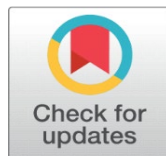
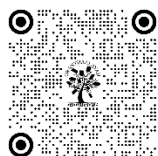


CRIMINAL LAW REFORMS IN RECENT TIMES: ISSUES AND CHALLENGES

Dr. Neeraj Malik¹✉

¹ Assistant Professor, C. R. Law College, Jat Educational Society, Hisar



ABSTRACT

Criminal law is basically a fundamental part of the judiciary system, which protects society and upholds justice. The main purpose of this law is to maintain social order and rehabilitate offenders. Ensures to protection of the rights of individuals and maintains rules regarding illegal and legal behaviour. In India criminal law protects citizens and improves overall justice delivery. The new criminal laws especially emphasize the human rights of the citizens and provide effective outcomes for victims. The modification and introduction directly contribute towards reducing the crime rate and ensuring India's justice system becomes more robust and simple. The importance of reforms and changes in the proper legislation process highlighted the fact that the existing laws are specially backdated. A certain colonial Era is directly reflected in the Justice system. Several old laws in the section have become irrelevant and undoubtedly delay the overall justice system. However, there is a certain concern which can reflect the criminal law reforms in India. Misuse of power by certain authorities and inappropriate implementation can cause severe consequences. The criminal law has been amended many times which enables a legal framework to maintain societal changes and emerging challenges along with technology advancement. When the criminal justice system came to deliver justice by mitigating delay and compliance it created a fair justice system for communities and people.

The idea of reform of criminal law mainly emphasizes victim empowerment, modernized evidence rule and many more. Also, certain areas needed to be addressed such as accountability, transfer, privacy, freedom of speech, the potential for abuse and interpretation and implementation challenges. Recent significant criminal law reforms in India here will be discussed and challenges or issues will be identified properly. Bharatiya Nyaya Sanhita (BNS) replaced the Indian penal code (IPC) and mostly aimed to influence the severity of punishment and criminal offences. Bharatiya Nagarik Suraksha Sanhita (BNSS) is a modified version of the Code of Criminal Procedure (CrPC) which focuses on victim protection and streamlining investigations. The Latest version of the Indian Evidence Act is Bharatiya Sakshya Adhiniyam (BSA) which incorporates forensic advancements and digital evidence. Those laws have been implemented with several challenges and issues but they also foster the judiciary system of India. These new laws effectively prioritize victims' rights and developed Updater support mechanisms for them also simplify the legal processes by reducing delays.

Corresponding Author

Dr. Neeraj Malik,
jobsmalik14@gmail.com

DOI

[10.29121/shodhkosh.v5.i7.2024.2341](https://doi.org/10.29121/shodhkosh.v5.i7.2024.2341)

Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

Copyright: © 2024 The Author(s). This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).

With the license CC-BY, authors retain the copyright, allowing anyone to download, reuse, re-print, modify, distribute, and/or copy their contribution. The work must be properly attributed to its author.



1. INTRODUCTION

Criminal law is basically a set of guidelines and rules which define several criminal offences by regulating effective legal processes. Also established proper punishment for those criminals who break the law for any purpose. It directly protects society from any kind of harmful action and ensures safety for communities and local people. A crime is not just an act of ruthlessness, it also violates the law. It can be categorized by its severity and the laws are just divided according to the severity of crimes. Criminal law reform is the concept or idea which highlights the facts about modernizing laws and introducing new offences. It also protects constitutional rights and maintains fair trial and liberty.

But in India reforming laws like the proper Indian Evidence Act of 1872 address specific issues such as delays in whole systems. The aim of the report is to identify several criminal law reforms in recent times and highlight challenges and issues regarding these aspects. Implementing appropriate criminal justice reform can especially address several structural issues within the justice system such as mass incarceration, racial profiling and police brutality. The need for these law changes and legislation created diverse opportunities for the colonial era and was positively driven towards a positive justice system. Many sections of Old laws are totally irrelevant and overhauled which impacted the overall justice system. This report includes several criminal laws that have been reformed in recent times. Also identifies issues, and challenges regarding implementation and procedure effectively.

