REFORM & REFLECTION

Analysis of Criminal Laws (Amendment) Bill, 2023

Association for Protection of Civil Rights

REFORM AND REFLECTION: ANALYSIS OF CRIMINAL LAWS (AMENDMENT) BILL, 2023

ASSOCIATION FOR PROTECTION OF CIVIL RIGHTS (APCR), NEW DELHI

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EXECUTIVE SUMMARY

Introduction

This report provides a brief analysis of the three proposed Criminal Law bills namely *the Bhartiya Nagrik Suraksha Sanhita Bill (BNSS), the Bhartiya Nyaya Sanhita Bill(BNS), and the Bhartiya Sakshya Bill(BSB).* These bills were introduced in the Indian Parliament in August 2023 by the government with the stated objective to overhaul the criminal justice system in India and shed the vestiges of British colonial rule.

This report seeks to analyse the effect of some of the most prominent changes introduced in these bills, especially looking at how they correspond to the stated objectives of simplifying and decolonising the criminal justice administration. It also highlights concerns about potential misuse of power, infringement on individual liberties, and inadequate safeguards for various vulnerable groups.

Key Findings:

The Bhartiya Nagrik Suraksha Sanhita Bill (BNSS)

- **Handcuffing Power:** The bill grants police the authority to handcuff individuals, contrary to previous Supreme Court judgments in which the Apex Court has denounced the practice of handcuffing being in violation of rights guaranteed by the Indian constitution.
- **Preventive Detention:** Broad powers for preventive detention raise concerns about potential misuse by police officers.
- **Extended Police Custody**: The bill allows police custody beyond the initial 15 days impacting individual rights and due process.
- **Trial in Absentia:** Allowing the trial of proclaimed offenders in absentia raises questions about adherence to natural justice principles.
- **Sentence Commutation:** Revised Section 475 of BNSS curtails the gov-

ernment's power to commute sentences potentially impacting the justice system.

- **Specimen Production:** Section 349 of BNSS gives discretion to the magistrate to order specimen production without arrest, raising ethical and legal concerns.
- **Bail Provisions:** Absence of updated provisions for bail, contrary to recommendations by previous law commission and judicial decisions.
- **Compensation for Wrongful Prosecution:** The bill still lacks the provision of compensation for victims subjected to wrongful prosecution and confinement, despite concerns raised in the past.
- **Search and Seizure of Electronic Devices:** No legally mandated framework for the search and seizure of electronic devices poses challenges in the digital age.

The Bhartiya Nyay Sanhita Bill (BNS)

- **Reintroduction of Sedition Law:** While introducing the bill the Home Minister Amit Shah mentioned the removal of the colonial sedition law from newly introduced bills. However, the bill has reintroduced the law in a broader and strengthened form under section 150 of the Bill.

  Furthermore, section 127 of the Bhartiya Nagrik Suraksha Sanhita Bill has retained the essence of sedition in referring to the publication as '*seditious matter*'.

  Section 150 of The Bhartiya Nyaya Sanhita Bill is marketed as a transformative, post-colonial breakthrough, but its substance suggests a more restrictive approach, which could potentially be used by the state to stifle democratic expression.

- **Introduction of 'Terrorist Offence' as a new offence -** The proposed Section 111 has effectively brought the offence of Terrorist Act contained under Section 15 of UAPA - which is a special anti-terrorism legislation - into ordinary criminal law. Unlike the UAPA, the offence of terrorist acts has not been limited by any sanction requirements.

- **Community service as an additional form of punishment-** Without providing any clear definition of such punishment, the fruitful purpose cannot be served.
- **No Shift from Gender-Centric to Gender-Neutrality:** In case of rape and sexual assault the laws are still stereotypically gendered where offender can only be man and victim, a woman.
- **Inadequate Penalties for Mob Lynching:** Although the bill introduced provision for mob lynching the penalties are inadequate.

The Bhartiya Sakshya Bill(BSB)

- The new bill retains the **potential for the misuse of 'confession made to police officers in or outside police custody or anyone other than police in police custody' in the name of *discovery statements.*** It requires additional safeguards to prevent the police from coercing confessions under the guise of discovering evidence.

Conclusion

The analysis of the criminal law bill reveals a missed opportunity for achieving meaningful decolonization in the criminal justice system. Rather than representing a comprehensive overhaul, the bill heavily relies on existing legislative text, failing to address the core issues. The legislation appears to shift the balance from a due process model to a crime control approach, granting broad powers to law enforcement and authorities at the expense of liberty of the citizens. This deviation raises concerns about the potential impact of the bill on the dispensation of justice and rights of individuals. It highlights the need for a more thorough re-evaluation of the proposed reforms.

INTRODUCTION

On the last day of the Monsoon Session of the parliament, Home Minister Amit Shah introduced three bills in the Lok Sabha intending to overhaul the criminal justice system in India and to replace the British-Era laws. This bill was withdrawn by the Government in the winter session and a revised bill was introduced with a few minor changes. Several recommendations have gone unaddressed in the revamped bill. All three Criminal Laws namely the Indian Penal Code 1860, Code of Criminal Procedure 1973, and Indian Evidence Act 1872 are being replaced by The Bhartiya Nyay Sanhita Bill, The Bhartiya Nagrik Suraksha Sanhita Bill, and The Bhartiya Sakshya Bill respectively. All of these laws, except for the Code of Criminal Procedure, have colonial origins. The Code of Criminal Procedure (CrPC) was enacted in 1973 based on the recommendations of various committees and Law commissions.

All these laws have since then undergone several amendments to address the evolving legal landscape and changing needs of the criminal justice system. According to the Government, these new bills will simplify the procedure to make the laws relevant for the contemporary time and will be more justice-oriented rather than punishment-oriented.

