

## **Insights into India's Evolving Criminal Laws: Examining Recent Changes and Legal Lacunae**

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### **Introduction**

On 14 December 2023, a majority of opposition members were suspended from the parliament. Interestingly, taking advantage of the absence of various opposition members, the Modi government introduced three very important criminal laws. The Union Minister for Internal Affairs Amit Shah stated that the purpose of introducing these criminal laws was to remove the laws of the British colonial era. The three new criminal laws Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya replaced the old laws of the Indian Penal Code (IPC), the Criminal Procedure Code (CrPC) and the Indian Evidence Act (IEA), respectively. Bharatiya Nyaya Sanhita is a comprehensive legal document that covers various aspects of criminal law, including definition of crimes, punishments, and procedures for prosecution. It retains most of the offences from the IPC. Bharatiya Nagarik Suraksha Sanhita is a procedure law which governs the administration of criminal justice system. It gives framework for the investigation and trial of criminal offences, procedure for arrest, bail, search and capture, and other aspects of criminal proceedings. Bharatiya Sakshya deals with the rules and regulations related to the evidence presented in courts. It involves the procedure and method by which evidence can be gathered, presented, and evaluated during the trial of civil and criminal cases. Critics pointed out that the Bharatiya Janata Party (BJP) government is using the narrative of colonialism to make laws that will be instrumental in expanding the grand project of Hindutva. Proponent of this project, they believe, will use these laws against those who humiliated Hindus in the past.<sup>1</sup> Discussion on these laws is important because of three main reasons: First, the timing, as elections are due, and these laws are introduced in the parliament. Second, the majority

of the opposition members were suspended from the parliament to preclude a healthy parliamentary debate on them. Third, India is at the top of the list of countries that have a maximum number of separatist groups or movements.

### **Background**

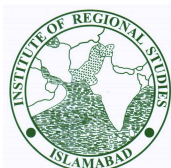
A country's penal code, criminal code of procedure, and evidence act form essential components of its criminal justice system. The old criminal laws were inherited by India from the British colonial era. The three laws: the IPC, the CrPC, and the IEA are now replaced by Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya. On 11 August 2023 when these new laws were introduced in parliament, the Union Home Minister, Amit Shah said that these laws would not be sent to the Standing Committee because these were major laws.<sup>2</sup>

In 2020, a national-level committee was made by the union government to review the old criminal laws after which in 2023 the government informed the parliament in writing that the Standing Committee after the review of old criminal laws suggested that there is a need to reform the old criminal laws rather than introduce an amendment bill.<sup>3</sup>

In July 2022, the Supreme Court directed the union government to make a separate bail act for the process of granting bail. India is one of the most under-trial populated country with 76% of all prisoners waiting for trial. This problem of under-trial detention has burdened the criminal justice system for decades. The Supreme Court, in May 2022, asked the states to abstain from filing sedition cases under article 124A of the IPC. The sedition law was first passed by the British in 1860 to suppress the voices against their government. The changes were made in the CrPC in 1973, which allowed the police to arrest anyone without an arrest warrant under

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section 124A. In 2021, the Indian union government informed the parliament that 501 individuals were arrested from 2015 to 2019 under section 124A but only 9 were convicted. From 2014 to 2020, 28% annual increase occurred in sedition cases which is greater than the average annual cases from 2010 to 2014. Critics claim that the increase in sedition cases shows that the union government used sedition laws in the same way as the British authorities in the colonial Era.<sup>4</sup>

Chapter 1, Section 1 "Title and the Operation of the Code," of the IPC said that this act shall extend to the whole of India except the state of Jammu and Kashmir. Under the new law, the state of Jammu and Kashmir will be an integral part of the union territory. There is a technical issue in the implementation of the old criminal laws in the state of Jammu and Kashmir because the law said that these laws shall not be extended to the state of Jammu and Kashmir.<sup>5</sup>

According to critics, the new laws are like old wine in a new bottle while some say that they are even more draconian than old criminal laws. Some of the critics claim that the BJP enhanced the power of the state and police through the implementation of these criminal laws. Senior human rights lawyer Colin Gonsalves says that these laws are 10 times more draconian.<sup>6</sup>

## **Bharatiya Nagrik Suraksha Sanhita Bill (BNSSB), 2023**

### **Police custody**

According to the CrPC 1973, if a person commits a crime and police arrest him/her, for a maximum for 15 days he or she can be in the custody of the police before he or she is sent to jail but under new law of Bharatiya Nagrik Suraksha Sanhita (BNSSB), it is increased up to 60 days.<sup>7</sup> A former judge at Delhi's criminal court and a lawyer of the Supreme Court Bharat Chugh said that traditionally courts are very much reluctant in granting bail if there is a possibility of police custody. So now, the time duration is increased it will be more difficult to get bail. He further added that the change in law had grave implications for life and personal liberty. Human rights lawyer, Colin Gonsalves said that legal

aid was provided from arrest under the old law but according to the new law, there is no such provision, which is interesting.

With 75% crowded jail across the country, the Supreme Court of India repeatedly stressed that bail not jail, as a rule. While human rights activists pointed out a very important issue that a lot of torture cases happen in police custody, according to the 2020 report of the national campaign against torture average of five people died in police custody daily in India. Conviction remains rare. India is a country with the most separatist movement so, this change in law has more dangerous implications, especially in the occupied state of Jammu and Kashmir.<sup>8</sup>

### **Trial in Absentia**

There is another new provision in the Bharatiya Nagrik Suraksha Sanhita, in which somebody accused of a crime in India, can be tried in India in absentia, can be given punishment, and can be sentenced in absentia while the person is overseas. The person will carry a sentence on their names and if they want to appeal against the sentence, they should first come back to India and surrender to Indian law, then they can seek reprieve from the law. They cannot do it remotely, they cannot do it from another country which is again a major change in the law and seized the basic rights of an accused. We can take an example of Ashok Swain, an Indian-origin Swedish academic and expert, who criticized the Indian government on its policies. The Indian government cancelled his overseas citizen of India (OCI) card for the first time in February 2023 which he challenged in Delhi High Court and the court altered the decision of government. Later, his (OCI) card was cancelled for the second time in September 2023. Another example is Arundhati Roy, an overseas Indian author and also a human rights activist. A sedition case has been filed against her in 2010 over a Kashmir speech.