2. MAIN BODY

CRIMINAL LAW REFORMS IN RECENT TIMES: ISSUES AND CHALLENGES IN INDIA

In recent times India's criminal law system has been modified and changed to improve the service of judiciary systems. India's recent law systems aim to create victim-centric, efficient and restorative criminal justice systems. However, there are also certain concerns about the facts which might impact these overall procedures such as police powers, legal protections, rapid passage and Overcriminalization etc. India's criminal law system significantly changed and implemented new laws on July 1, 2024¹. The new laws are The Bharatiya Nyaya Sanhita (BNS) replaced the Indian Penal Code (IPC), the Bharatiya Sakshya Adhiniyam (BSA) replaced the Indian Evidence Act, the Code of Criminal Procedure (CrPC) replaced with Bharatiya Nagarik Suraksha Sanhita (BNSS) etc.

THE BHARATIYA NYAYA SANHITA (BNS) AND ISSUES IN INDIA

BNS is a newly reformed law that replaced the popular act Indian Penal Code (IPC) in India on July 1, 2024. It was passed on December 25, 2023. It mainly aims to modify Indian legal systems to highlight specific issues such as environmental law, human rights and cybercrimes. The changes provide a clearer overview of crimes and introduce simpler procedures. It also introduced tougher penalties for severe crimes against women and children. The BNS mostly adopts restorative justice which enlightens reformation and rehabilitation instead of punishments. The BNS introduces proper community service and provides ideas about contract killings, kidnapping, cybercrimes and financial scams.

However, the **BNS has several issues** and effectively failed to discriminate in many areas which does not justify the effectiveness of the law.² There is no serious or major lapse where BNS can deal with internet-related offences. The Information Technology Act, of 2000 is very limited and does not provide a brief idea about digital crimes. Also, transgender individuals are not mentioned in these laws and are totally excluded from the definition of men and women.³ The assault, or harassment of a transgender does not considered rape. It also misguides about the assault between persons of the same sex.⁴ The BNS provides ideas about terrorism offences and is considered as a general criminal law which leads towards confusion effectively. The UAPA and BNS both introduce terrorism and there is no proper discrimination between them. These unethical and parallel provisions provide an opportunity to police officers to which laws should be applied in particular cases.⁵ These could effectively lead towards inconsistent enforcement and imbalance in justice systems.

THE BHARATIYA SAKSHYA ADHINIYAM (BSA) AND CHALLENGES IN INDIA

BSA is criminal law which mainly focuses on the relevance, admissibility and evaluation of legal proceedings in India. It mostly replaced the Indian Evidence Act of 1872 (IEA) and contributed as a part of legal reforms. The modernization of

¹ Ouziel, L.M., 2020. Democracy, bureaucracy, and criminal justice reform. BCL Rev., 61, p.523. <https://lira.bc.edu/files/pdf?fileid=313dc59a-faeb-41ce-81e3-988acbfd5f8>

² Pai, S.N., Jeyaraman, M., Jeyaraman, N. and Yadav, S., 2024. The New Bharatiya Nyaya Sanhita Laws: Progress or Pitfall for Doctors? Cureus, 16(9). <https://www.cureus.com/articles/294370-the-new-bharatiya-nyaya-sanhita-laws-progress-or-pitfall-for-doctors.pdf>

³ Uma, S., 2024. Why is the Bharatiya Nyaya Sanhita a missed opportunity for gender justice? The Wire. <https://pure.igu.edu.in/id/eprint/8067/1/Why%20the%20Bharatiya%20Nyaya%20Sanhita%20Is%20a%20Missed%20Opportunity%20for%20Gender%20Justice.pdf>

⁴ Naik, Y., 2024. The Bharatiya Nyaya Sanhita (BNS): A Critical Examination of India's New Penal Code. Available at SSRN 4884622. https://www.academia.edu/download/116567496/Article_2024_26.pdf

⁵ Naik, Y., 2024. The Bharatiya Nyaya Sanhita (BNS): A Critical Examination of India's New Penal Code. Available at SSRN 4884622. https://www.academia.edu/download/116567496/Article_2024_26.pdf

BSA positively acknowledged the digital and electronic evidence and considered it primary evidence in court⁶. The BSA has its own **certification and implementation issue** which impacts the overall effectiveness of the law. The BSA mostly includes electronic records but it addresses certain challenges with their admissibility. There is no proper safeguard to mitigate tempering issues with electronic devices. These delays in the investigation process and certification are more precisely authenticated but this can override other several provisions. The rapidly evolving technology and continuous growth of digital infrastructure need continuous updates in the legal framework.