The bill has evoked both criticism and approval among the public. One of the most pressing concerns raised relates to the extensive scrutiny and interpretation of the existing law by the judiciary over time. The law is dynamic, it is always evolving. The new law introduces a complex restructuring of sections, potentially leading to ambiguity and confusion. These new enactments inevitably raise intricate questions about their impact on pending cases. India currently has numerous ongoing cases governed by existing criminal laws, and the introduction of a new law with entirely different section numbers poses a challenge in terms of adhering to established precedents and vital legal commentaries.

While the bill claims to revolutionise the criminal justice system in India, it appears that the reality is somewhat different. An initial plagiarism check of the

bill revealed a similarity index of approximately 80-83%[1], suggesting that it represents a mere surface-level reform with a few amendments and a reshuffling of pre-existing provisions. It's noteworthy that India still retains many colonial-era laws, such as the Code of Civil Procedure 1908 and the Indian Contract Act 1872. However, these laws have evolved through amendments. In the case of implementing such laws, the primary consideration should revolve around their relevance and effectiveness in addressing contemporary needs and challenges.

When examining the potential differences between the new bills and existing Acts, a particularly concerning aspect is the extensive powers granted to the police, especially under the guise of Preventive Detention. The Indian Criminal Justice System adheres to the Due Process model, which seeks to balance individual and societal rights. Any law that contradicts the principles of justice, reasonableness, and non-arbitrariness cannot withstand judicial scrutiny. While combating crime is crucial, it is equally important to uphold individual liberty. The proposed Bhartiya Nagrik Suraksha Sanhita bill appears to prioritise crime prevention over individual liberty, leaning toward a crime-controlling system. In such cases, the Supreme Court's rulings in various cases, such as *R.C. Cooper v. Union of India*[2] and *Maneka Gandhi v. Union of India*[3], where the Court consistently emphasised the doctrine of Due Process, would risk being undermined.

Another significant objection to the inclusion of terrorism laws in the Penal Code is the redundancy it creates within our legal framework. It is worth noting that our country already has specific legislation in place to address terrorism-related activities, most notably the *Unlawful Activities (Prevention) Act of 1967*. The existence of such a dedicated law raises questions about the necessity and practicality of incorporating terrorism-related provisions within the broader framework of the Penal Code.
The third significant objection pertains to the nomenclature of these Bills. India, with its rich tapestry of linguistic diversity, is home to a multitude of languages, with over 122 major languages and approximately 1,599 other languages, as

1 Natasha Narwal, "The Proposed Overhaul of the Criminal Justice System: Decolonising or Recolonising the Law?" *The Wire*, Sep. 6, 2023.

2 1970 AIR 564.

3 1978 AIR 597.

documented in the Census of India in 2001. English, as a global lingua franca, serves as a common language spoken and understood throughout the country. When new laws are introduced, they are drafted in English to ensure comprehensibility for all, and subsequently, translated into Hindi and other regional languages. However, the recent practice of introducing Hindi names for laws initially written in English has raised considerable concerns and objections, particularly from non-Hindi-speaking communities.

This naming practice poses practical challenges, as non-Hindi-speaking citizens may find it challenging to pronounce and refer to these laws in a court of law. The Madras Bar Association, for instance, has registered its formal objection and voiced its concerns regarding this naming convention. Tamil Nadu Chief Minister MK Stalin has characterized this move by the Centre as 'reeking of linguistic imperialism' and has expressed apprehensions that it might represent an attempt to re-colonization in the name of decolonization.' It is important to note that while promoting the "Indianization" of laws is a laudable goal, this may necessitate more comprehensive efforts beyond merely naming them in Hindi or Sanskrit.

This article further deals with other concerns in more detail, with each one covered in its section which will involve a thorough evaluation of these proposed legislation, considering factors such as constitutional compliance, protection of individual rights, societal impact, legal clarity, and effectiveness to ensure that the legislation aligns with the principles of justice, constitutional rights, and the welfare of Indian citizens.

THE BHARTIYA NAGRIK SURAKSHA SANHITA BILL, 2023

The proposed Bhartiya Nagrik Suraksha Sanhita bill (BNSS) seeks to repeal nine provisions of the CrPC, proposes changes to 160 provisions thereof and introduces nine new provisions. The Bill contains a total of 533 Sections. It substantially expands police powers and discretion in areas of arrest, custody, investigation, and seizure while diluting existing safeguards and rights of accused persons. The addition of new provisions for Handcuffing, Preventive Detention, and Conviction of accused in absentia seem to run contradictory to wider principles of due process as well as directions laid down by the Supreme Court in various cases.

Handcuffing of Accused

- **Existing law on Handcuffing and new provisions in BNSS**

  The Code of Criminal Procedure has no provisions relating to handcuffing and the Supreme Court in various cases has raised concerns regarding Handcuffing. One such case is *DK Basu v State of West Bengal*[4], where the court has issued certain guidelines related to arrest. In one of these guidelines related to handcuffing it was held that handcuffing violates all kinds of decency and it must be followed as a last resort and should not be used as a custom. It was held that *"The indiscriminate resort to handcuffs when accused persons are taken to and from the court and the expedient of forcing irons on prison inmates are illegal and shall be stopped forthwith save in a small category of cases. Reckless handcuffing and chaining in public degrades, puts to shame finer sensibilities, and is a slur on our culture."*

4 (1997 (1) SCC 416).

In another case of *Prem Shanker Shukla versus Delhi Administration*[5], the Supreme Court had denounced the act of handcuffing by observing that, "*Insurance against escape does not compulsorily require handcuffing.*

Again the Supreme Court in *Sunil Batra v Delhi Administration*[6] had critiqued indiscriminate handcuffing as it could amount to cruel and inhuman treatment.

