Prosecution Officers and approximately 735 Advocates have participated in the training programme on new criminal laws, 2023 organized by Uttarakhand Judicial and Legal Academy, Bhowali, Nainital. It is worth mentioning that Uttarakhand police**

has been congratulated on Karmayogi Bharat App for its dedication to continuous learning and contribution towards.

The implementation of the new regime will reap the desired result. The new laws have taken strides towards promoting digitalization of courts at substantive stages, however, this must be predicated on the basis that each court in India is well equipped with the audio-visual facilities which may be a pressing concern moving forward. There may have been efforts towards improving the **video conferencing facilities in courts** which ought to be extended to all courts across India and not just metropolitan cities.

The effective implementation of new laws require an efficient and flawless sync between bar, bench and the police. These all 3 stakeholders need to understand the letter and spirit of all the 3 new laws which will be a great challenge in initial days.

The new legislation has injected a **renewed enthusiasm** among **legal practitioners, judiciary, prosecutors, and law enforcement personnel**. The provisions offer protection to all involved in the criminal justice system and are perceived as a positive step towards enhancing trust and efficiency. The issue of pending investigations and trials and said that the focus is on addressing the problem of false litigation, which burdens the system. The amendments aim to strike a balance in tackling false complaints while ensuring fundamental issues like prosecution sanction are addressed effectively, thus contributing to the improvement of the criminal justice system. Regarding the infrastructure support required for implementing the legislative changes, initiatives such as the **E-Sankalan** app and **bolstering forensic capabilities** taken up.

Potential Challenges Faced by Policing System:

Training and Adaptation: Police need thorough training to understand and enforce new laws, requiring significant time and resources, potentially straining existing facilities. For example: The Government will have to established

a specialized task force of officers, who will then train and instruct police officers and lawyers.

- **Resource Allocation:** Implementing new laws requires additional personnel, updated technology, and enhanced infrastructure, creating financial and logistical challenges for police departments. For instance: Deploying and managing Forensic Science Laboratory vans and ensuring mandatory forensic examinations in relevant cases require significant resources.
- **Technological Integration:** Modern law enforcement requires advanced technologies and comprehensive training for personnel to effectively use digital evidence systems and crime analytics tools. For instance: The shift to online FIR filing through Crime and Criminal Tracking Network and Systems (CCTNS) necessitated extensive training for police personnel to process digital complaints effectively.
- **Public Interaction:** Police must manage increased public queries and confusion about new laws, necessitating clear communication and additional community outreach initiatives.
- **Legal Knowledge:** Police officers need to quickly become proficient in new laws' nuances to avoid legal missteps and ensure proper enforcement.

Potential Challenges Faced by Judicial System:

1. **Training and Adaptation:** Judges and judicial staff need extensive training to interpret and apply new laws accurately, requiring continuous **education programs**.
2. **Legal Precedents:** Existing legal precedents may not align with the new laws, leading to potential **ambiguities** and uncertainties in legal interpretations.

For instance: Judges need to maintain clarity between old and new legal provisions, particularly where section numbers have changed, to avoid inconsistencies in rulings.

3. **Case Backlog:** Transitioning to new laws may worsen case backlogs as judges and lawyers adjust to new legal parameters. For instance: In 2023, the Law Ministry informed that over 5 crore cases were pending in various courts, including 80,000 in the Supreme Court.
4. **Resource Constraints:** Courts may lack necessary resources, such as updated legal databases and skilled support staff, impeding effective law implementation.
5. **Judicial Interpretation:** Consistent interpretation of new laws across courts requires detailed guidelines and higher court rulings to ensure uniformity.
For instance: The inclusion of ‘terrorism’ as an offence in ordinary penal law in addition to the present special anti-terrorism law is bound to cause confusion.
6. **Coordination with Law Enforcement:** Smooth cooperation between judiciary and police is crucial, necessitating clear protocols, regular communication, and joint training sessions.

Mitigating Strategies:

- **Training and Skilling:** Develop comprehensive training programs and workshops for officers, leveraging online platforms, with refresher courses. For instance: The Bureau of Police Research and Development(BPR&D) has created 13 training modules to enhance the capabilities of police, prisons, prosecutors, judicial officers, forensic experts, and central police organisations.
- **Balancing Old and New Provisions:** Need to Create detailed comparative guides and cross-reference tools, conduct regular briefings and interactive Q&A sessions to help officers understand the changes and avoid legal ambiguities. For example :The Bar Council of India has mandated that universities and Centres of Legal

Education integrate the new laws into their curriculum starting from the 2024-25 academic year.

- **Forensics Infrastructure:** Adequate funding to establish new central forensic science labs, establish partnerships with private forensic labs, and provide continuous training for forensic personnel to manage resources effectively. For example: The National Informatics Centre (NIC) has developed eSakshya to enable electronic videography/photography of crime scenes.
- **Technology Integration in Judiciary:** Implement phased integration of technology and provide robust technology training and continuous support for judges and judicial staff. For example: The NIC has developed applications like NyayShruti and eSummon to enable conduct of judicial hearings, and deliver court summons electronically.
- **Public Awareness :** Collaborate with law enforcement and community organisations to conduct public education initiatives, and provide accessible resources and helplines to address public queries and concerns.

The last word

These reforms are poised to address longstanding issues such as procedural delays, inadequate protections for victims and witnesses, and the need for more approaches to sentencing and rehabilitation. By integrating digital technologies, enhancing victim rights, and adapting to contemporary forms of criminality such as cybercrime, the new laws signal a commitment to not just catching up with global legal standards but also leading in innovative practices that uphold the rule of law.