Different facts can be discovered with force without any adequate safeguards. According to these laws, the burden of proof aligns with the party who basically loses the case. If the party does not have proof that indicates that if a party initiates a lawsuit then they must provide valid evidence for supporting the claims⁷. It highlights the area of secondary evidence and includes counterparts of documents, original documents, and copies verified against originals not signed by the parties. The act removed certain phrases such as "Parliament of the United Kingdom", "Pleader", "Barrister", and "notification by the Crown Representative", which represent India's colonial past and introduced more contemporary words such as "Advocate". Another issue could be that it replaced the word "lunatic" and introduced "a person of unsound mind". Also, the officials and citizens need to know about their rights and responsibilities⁸. Alternatively, there may not be funding, resources or enforcement to implement BSA nationwide. The legal system needs to be updated according to technological evolution. Overall it basically struggles to keep the balance between societal norms and technology advancement.

BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS) AND ISSUES IN INDIA

BNSS replaced the Code of Criminal Procedure (CrPC). The CrPC more precisely procedures and outlines which include trial, investigation and adjudication of criminal cases. It is one of those criminal laws that are re-written in 2023⁹. It includes forensic investigation, Bail for under-trial prisoners, and established deadlines for examinations. A forensic expert definitely should visit the crime side to collect the evidence and if a state does not have its own personal forensic then another state can help it. According to BNSS guidelines, there was a 7-day period of deadline is considered for a rape victim and 30 days period is considered for judgment.

The BNSS is **basically criticized for several reasons** such as bail, police custody, property attachment, police powers, preliminary inquiry, civil liberties etc. The BNSS creates difficulties in the bail process and effectively limits the scope for plea bargaining. It directly denies bail for those who have been faced with multiple charges. It allows 15 days of police custody but if police do not use these 15 days the victim may not be granted bail for the entire custody period. There is no time limit provided by the BNSS for attaching property. It does not include appropriate safeguards regarding the Prevention of Money Laundering Act (PMLA). The law provides police the power to attach and seize property before trial and compel victims to produce digital devices during the time of investigation¹⁰. There was the other issue in this law which highlights that it requires preliminary enquiry before an FIR which can create delays in the justice process. The main agenda of this law is to provide a more efficient and faster justice system by addressing issues. However, it delays the delivery of justice because of its large pendency, procedure and complex concept. Also, it does not justify the level of technology in the legal system and does not include forensics which delays the investigation. There were also certain challenges during the implementation process of BNSS. The transition period is complex and it has faced challenges due to different state-specific laws and framework practices¹¹. It requires more upgrades in the infrastructure to support and follow the guideline but in context, it could not match the expectation due to a lack of resources. The evidence

⁶ Hanspal, M.S., 2024. Navigating Legal Changes in BNS, BNSS, and BSA, 2023: A New Era for Women's Safety in India. <https://ijlsi.com/https://ijlsi.com/wp-content/uploads/Navigating-Legal-Changes-in-BNS-BNSS-and-BSA-2023.pdf>

⁷ Malik, N., 2024. Mutual Admissibility of Evidence and Electronic Evidence in Criminal Proceedings as per Bhartiya Sakshya Adhiniyam, 2023. Universal Research Reports, 11(4), pp.64-72. <https://urr.shodhsagar.com/index.php/j/article/download/1310/1353>

⁸ Rappaport, J., 2020. Some Doubts About "Democratizing" Criminal Justice. The University of Chicago Law Review, 87(3), pp.711-814. https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2236&context=public_law_and_legal_theory

⁹ Khan, K., 2024. Imperatives Of Judicial Review In India. Indian Journal of Law and Legal Research, 6(4), pp.1168-1184. <https://hcommons.org/deposits/download/hc:69334/CONTENT/imperatives-of-judicial-review-in-india.pdf/>

¹⁰ Mondal, M., Gupta, A.D. and Paul, S., 2024. Sustainable Aquaculture of Hilsa in India and Legal Perspectives: A Comprehensive Review. UTTAR PRADESH JOURNAL OF ZOOLOGY, 45(16), pp.380-389. <http://library.2pressrelease.co.in/id/eprint/2075/1/Gupta45162024UPIOZ3808.pdf>

¹¹ Green, B.A. and Roiphe, R., 2020. When prosecutors politick: Progressive law enforcers then and now. J. Crim. L. & Criminology, 110, p.719. https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=2457&context=fac_articles_chapters

collection procedure required police investigation and research which delays the overall speed of the investigation. There may be a need to train the new procedure to stakeholders and others.