In contrast to all these judgments, Section 43(3) of BNSS explicitly states that:

> *"The police officer may, keeping in view the nature and gravity of the offence, use handcuff while effecting the arrest of a person who is a habitual, repeat offender who escaped from custody, who has committed offence of organized crime, offence of terrorist act, drug-related crime, or offence of illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency notes, human trafficking, sexual offences against children, offences against the State, including acts endangering sovereignty, unity and integrity of India or economic offences."*

It allows the handcuffing of certain categories of accused including those accused of acts e*ndangering the sovereignty, unity, and integrity of India*, expanding police discretion compared to Section 46 of CRPC. By diluting restrictions under these landmark judgments, BNSS gives wider handcuffing powers to police without sufficient accountability checks which could lead to human rights violation.

Wide Arresting Powers to Police

- **Clause 43(2) of the Nagrik Suraksha Sanhita reads,** "*If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest*"
  It allows the police officer to use "all means necessary" to effect the arrest of a person forcibly resisting the arrest. It gives the police wide lee-

5 1980 AIR 1535.

6 1980 AIR 1579.

way akin to the power of military personnel under the draconian Armed Forces (Special Powers) Act.

Preventive Detention

The power of Preventive Detention under BNSS somewhat resembles the construction of the power of arrest under Section 43A of the Unlawful Activities Prevention Act, 1967, where the police have similar power to arrest a person if they "*have reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing.*"

Section 172 of BNSS states

"(1) All persons shall be bound to conform to the lawful directions of a police officer given in fulfilment of any of his duty under this Chapter.

(2) A police officer may detain or remove any person resisting, refusing, ignoring or disregarding to conform to any direction given by him under sub-section (1) and may either take such person before a Judicial Magistrate or, in petty cases, release him when the occasion is past.

The revised section in the second BNSS bill has replaced 'when the occasion is past' with 'within a period of twenty-four hours'.

Section 172 of BNSS states if police directions are defied, police can detain persons resisting their orders. CRPC does not contain such broad preventive detention powers based on disobeying police orders. The Police officer has the power to detain or remove any person resisting, refusing, ignoring, or disregarding to conform to any direction given by such police officer. Without adequate safeguards, this provision can be misused to suppress dissent and criticism of police excesses, undermining democratic rights. In *Maneka Gandhi v. Union of India*[7], it was set up that any procedural law should be "just, fair and reasonable"; this bill does not seem to meet this rule.

This provision of the bill also seems to violate Article 22 of the Constitution

7 (1978) 1 SCC 248.

as the Police have been given vast and vague power in case the person does not follow the directions given by the police and such power has been vested without giving any time limit for such detention.

Police Custody

BNSS **Section 187(2) is a mirroring provision of Section 172(2) of the Code of Criminal Code.**

> **187(2), Bhartiya Nagrik Suraksha Sanhita**-*The Judicial Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration the status of the accused person as to whether he is not released on bail or his bail has not been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days* ***in the whole, or in parts****, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Judicial Magistrate having such jurisdiction.*

> **Section 167 (2) of Code of Criminal Procedure-** *The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days* ***in the whole****; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.*

Section 187(2), Bhartiya Nagrik Suraksha Sanhita says that the 15-day police custody can be sought on a whole, or in parts, at any time during the initial 60 days (if the offence is punishable with death, imprisonment for life, or imprisonment for a term of not less than ten years) or during the initial 40 days (in respect of other offences).

It means that the Investigating Agency can seek Police Custody for 15 days in different parts. It allows extending police custody beyond the initial 15 days to up to 40/60 days during the total custody period of 60/90 days for investigation.

This provision dilutes the 15-day police custody limit under Section 167(2) CRPC which is an important safeguard against custodial abuse. The Supreme Court in *Anupam J Kulkarni v CBI*[8] had ruled that no further police custody is permitted once 15 days lapse, **even if a total of 15 days is not exhausted earlier.** As per the existing interpretation of CrPC, after the first 15 days have elapsed, no one can be sent to police custody even if the arrested person was not sent to police custody for a total of 15 days. By increasing permitted police custody duration, BNSS enhances powers of interrogation while weakening protections against torture/coercion of accused in custody.

This is the most alarming change in the Procedural law. Custodial violence and death remain a concern in India. Thus, the BNSS provision regarding the increase in police custody risks Custodial violence and further gives room for human rights violations.

Preliminary Inquiry

- **Section 173, BNSS and Preliminary Enquiry**

Section 154, Code of Criminal Procedure,- Information in cognizable cases.

1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, ***shall*** *be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government*

8 1992 SCR (3) 158.

may prescribe in this behalf.

Section 154(1) of the Code of Criminal Procedure casts an obligation on the Police officer to register an FIR in the cognizable offence as soon as the person approaches the Police station. In case of a Police officer not registering the FIR, an action can be taken against the police officer under section 166A of IPC. If the offence does not fall under the list of offences given under sub-section (c) of section 166A IPC then disciplinary action against that police officer could be initiated.[9] In an earlier judgement of the Supreme Court in ***Lalita Kumari v. Govt. of U.P***[10] The Constitution bench has held that registration of First Information Report is mandatory under Section 154 of the Code of Criminal Procedure if the information discloses the commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether a cognizable offence is disclosed or not.

Section 173 (3) (i) (ii)- Information in cognizable offence

173(3) Without prejudice to the provisions contained in section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in-charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence, –

(i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or

(ii) proceed with investigation when there exists a prima facie case.

BNSS Section 173 however allows preliminary enquiry before registering FIR to verify prima facie case. The preliminary enquiry was prone to mis-

9 *State Of Haryana And Ors v. Ch. Bhajan Lal And Ors*, 1992 AIR 604.

10 AIR 2012 SC 1515.

use by police to not register genuine complaints. By reintroducing it, BNSS nullifies binding Supreme Court directions and again provides room for non-registration of FIRs. Police can now refuse to register or delay in registering information on the pretext of first forming a prima facie case.

Trial of Proclaimed Offender In-Absentia

- The principle of Audi Alteram Partem is the basic concept of the principle of natural justice. This doctrine states that no one shall be condemned unheard. This ensures a fair hearing and fair justice for both parties. Under this doctrine, both the parties have the right to speak.