Furthermore, the emphasis on rehabilitation and alternative sentencing under the BNS underscores a **shift towards a more humane approach to justice**, acknowledging that punitive measures alone may not suffice in addressing the complex social factors contributing to criminal behaviour. This holistic

approach, coupled with strengthened safeguards for digital evidence and witness protection under the BSA, **ensures that trials are fair, evidence is reliable, and witnesses are safeguarded against intimidation.**

While challenges such as implementation logistics, judicial capacity building, and ensuring equitable access to justice remain significant, the potential benefits of these reforms cannot be overstated. They can restore public trust in the legal system, improve efficiency in case adjudication, and uphold constitutional principles of equality and fairness. Ultimately, the success of these reforms will depend on collaborative efforts among policymakers, legal practitioners, civil society, and the public to navigate the complexities of transition and ensure that the promise of a more just and modern legal framework in India is realized.

In essence, while the road ahead may be complex, the proposed reforms hold **promise for establishing a more just, efficient, and responsive criminal justice system in India.** By replacing outdated colonial-era laws with contemporary and progressive legislation, India can pave the way for a future where justice is not only accessible but also administered in a manner that aligns with the evolving socio-legal dynamics of the nation. The transition from the IPC, CrPC, and Evidence Act to the BNSS, BNS, and BSA **represents a bold and necessary step towards a more equitable legal framework, one that is reflective of India's aspirations in the 21st century.**

The Twelve Key Points is The Paradigm Shift of The Three New Criminal Laws

Nationhood in true sense

- Two of these laws were enacted during the British regime. "They made laws to rule us, whereas we made laws to establish rule of law." The concept of nationhood is not new to anyone existing in this world. Love for the nation is today recognized as the noblest idea by the entire globe. The three criminal laws imbibe within the citizens the feeling of Nationhood with the help of realization of the fact that these are drafted by "We, the people" for "We, the people".

Paradigm Shift from Colonial rule to 'Swaraj'

- The term 'Swaraj' has been advocated by Mahatma Gandhi himself. The father of the nation was a strong supporter of own rule and hence independence in true and complete sense. The three new Criminal laws carry the term 'Bharat' in their titles itself. This, in itself signifies a pertinent change and reflects the objective behind these new laws- the declaration that we completely denounce the colonial laws in words and spirit.

Valuing time, place and circumstances

- India was talking about knowledge, philosophies and spirituality when other nations were trying to fulfill their basic needs is an undeniable truth. A very popular philosophy of this nation is giving value to time, place and circumstances ("kaal, Samay aur Paristhiti se bada koi nahi"). The new criminal laws fit apt to this philosophy. They have been introduced at the correct time in the correct place and obviously in the circumstances that required it as an urgency.

Respect for technology

- Time is the best teacher is an inescapable truth. It has taught us yet another thing- technology ought to be respected. Innovations and inventions have made us reach at a point where technology cannot be ignored even to a bit. We should hence work complementary to the technology and should not hesitate in taking its help whenever and wherever required. The new criminal laws have incorporated provisions related to inculcation of technology which shall make implementation of laws easy and effective. This shall pave a path towards the actual realization of justice.

Speedy Justice and increased accountability

- “Justice delayed is justice denied” is perhaps the most pertinent element in any justice delivery system and law enforcement machinery. The new criminal laws have kept this element in mind. This is evident from the fact that new timelines have been introduced for the procedures to be followed to ensure speedy justice and also compliment the accountability of the ones involved.

Introduction of new offences

- Law is for the society and character of the society is dynamic wherein numerous changes have taken place including innovation in the form of technological advancements. Keeping pace with the changing nature of the society is hence a sine qua non. The new criminal laws have adapted themselves with the changing technology. For better conditions in the society, new criminal offences which evolved out of the technological advancements and other developments taking place have also been introduced.

Victim Centric approach

- In a social welfare state, satisfaction of the victim is the end desired behind any sanction. In this spiritual nation there has always existed the belief that justice and revenge should be differentiated and ultimate justice means welfare. This vision has been given a positive direction by the new criminal laws in India with their victim centric approach.

Terrorism as an offence

- With the insertion of terrorist act as an offence in the new criminal laws, it should be understood that the assertion of intellectuals shall now stand satisfied. The long debate of the history hence comes to an end and the offence is now recognized. This shall pave a new path in the direction of justice and righteousness.

The basics of zero FIR and e FIR

- Registration of an FIR has always been seen as an ardent task by the citizens of this nation. Moreover, people have always tried to keep distance from this task. The problem has been effectively handled by the new criminal laws. The menace of non- reporting of offences shall surely come to an end with the concepts of Zero FIR and E FIR.

Mob Lynching and Snatching

- The new offences introduced in the new criminal laws are a symbol of the respect and care that the legislature has shown towards the citizens of India (particularly senior citizens who have been the prime target of snatching). By trying to put an end to mob lynching through its introduction as an offence, the unity of the nation and hence its integrity as a result has thereby been preserved and maintained.

Organized crimes and petty offences

- The new criminal laws in India have also taken up gravity of the situation of introducing organized crimes and petty offences within their ambit. These are the ones which required urgent attention and found no place in perhaps any legislation in India. The problem has finally been taken up and expected to be effectively dealt with in future.

Community services

- Another Indian philosophy is being reflected by the introduction of this new punishment. The ancient Indian Philosophy- “The offender should get a punishment from which the society also gets benefited” has been accomplished by this act of the parliament.