## **Bharatiya Nayaya Sanhita Bill (BNSB), 2023**

### **Desh Droh**

The Supreme Court of India, in 2022, suspended Article 124A for the first time and



directed the government to not register further cases. It was a colonial era law, introduced by the British to protect their government, under which sedition was a crime against the government of the day. The Hindi translation of Sedition is *Rajdroh* which means rebellion against the country or an act that did damage to the country. The Modi government has repealed Article 124A. While sedition will no longer be a crime, a lot of the crimes which were earlier swept into the sedition bucket will now go into the treason bucket. So what used to be *Rajdroh*, will now become *Deshdroh*. The new law Bharatiya Nyaya Sanhita includes Section 150, which addresses the offence of *Deshdroh*. The old law spoke about inciting or attempting to incite disaffection towards the government and the punishment was three years to life imprisonment. The new law represents acts endangering the sovereignty, unity, and integrity of India without using the word sedition. This law encompasses not only actions but also any words spoken, written, signs, visible representation, electronic communication, or financial support to or for a perceived subversive organization, all of which could result in charge under this law. Sedition, which concerns rebelling against the government, has been replaced by a new law that addresses rebellion against the nation itself. This change represents a significant transition from the old law to the new law. Although the Union Home Minister proclaimed quite proudly that the colonial era sedition law was done away with, it has essentially been transformed into something even more objectionable. The punishment for the offence has been increased. Previously, it was three years to life imprisonment, and now, it is seven years to life imprisonment, which is a major change. The Indian government has now been empowered under this law to seek extradition of a person sitting outside India allegedly plotting to commit the crime. This law will impact Sikh, Kashmiri, and Hindu diaspora communities residing in Canada, Britain, US, and other countries.

### **Terrorism**

Bharatiya Nyaya Sanhita also includes special offences like terrorism and organized crime, which had previously been governed by special

laws, into ordinary criminal laws without providing safety. For example, under India's special anti-terror law, the Unlawful Activities Prevention Act (UAPA), all the shreds of evidence would be examined by an independent authority. However, no such thing has been provided in new laws. In the bail application case of Shaheen Bagh protesters in Delhi, the Delhi High Court pointed out that there was a lack of a clear definition of terrorism. Under Section 111 of the of the new law Bharatiya Nyaya Sanhita, a person is said to have committed a terrorist attack if he commits any crime in India or in any foreign country with the intention to threaten the unity, integrity, and security of India to intimidate the general public or disturb the public order by an act or using bomb dynamite and other explosive substances, to cause death or serious bodily harm to any person, or endangers a person's life. Terrorism can also be the destruction of properties. UAPA also pointed out the same thing but the new law specifies that whether public property or private and it also adds a new feature that is obstructing supplies, so it is not just the destruction of property but also obstructing supplies, which now become a terrorist act.

It is important to note that the sedition law has been abolished. Another significant aspect is Clause 4 of Section 111 of the Bharatiya Nyaya Sanhita, which states, "To provoke or influence by intimidation the government or its organization, in such a manner so as to cause or likely to cause death or injury to any public functionary or any person or an act of detaining any person and threatening to kill or injure such person in order to compel the government to do or abstain from doing any act, or destabilize or destroy the political, economic, or social structure of the country, or create a public emergency or undermine public safety."<sup>9</sup> Even giving out statements like the one Sharjeel Imam gave about Siliguri being a very narrow corridor, which if choked, could cut off the north east from India can now be considered terrorist acts under the new laws.<sup>10</sup>

### **Bharatiya Sakshya Bill (BSB), 2023**

The Bharatiya Sakshya Bill of 2023 has replaced the Indian Evidence Act of 1872, introducing regulations governing the presentation

of evidence in courts, whether in written or oral form. While largely retaining the provisions of the Indian Evidence Act, the Bharatiya Sakshya distinguishes between two types of evidence: primary evidence, which includes original documents, and secondary evidence, which serves to authenticate the contents of primary documents. Notably, under the Indian Evidence Act, electronic records were categorized as secondary evidence. However, the Bharatiya Sakshya now elevates electronic records to the status of primary evidence.

### Conclusion

Despite the reforms in the criminal laws, critics and analysts argue that the colonial era law has been preserved in the name of new laws, like the evidence law, which has not been modified into new laws. Also, in IPC, the government only adds a few things and just rearranges the old section. There is nothing new, but rather presenting old things in new packing. It will only delay the legal proceedings

of many cases, which are already more than 50 million pending cases. It will also create challenges for the system because in the ongoing cases which law will be used for example if some of the legal processes are complete and some are remaining then, which law would be used on the remaining part? Some of the new sections are horrible like the extension of the duration of the police custody. The Congress leader, Jairam Ramesh said that "the three criminal justice bills bulldozed through parliament last week, aided by the deliberate suspension of 146 MPs, has now received presidential accent. Many eminent lawyers and jurists have already pointed out its disastrous consequences, especially for the marginalized sections of society."<sup>11</sup> The new laws challenge the liberty of the citizens and give extra power to the state and state institution, which has also been deceitfully used against opposition leaders, critics of the government, minority leaders and specifically separatist leaders.

### Notes and References

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