  Section 356(1) of the BNSS states that *"when a person declared as a proclaimed offender, whether or not charged jointly, has absconded to evade trial and there is no immediate prospect of arresting him, it shall be deemed to operate as a waiver of the right of such person to be present and tried in person, and the court shall, after recording reasons in writing, in the interest of justice, proceed with the trial in the like manner and with like effect as if he was present, under this sanhita and pronounce the judgement."*

  Section 299 of the CrPC states, "*if it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of, may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.*

Under CrPC, there is a provision for the recording of evidence of the witness against the accused person who has absconded. Such evidence by the deponent could only be used on the arrest of the accused if the deponent is dead or incapable of giving evidence.
Under **section 356 of BNSS** the words, "*that there is no immediate prospect of*

arresting him" are ambiguous as to what should be the period in considering the immediate prospect.

To proceed with the trial and then pronounce judgement without giving the accused a reasonable opportunity to be heard is a clear violation of principles of natural justice, which is also a part and parcel of the basic structure of the Constitution.

Also to enhance the probative value of the evidence, cross-examination is considered as the most important tool in the trial, and depriving an accused of this right would also amount to a violation of the Right to fair Trial as implicit under Article 21.

Level of Executive Satisfaction to 'use armed forces to disperse assembly'

- **In Section 149(1) of BNSS corresponding to Section 130(1) of CrPC**, the level of executive satisfaction to 'use armed forces to disperse assembly' has been lowered. Earlier, the "Executive Magistrate of the highest rank who is present" could only request the deployment of armed forces. But now, the "District Magistrate or any other Executive Magistrate authorised by him, who is present" is also given power to permit deployment.

  Section 130, Code of Criminal Procedure- Use of armed forces to disperse assembly.—(1*) If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed,* ***the Executive Magistrate of the highest rank who is present*** *may cause it to be dispersed by the armed forces.*

  Section 149(1) of Bhartiya Nagrik Suraksha Sanhita- *If any assembly referred to in sub-section (1) of section 148 cannot otherwise be dispersed, and it is necessary for the public security that it should be dispersed,* ***the District Magistrate or any other Executive Magistrate authorised by him,*** *who is present, may cause it to be dispersed by the armed forces.*

Power of the Government to commute sentences

- **A revised section 475 has been added under BNSS** which amends the

earlier Section 433 of CrPC. This new law under this provision significantly curbs the power of the government to commute sentences. For instance, earlier a death sentence could be commuted for any punishment. Now, it can only be commuted to life imprisonment. Similarly, a life sentence or sentence of rigorous imprisonment could earlier be commuted and substituted by imprisonment or a fine. Now, both a life sentence and a sentence of rigorous imprisonment cannot be commuted to just fine.

Section 475 of Bhartiya Nagrik Suraksha Sanhita Bill, 2023- The appropriate Government may, without the consent of the person sentenced, commute—

*(a) a sentence of death, **for imprisonment for life**;*

(b) a sentence of imprisonment for life, for imprisonment for a term not less than seven years;

(c) a sentence of imprisonment for seven years or ten years, for imprisonment for a term not less than three years;

(d) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced;

(e) a sentence of imprisonment up to three years, for fine

Section 433, Code of Criminal Procedure-

Power to commute sentence.— *The appropriate Government may, without the consent of the person sentenced, commute—*

*(a) a sentence of death, **for any other punishment** provided by the Indian Penal Code (45 of 1860);*

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine.

However, the Sentence of imprisonment for life can now be commuted to seven years.

Power of the Magistrate to order sample or specimen

- **Section 349 of BNSS reads as,**

  If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Sanhita, it is expedient to direct any person, including an accused person, to give specimen signatures or finger impressions or handwriting or voice sample, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or finger impressions or handwriting or voice sample:

  Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding:

  Provided further that the Magistrate may, for the reasons to be recorded in writing, order any person to give such specimen or sample without him being arrested.

The second proviso to section 349 of BNSS departs from **Section 311A of CRPC** which reads as,

" If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case, the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

It allows a magistrate to direct any person to provide fingerprints, voice samples, etc without requiring arrest. Earlier under Code of Criminal

Procedure, such processes could only be directed for arrested accused. By removing the need for arrest, BNSS enhances police powers to collect personal data/samples without sufficient oversight.

This increases the risk of harassment and violation of privacy rights, as samples can be obtained from any person on the magistrate's orders without establishing credible links to the crime.

Provisions related to Bail

- **Section 481(2) of the Nagrik Suraksha Sanhita, 2023**

  *"Notwithstanding anything contained in sub-section (1), where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he **shall** not be released on bail by the Court."*

  It restricts applying the provision for release on bail in cases where multiple proceedings exist against the person. It states that an under trial ***shall*** not be released on bail if an investigation, inquiry, or trial in more than one offence or in multiple cases is pending against that person. This provision could be easily abused by the state to keep an under trial in jail for an indefinite period without the possibility of bail.
  A similar provision in the Code of Criminal Procedure is under section 436A which reads,

  " Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties;

  Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties;

  Provided further that no such person shall in any case be detained during the

period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law."

The amended provision under BNSS significantly dilutes the relief available to undertrials under Section 436A of CRPC. For the majority of undertrials, parallel proceedings always exist. By making the section inapplicable in such cases, BNSS takes away a crucial legal remedy.