3. CONCLUSION

This report basically significance the of criminal law in India and its recent reforms. It is necessary to reform criminal law to maintain fair trials and liberty. However, the idea of maintaining Liberty and the justice system has not perfectly aligned with the expectations due to certain reasons. Which indirectly impacted the whole system and delayed the overall procedures. In India, reforming criminal law creates issues regarding legal protection, police powers over criminalisation etc. There are three main criminal laws that have been reformed recently. The new laws are The Bharatiya Nyaya Sanhita replaced the Indian Penal Code, the Bharatiya Sakshya Adhiniyam replaced the Indian Evidence Act, the Code of Criminal Procedure replaced with the Bharatiya Nagarik Suraksha Sanhita. BNS highlights Pacific issues regarding human rights, cybercrime and environmental law. It directly contributes towards restorative justice but it has several issues effectively. Human rights here are not justified properly and there is no mention of transgender and their rights. BSA replaced the Indian Evidence Act of 1872 and aimed to modify the evidence system towards digitalisation.

It has its own implementation and certification issues regarding technology challenges and infrastructure challenges, these issues effectively delay the overall investigation process and complicate the procedure. BNSS implementation was criticized for its police custody amendment and preliminary enquiry system. Also, it was very complicated and sometimes provided much more power to police officers to manipulate it unethically. There is no doubt that modernizing India's justice system requires reforms of criminal law and it creates a fair justice system for the community. However, the issue related to these laws needed to be resolved for a better judiciary system.

CONFLICT OF INTERESTS

None.

ACKNOWLEDGMENTS

None.

REFERENCE

- Green, B.A. and Roiphe, R., 2020. When prosecutors politick: Progressive law enforcers then and now. *J. Crim. L. & Criminology*, 110, p.719.
https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=2457&context=fac_articles_chapters
- Hanspal, M.S., 2024. Navigating Legal Changes in BNS, BNSS, and BSA, 2023: A New Era for Women's Safety in India. <https://ijlsi.com/>. <https://ijlsi.com/wp-content/uploads/Navigating-Legal-Changes-in-BNS-BNSS-and-BSA-2023.pdf>
- Khan, K., 2024. Imperatives Of Judicial Review In India. *Indian Journal of Law and Legal Research*, 6(4), pp.1168-1184.<https://hcommons.org/deposits/download/hc:69334/CONTENT/imperatives-of-judicial-review-in-india.pdf/>
- Malik, N., 2024. Mutual Admissibility of Evidence and Electronic Evidence in Criminal Proceedings as per Bhartiya Sakshya Adhiniyam, 2023. *Universal Research Reports*, 11(4), pp.64-72.
<https://urr.shodhsagar.com/index.php/j/article/download/1310/1353>
- Mondal, M., Gupta, A.D. and Paul, S., 2024. Sustainable Aquaculture of Hilsa in India and Legal Perspectives: A Comprehensive Review. *UTTAR PRADESH JOURNAL OF ZOOLOGY*, 45(16), pp.380-389.
<http://library.2pressrelease.co.in/id/eprint/2075/1/Gupta45162024UPJOZ3808.pdf>
- Naik, Y., 2024. The Bharatiya Nyaya Sanhita (BNS): A Critical Examination of India's New Penal Code. Available at SSRN 4884622. https://www.academia.edu/download/116567496/Article_2024_26.pdf
- Naik, Y., 2024. The Bharatiya Nyaya Sanhita (BNS): A Critical Examination of India's New Penal Code. Available at SSRN 4884622. https://www.academia.edu/download/116567496/Article_2024_26.pdf
- Ouziel, L.M., 2020. Democracy, bureaucracy, and criminal justice reform. *BCL Rev.*, 61, p.523.
<https://lira.bc.edu/files/pdf?fileid=313dc59a-faeb-41ce-81e3-988acbfd5f8>

- Pai, S.N., Jeyaraman, M., Jeyaraman, N. and Yadav, S., 2024. The New Bharatiya Nyaya Sanhita Laws: Progress or Pitfall for Doctors? *Cureus*, 16(9). <https://www.cureus.com/articles/294370-the-new-bharatiya-nyaya-sanhita-laws-progress-or-pitfall-for-doctors.pdf>
- Rappaport, J., 2020. Some Doubts About "Democratizing" Criminal Justice. *The University of Chicago Law Review*, 87(3), pp.711-814. https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2236&context=public_law_and_legal_theory
- Uma, S., 2024. Why is the Bharatiya Nyaya Sanhita a missed opportunity for gender justice? *The Wire*. <https://pure.jgu.edu.in/id/eprint/8067/1/Why%20the%20Bharatiya%20Nyaya%20Sanhita%20Is%20a%20Missed%20Opportunity%20for%20Gender%20Justice.pdf>