- **Bail, not the rule, Jail still not an exception-** '*Bail is the rule, jail is an exception*' is a legal principle that was laid down by the Supreme Court in a landmark judgement of *State of Rajasthan v. Balchand alias Baliya* in 1978. **Justice VR Krishna Iyer** was the staunch advocate of this principle and his judgments have an effective impact on building criminal jurisprudence in India but besides having a good impact, his ideals are not reflected in the new criminal law bill. There is still no proper law following this principle. **The 268th Report of the Law Commission of India** brought to light the necessity of establishing a distinct Bail Act, similar to the legislative framework in the United Kingdom and subsequently suggested the Ministry of Law and Justice for the same. The Ministry of Law and Justice then requested the Commission to examine and propose amendments to the existing Code of Criminal Procedure (CrPC).
  Another issue raised by the Law Commission was related to the monetary obligation in the bail and its implications. The financially well-established can easily afford to purchase their freedom, while the victims of the financial bail system- the poor, are jailed because they cannot raise the money.
  Bail jurisprudence in India tends to predominantly focus on white-collar crime, often giving comparatively less attention to the plight of poor and indigent individuals in need of equitable access to justice. The legal system should ensure that access to bail and justice is equitable, regardless of the socio-economic status of the accused.

  Despite these amendments and suggestions, the CrPC, and for that matter, even the new Bhartiya Nagrik Suraksha Sanhita Bill remains insufficient in adequately addressing issues related to bail.

  There seem to be no significant provisions relating to bail in the New

proposed Bill. No new provision for default bail has been provided in the Bill except for undertrials who have served at least half of their sentence. However, the proviso clarifies that this provision applies only to first-time offenders and not where an investigation, inquiry, or trial in more than one offence or in multiple cases is pending against a person. If such an interpretation is used, then the only thing required to be done to deny bail to an individual is to institute multiple cases against that person or add more than one offence in the FIR.

Uncompensated Suffering: The Ongoing Struggle for the Victims of Wrongful Prosecution and Confinement

"It is better 100 guilty persons should escape than that one innocent person should suffer"

As rightly said by Benjamin Franklin, no innocent person should be subjected to the repercussions of flawed investigations and evidence. The experience of being convicted and imprisoned for an offence they did not commit can lead to many victims suffering from symptoms associated with post-traumatic stress syndrome.[11]

Even though the Indian criminal justice system has been designed to ensure that those who are culpable face punishment, while those who are innocent receive justice, it still lacks a legislative framework to provide relief for those who are wrongfully prosecuted.

Article 21 of the Indian Constitution safeguards the lives and personal liberties of its citizens. The police, prosecuting authorities, and everyone engaged in the administration of justice must ensure the protection of citizens' rights. When these fundamental rights are violated due to misconduct by the police and prosecutors, it triggers state accountability. However, the constitution, which ensures these fundamental rights, does

11 Sion Jenkins, "Secondary victims and the trauma of wrongful conviction: Families and children's perspectives on imprisonment, release and adjustment", *Vol. 46 Journal of Criminology, Sage Journa*l(2013).

not explicitly address the provision of compensation by the state for such infringements. Even if remedies are available within the current system, they often involve a complex and convoluted process.

In 2008, the Delhi High Court in the case of *Babloo Chauhan @Dabloo v. State Government of NCT of Delhi*[12] expressed some grave concern about victims of wrongful prosecution and unjust detention of innocent persons. It conveyed its apprehension about no effective response from the government for the victims of wrongful prosecution. The court subsequently instructed the Law Commission to conduct a thorough assessment of the matter and provide recommendations to the Government of India.

The Law Commission in 2018 in its **277th Report titled, "Wrongful Prosecution (Miscarriage of Justice): Legal Remedies** suggested certain standards to be applied in this particular matter via amendments in the Code of Criminal Procedure, 1973 and also prepared a draft bill for more clarity in the matter.

The recommendations were made in 2018 and still, there is no progress to show in terms of legislative framework.

No legally mandated regulations for the Search and Seizure of Electronic Devices

Smartphones and laptops often contain a vast array of personal and sensitive information, ranging from contact numbers and emails to bank account details, personal photos, text messages, and much more. These devices have become repositories of our digital lives, holding a wealth of data that reflects our personal, financial, and professional aspects. It makes their protection and privacy very much important.

Improper seizure of data can have a wide range of serious consequences. It can result in invasions of privacy and legal and ethical violations. Safe-

12 247 (2018) DLT 31.

guarding data during seizures is essential to protect individuals, maintain public trust, and prevent the severe repercussions of data exposure and misuse.

Until now, there has not been a specific legal framework within the Code of Criminal Procedure (CrPC) addressing the search of smartphones or electronic equipment. Instead, the standard provisions related to search and seizure are applied when conducting searches and seizures of electronic devices.

This newly proposed bill has introduced some significant changes in the chapter containing *'Process to compel production of things'*. Section 94 of the BNSS Bill which mirrors section of section 91 CrPC now ***empowers the Court or officer-in-charge of the police station to produce any document, electronic communication, including communication device which is likely to contain digital evidence or desirable for investigation, inquiry, trial or other proceedings.***

Earlier the Court or Officers in charge of the police station were empowered to issue summons/warrants only for producing ***any documents or other things*** under section 91 of the Code of Criminal Procedure. Now with the introduction of Bhartiya Nagrik Suraksha Sanhita Bill, 2023 the power to search, seize and summon has been expanded to include even Electronic devices which could have various ramifications.

As the Hon'ble Karnataka has observed in the case of *Virendra Khanna v. State of Karnataka*[13]

> *"There are no rules formulated by the police department regarding the manner of carrying out a search and/or for preservations of the evidence gathered during the said search in respect of the smartphone. It would be in the interest of all stakeholders that detailed guidelines are prepared by the police department."*

13 WP No. 11759/2020.

> In another petition pending before the Supreme Court concerning guidelines for the seizure of personal electronic devices by investigating agencies, the court has sought a proper reply from the state along with international practices in this regard.[14]
>
> Hence, it is imperative that guidelines are established to safeguard the interests of persons when it comes to search and seizure to mitigate the risk of unjustly burdening innocents.

Taken together, these changes signal a dangerous shift towards concentrated police powers without adequate checks and balances. By diluting judicial oversight and the rights of the accused, they threaten civil liberties and promote a climate of fear. The proposed expansions in power, discretion, and authority of police without mechanisms for accountability run the risk of institutionalising abuse and impunity. This perpetuates a regressive "order over justice" approach which is detrimental to democratic norms and public interest.

14 *Ram Ramaswamy And Ors. v. Union of India And Ors. WP(Crl) No. 138/2021.*

THE BHARATIYA NYAYA SANHITA BILL, 2023

Reframing of the old sedition law in a new and broadened form in the name of removal

Legitimate dissent is a vital aspect of India's democratic framework, allowing individuals and groups to express their views and concerns without fear of persecution. It is a fundamental right enshrined in the Indian Constitution, upholding the principles of free speech and expression. A healthy democracy thrives on diverse opinions and debate, and dissent plays a crucial role in holding the government and institutions accountable. However, there have always been attempts to limit or control dissenting voices through the introduction of various legislations by the government.

One such legislation 'sedition' under 124A Indian Penal Code was introduced during the colonial regime to curb the free speech and writings of freedom fighters. There has been a long debate since then about the relevance of sedition law in the post-independence era. After a long history of its blatant misuse, the Supreme Court bench reviewing *Kedar Nath v. State of Bihar*[15] held that this section 124A should be effectively kept in abeyance till the Union Government reconsiders this provision.[16] Supreme Court also ordered to refrain from registering FIRs during this review period. The Government acknowledged that this law does not fit in the current era and was meant for the colonial Era and the Government is in the process of re-evaluating this provision.

Home Minister while introducing the new bill, Bhartiya Nyaya Sanhita, 2023 said that the new bill will repeal the old draconian sedition law. However, upon closer view, the words of the Home Minister do not seem to be consistent with the new provisions.

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15 1962 SCR Supl. (2) 769.

16 *S.G. Vombatkere v. Union of India*, 2022, *Livelaw* (SC) 470.

Part VI of the bill titled "Of Offences Against The State" includes section 150 and reads as,

> *"Whoever, purposely or knowingly by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial means, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or imprisonment that may extend to seven years, and shall also be liable to a fine."*

Now if we see **section 124A of the Indian Penal** which is termed sedition reads as,

> *"Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in [India], shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."*

The important different terms used in new bills are **"Exciting secession, armed rebellion, subversive activities, or encouraging feelings of separatist activities."** It **also includes acts endangering the sovereignty or unity and integrity of India**, a term which is open to various interpretations. In contrast, section 124A IPC focuses on acts bringing hatred or contempt and exciting disaffection towards the government.

Now if we see punishments, section 150 of ***Bhartiya Nyaya Sanhita, 2023*** proposes a penalty of imprisonment for life or imprisonment that may extend to seven years, and a fine whereas section 124A of IPC suggests a penalty of imprisonment for life, with an added fine or with imprisonment which may extend to three years, with or without fine. The punishment is now stricter than the existing law. Also, the new provision acknowledges forms of modern communication, i.e., *"Electronic Communication"*.

Although it does not use the word sedition in its express form, it describes offences such as separatism, armed rebellion against the government, challenging the sovereignty of the country, and Unity and Integrity of India which redefines and restructures sedition law in the new bill. The Bill replaces sedition with 'subversive activities', which makes it very vague and broad. The bill without calling it sedition explicitly has expanded its earlier definition.

It is also worth noticing that section 108 of the CrPC which provides for obtaining security for good behaviour from persons **disseminating seditious matters** has been substantially retained under **Section 127 of the Bhartiya Nagrik Suraksha Sanhita Bill.** Any publication punishable under section 150, BNS has been referred to as a 'seditious matter' in section. 127, BNSS.

So it can be said that although the word 'sedition' has been removed in defining the offence in the BNS, the procedural aspect in the new law still retains its reference to 'seditious matter'. The essence of sedition has been retained and will continue to be interpreted in the light of new sections in a more broadened form now.

New offence of 'Terrorist Act'

The Bharatiya Nyaya Sanhita has added a new offence of **Terrorist Act** under **Section 111.** Under the revised second draft of the BNS, this has been changed to **Section 113**. The section defines terrorist acts as anything done "*… with the intention to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India, a or with the intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country …* ". It specifically mentions acts such as:

i. Use of bombs or other explosive substances

ii. Causing damage or loss to public property or critical infrastructure

iii. Disrupting essential supplies or services

iv. Provoke or intimidate the Government, its organisation or its public functionaries in order to compel them to commit an act or prevent them from carrying out any specific act.

v. Damage to monetary stability by production of counterfeit currency

vi. Damage or destruction of property related to defence of India, or connected to any other purposes of the government

The construction of the proposed Section 113 of the BNS is materially very similar to the construction of Section 15 of the UAPA, and includes sub-clauses similar to several provisions within the UAPA. For instance, the proposed Section 113(3) of BNS contains the offence of conspiracy to commit a terrorist act, and is an almost exact replica of Section 18 of UAPA.

In the case of membership of a terrorist organisation, the BNS defines the offence in even broader and more vaguely defined terms than the UAPA. Sections 10 and 38 of the UAPA contain the offence of membership of an unlawful association or terrorist organisation respectively. For either of these to apply, it is necessary that the person is a member of a group that has specifically been declared as an unlawful association or terrorist organisation by the Union of India. Under the proposed Section 113(5) however, the offence is defined as being a member of "*an organisation which is involved in a terrorist act*". This creates a potential for criminalising any individual who happens to be associated with an organisation that is charged with any offence under Section 113 of the BNS, regardless of the individual's own culpability or even knowledge of the activities of the organisation. Under the UAPA, there is at least a formal requirement to establish that the concerned organisation is involved in unlawful activities, and that the person being punished for its membership has continued to be its member despite it being declared an unlawful organisation. That requirement has entirely been removed under the BNS, creating an overly broad definition of membership of a terrorist organisation.

Further, charging a person under any provision of the UAPA requires Sanction from the appropriate government before it can be applied. The purpose of this sanction requirement is to deter excessive application or misuse of the stringent provision. It acts as a limited mechanism of supervision by the executive over the use of these provisions by the police. Unlike the UAPA however, the proposed Section 113 does not carry any requirement to obtain sanction or prior approval before charging an accused under it.

The definition of terrorist act under Section 15 of UAPA, which has now been included under the proposed Section 113, is extremely broad and somewhat vague. All the acts contained therein are individual offences under criminal law. However, an act is charged under terror law based on a subjective satisfaction that such an act is carried out with the intention to 'threaten the unity, integrity and security of India'. Under the UAPA, this final determination is made by the executive. However, under the first draft of the BNS Section 111, the entirety of this determination had been left at the level of the police station or the investigating officer. In the revised second draft, the only change is that an explanation has been added to Section 113 that the decision to apply this provision shall be taken by an officer not below the rank of Superintendent of Police. This opens up the potential for abuse of a stringent provision like criminalisation of terrorist acts.

Addition of another form of punishment without any clear definition

The new bill has added one new punishment i.e., **Community Service** other than five earlier mentioned Punishments under section 53 of the Indian Penal Code such as

- Death;
- Imprisonment for life;
- Imprisonment, which is of two descriptions, namely: Rigorous and Simple;

- Forfeiture of property;
- Fine.

However, the bill does not define what community service entails. Without a proper definition and prescription, the authority will consider its own interpretation and in such cases, the aim of the punishment would not be achieved.

No shift from Gender Centric to gender neutrality

In 2019, when the Criminal Law Amendment was introduced, it suggested some major changes in Indian Criminal law especially rape and sexual assault legislation to make it gender-neutral rather than reserving the legislation for a particular gender.[17]

However, when The Bhartiya Nyaya Sanhita, 2023 was introduced, there were no such changes. Notably, the statement of objects and reasons of the BNS mentions that 'various offences have been made gender neutral.' However, this does not apply to the offence of rape. Only two provisions under the category of 'criminal force and assault against women' have been made gender-neutral.

But it has been made gender neutral from the angle of the perpetrator only and not from the victim's angle. These offences can be done only against women. Rape provisions are also still gendered where offenders can only be men, and the victims, a women.

Ambiguities brought by defining "Life Imprisonment" as imprisonment for the remainder of Natural life

The intent and implication of the proposed change in definition under section 4(b) of the Bhartiya Nyay Sanhita, 2023(BNS) are not clear. There are two possible interpretations of the clause in which one could mean that life imprisonment in fact means a whole life sentence as per the legal position without any power given to the government for reducing the sentence. There are a total of 64 offences having the punishment of

17 Justice JS Verma, 'The Report of the Committee on Amendments to Criminal Law', (23 January 2013), last accessed on 10.10.2023: Recommended that definition of rape be expanded to be neutral to the gender of the victim.

Life Imprisonment. If no remission power is given to the convict, it takes away the chance for the convict to reform and rehabilitate.

Also, in this situation, it becomes unclear why some other provisions introduced in BNS state 'imprisonment for life' *as a possible sentence* while some others specifically prescribe 'imprisonment for life, which shall mean *the remainder of that person's natural life*.'

For instance, the offence of organized crime is punishable with imprisonment for life as a possible sentence under section 109(6). However, punishment for murder by life convicts under section 102 specifically states that the death penalty and imprisonment for life shall mean the remainder of that person's natural life. There are many such provisions across the BNS where there are **two different articulations of the same term** that have been used. Only one provision which is clear about its articulation is section 111 BNS which introduces the offence of 'terrorist act' and provides life imprisonment *without parole as a possible punishment.* This is the only provision in the BNS that explicitly restricts parole for a life sentence.

If a life sentence means till the end of natural life then using two different articulations across the BNS only creates confusion about the legislative intent.

No reasonable standards/guidelines

- **Section 195(d) of BNS which criminalises *"making or publishing false or misleading information jeopardising the sovereignty unity and integrity or security of India" has various implications***

Section 153B of IPC has been amended with added provisions under section 195(d) under the BNS. The offence proposes a punishment of three years of imprisonment, or fine, or both. The terms used in this section such as ***'False and Misleading Information' and 'Jeopardising'*** are vague and open to various interpretations in the hands of the deciding authority.

In the landmark judgement of the Supreme Court in ***Shreya Singhal v.***

Union of India[18], the court struck down section 66A of the Information Technology Act which punishes any person who sends through a computer resource or communication device any information that is **grossly offensive, or with the knowledge of its falsity, the information is transmitted for the purpose of causing annoyance, inconvenience, danger, insult, injury, hatred, or ill will** as it violates the right to freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India and the law was unconstitutionally vague as it fails to specifically define its prohibitions.

> *The Court followed the U.S. judicial precedent, which holds that "where no reasonable standards are laid down to define guilt in a Section which creates an offence, and where no clear guidance is given to either law-abiding citizens or to authorities and courts, a Section which creates an offence and which is vague must be struck down as being arbitrary and unreasonable."*

The same is the case with this new provision in section 195(d) of BNS where no reasonable standards are laid down to define ***'information jeopardising the sovereignty, unity and integrity or security of India'*** and hence vague.

Inadequate Penalties: New Law's Approach to Punishing Mob Lynching"

There has been public concern and outcry regarding incidents of mob lynching in the recent past. The Supreme Court in the case of *Tehseen S. Poonawalla v. Union of India*[19], has acknowledged the increasing issue of mob vigilantism and its impact on the rule of law. The Supreme Court had then called upon the Parliament to establish a dedicated law to address mob lynching and to ensure appropriate penalties for such acts including compensation to the family of the victim.

The new bill without specifying the term 'Mob lynching' has introduced special categories of crime within the offence of murder by a group of

18 AIR 2015 SC 1523.

19 (2018) 9 SCC 501.

five or more persons on the grounds of ***'race, caste or community, sex, place of birth, language, personal belief and any other ground'.***[20] The first draft of the BNS included provisions for penalties of up to seven years of imprisonment, life imprisonment, and even the possibility of imposing the death penalty for those involved in mob lynching.

This provision of the BNS was criticised since under the current law, cases of Mob lynching were dealt with under the offence of murder under section **302 of the Indian Penal Code which reads as** ***"Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine."***

The provision for punishment under the BNS did not appear to be adequate keeping in mind the earlier provision. Under the Indian Penal Code, the minimum punishment for such offences is either life imprisonment or death. However, the BNS gave way to judges to use the discretion of giving seven years of punishment. This criticism led to a change in the present second draft of the BNS, where the provision for seven years of imprisonment has been replaced with life imprisonment or death.

While the bill has introduced amendments, it still falls short of effectively addressing the problem in alignment with the guidelines provided by the Supreme Court. Ultimately, the provision regarding mob violence under the BNS only relates to punishment in cases where such violence leads to death. It does not create any special category of offences to deal with the root causes of the problem, such as the spread of hatred or misinformation against vulnerable groups. The offences relating to hateful speech under the BNS continue to be characterised by a focus on maintenance of public order, without any recognition of greater consequences of hate speech targeted against vulnerable groups such as religious, caste or other minorities.

20 Section 101(2), Bhartiya Nyaya Sanhita Bill, 2023.

THE BHARTIYA SAKSHYA BILL, 2023

Weaponization of Section 27, Indian Evidence Act - addressed in the new bill or remains the same?

Section 23 of the Bill which incorporates sections 25, 26, and 27 of the Indian Evidence Act reads,

> *"(1) No confession made to a police officer shall be proved as against a person accused of any offence.*
>
> *(2) No confession made by any person while he is in the custody of a police officer unless it is made in the immediate presence of a Magistrate shall be proved against him:*
>
> *Provided that when any fact is deposed as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact discovered, may be proved."*

As per section 25 of the Indian Evidence Act, any confessions made to police officers, whether during their custody or elsewhere, were deemed inadmissible in court. This exclusion is guided by a well-established principle that is aimed at discouraging the use of coercion by police officers to obtain confessions. The underlying rationale of this principle is that if confessions obtained by the police would not be used as evidence in court, there would be no resort to torture to secure such confessions.

In line with a similar rationale, the Evidence Act, **under section 26**, extended the inadmissibility of confessions made in police custody to individuals other than police officers, unless such confessions occurred in the direct presence of a magistrate.

However, **section 27 of the Act,** which immediately followed these two provisions, established the admissibility of specific portions of these confessions, commonly referred to as ***'discovery statements,'*** in court. This admissibility remained unaffected by the previously mentioned restrictions, particularly when these statements led to the discovery of physical evidence related to the offence. This provision of the Indian Evidence Act has been widely criticised for diluting the original bar under sections 25 and 26. Ultimately, in situations where the police are unable to employ an accused person's confession of guilt, there remains a potential risk that they may employ coercion, to ensure the admissibility of the portion of the statement that could potentially lead to the discovery of crucial evidence.

The **exception under section 27** operates in two conditions (as clarified by the Supreme Court in various judgments[21] as well as by Law Commission 185th Report):

1. Confessions made to police officers, whether in their custody or outside, were considered inadmissible in courts.

2. Confessions made in police custody to anyone other than a police officer, unless in the immediate presence of a magistrate.

Section 25, 26 and 27 of the Indian Evidence Act has been merged into a single Section i.e., Section 23 in new The Bhartiya Sakshya Bill, 2023 which has created confusion as to its applicability**.**

Proviso to Section 23 of The Bharatiya Sakshya Bill is similar to Section 27 of the Indian Evidence Act, which has been criticised for diluting the original bar on confessions made to police officers. This raises concerns that this provision could still be misused by police officers to coerce confessions from accused persons.

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21 *Mohmed Inayatullah v. The State Of Maharashtra*, 1976 AIR 483; *State Of U. P vs Deoman Upadhyaya*, 1960 AIR 1125;*Aghnoo Nagesia vs State Of Bihar*, 1966 AIR 119.

Further safeguards are needed to ensure that the proviso in Section 23 is not misused by the police.

Facts that need not be proved-

Chapter III of the Bill, dealing with `facts which need not be proved' includes an amended Section 52 which deals with facts of which judicial notice must be taken. Section 52(1)(a) (corresponding to Section 57(1) of the Evidence Act) includes within it all laws operating within the territory of India having extra-territorial operation. Further, Section 52(1)(b) includes international treaties, agreements, and conventions with countries by India, apart from decisions made by India at international associations and other bodies. Notably, Section 52 excludes references to seals, proceedings, and sovereigns concerning the United Kingdom and limits the scope to similar authorities of India. This brings treaties and other authorities concerning India to an international level at par.

CONCLUSION

While the new criminal law bills do introduce certain welcome changes, it is evident that many vital issues have been left unaddressed. In an ideal scenario, while drafting entirely new legislation, the legislature should prioritise rectifying past loopholes and incorporating recommendations gathered from previously formed committees and Law Commissions.

Decolonizing the criminal justice system is an essential concept that seeks to eliminate the legacy of colonialism and its inherent biases from the legal framework. Unfortunately, the new bill falls short of achieving meaningful decolonization. Instead, it seems a mere distraction, as it retains outdated colonial terminology and relies heavily on text from previous legislation.

The absence of a comprehensive overhaul of the criminal justice system is disconcerting. The term "overhauling" implies a much-needed, thorough, and systematic transformation of the existing system. Unfortunately, the current bill appears to be more about relabeling the older provisions than enacting substantial reform

The new bill primarily focuses on expanding police powers without presenting a fresh and innovative approach to criminal law. Instead of embracing a reformative approach to address criminal behaviour, the bill seems to widen the scope of criminalization, which can have far-reaching implications for society.

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