

Making Criminal Justice More Contemporary: India Introduces Three New Bills

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Summary

In the recently concluded monsoon session of the Indian parliament, the government introduced the Bharatiya Nyaya Sanhita Bill, 2023, Bharatiya Nagarik Suraksha Sanhita Bill, 2023, and Bharatiya Sakshya Bill, 2023, which will replace the Indian Penal Code, 1860, Criminal Procedure Act, 1898, and the Indian Evidence Act, 1872, respectively. The new Acts are aimed at providing speedy justice and creating a legal system that is in line with the contemporary needs and aspirations of the people. The bills have been sent to the Parliamentary Standing Committee on Home Affairs. Alongside this, the Supreme Court has released a handbook on correcting gender stereotypes.

Introduction

In 2014, the present government had declared that old Acts would be weeded out and replaced with Acts which are consonant with the times. In the process of carrying out this objective, till 2022, the government had repealed more than 1,500 archaic laws and reduced more than 32,000 compliances to put an end to the legal hurdles that obstructed the path of innovation and ease of living.¹ In the monsoon session of parliament this year, three more Bills have been introduced to replace the 19th century era Criminal Procedure Code (CrPC), 1898, the Indian Penal Code, 1860 (IPC), and the Evidence Act, 1872. The declared intention in the introduction of the new Acts is to transform India's criminal justice system, eliminate colonial era norms and ensure justice, rather than seek to punish.

The Bharatiya Nagarik Suraksha Sanhita Bill, 2023 (Indian Citizen's Protection Code), which is proposed to replace the CrPC, will have 533 sections. The Bharatiya Nyaya Sanhita Bill, 2023, will replace the IPC and will have 356 sections. The Bharatiya Sakshya Bill, 2023, which will replace the Evidence Act, will have 170 sections. Eighteen states, six Union Territories, the Supreme Court, 16 High Courts, five Judicial Academies, 22 law universities, 142 Members of Parliament, around 270 Members of the Legislative Assembly and the public have suggested these new laws.² The Bills were under discussion with the courts, the state governments and law universities in the country over four years. They have been prepared to remedy delays in the delivery of justice due to complex legal procedures, large pendency of cases in courts, low conviction rates, low-level use of technology in the system, delays in investigation

¹ "Remove Archaic Laws, Ensure Speedy Justice says PM Modi", *The Economic Times*, 17 October 2022, <https://economictimes.indiatimes.com/news/politics-and-nation/remove-archaic-laws-ensure-speedy-justice-says-pm-modi/articleshow/94886272.cms?from=mdr>.

² "Union Home Minister and Minister of Cooperation, Shri Amit Shah introduces the Bhartiya Nyaya Sanhita Bill 2023, the Bharatiya Nagarik Suraksha Sanhita Bill, 2023 and the Bharatiya Sakshya Bill, 2023 in the Lok Sabha, today", Press Information Bureau, Government of India, 11 August 2023, <https://pib.gov.in/PressReleaseSelfframePage.aspx?PRID=1947941>.

processes, complex procedures and inadequate use of forensics, which were among the biggest hurdles in the speedy delivery of justice. The Bills have been sent by parliament to the Standing Committee for detailed discussion.

The Bhartiya Nagarik Suraksha Sanhita Bill, 2023

This Bill will replace the CrPC. It comprises 533 sections – 160 sections of the old law have been changed, nine new sections have been added and nine sections have been repealed.

The law expands the definition of documents to include electronic or digital records, e-mails, server logs, computers, smartphones, laptops, short messaging service, websites, locational evidence, mail and messages on devices that can be used in courts. The provision has been made in this law to digitise the entire process from the First Information Report (FIR) to the case diary, from the case diary to the charge sheet and from the charge sheet to the judgment. At present, only the accused's appearance in court can be done through video conferencing, but now, the entire trial, including cross-questioning, will be done through video conferencing. The Bill seeks to draw upon technological innovations to protect the interests of the citizens. A huge benefit will be that the entire life cycle of a case from the stage of filing the FIR to the case diary and culminating in the judgement will be digitally recorded.

Technology will be used by the police to conduct search and seizure operations, quelling doubts about police motives, and enforcing accountability for unbiased investigations. The entire process of search or seizure of any property shall be videographed through electronic devices. The police shall send such a recording to the concerned magistrate without any delay. This will ensure transparency, quelling doubts about police motives and enforcing accountability for unbiased investigations. Similarly, the issuance of summons and warrants electronically will speed up the process in court. This innovation plugs the common loophole of summons non-receipt, which is a cause for repetitive delays.

The code provides for zero FIR. With this provision, the citizens will be able to lodge a complaint even outside their police station area. Provision of e-FIR is being added for the first time – every district and police station will designate a police officer who will officially inform the family of the arrested person about his arrest online and in person. The visit of the forensic team is being made compulsory on the scene of crimes having provision for punishment of seven years or more; through this, the police will have scientific evidence, after which the chances of acquittal of the culprits in the court will be reduced. The code permits trials, inquiries and proceedings, including the examination and recording of evidence, to be conducted in electronic mode. This makes it convenient for an accused or witness to participate in the proceedings.

An important provision is the granting of sanctions to prosecute a public servant – a provision which was prone to misuse as the grant could come in months or not come at all. The Code now provides that the decision to grant or reject a sanction must be accorded within 120 days of the request being made. If not accorded within this time limit, the sanction will be deemed to have been accorded. In the case of sexual offences or trafficking of humans, no sanction needs to be taken.

A provision in the Code that seems to have raised concern among legal circles is that it permits a magistrate to authorise detention in police custody for a period beyond the current 15-day limit, extending up to 90 days for offences punishable with death, life imprisonment and imprisonment up to 10 years. The spectre of spending such a long period in police custody does leave the scope of intimidation and coercion.³ Such a provision will need closer examination by the parliamentary committee.

The Bhartiya Nyaya Sanhita Bill, 2023

The Bharatiya Nyaya Sanhita Bill, 2023 (the Indian Justice Code), will replace the IPC. It will have 356 sections instead of the earlier 511 sections. A total of 175 sections have been changed. Eight new sections have been added and 22 sections have been repealed.⁴

The Bill seeks to serve contemporary needs better and to create a citizen-centric legal structure. It introduces community service as a form of punishment, makes offences gender-neutral, deals with organised crimes and terrorism and adds new offences relating to secession and armed rebellion. The Bill recognises community service as a form of punishment for offences such as, public servant unlawfully indulging in trade, non-appearance in response to a proclamation, attempt to commit suicide to compel or restrain the exercise of lawful power, theft of low-value goods, public misconduct by a drunk and defamation. In an attempt to make offences gender neutral, the Bill redefines the offences of 'voyeurism' and 'assault to disrobe a woman'. Under the extant IPC, only men could have been charged for these offences whereas now 'any person' can be charged for these offences.

The Code, however, continues to treat defamation as a criminal offence. Such offence could have been decriminalised. A two-year imprisonment has been retained though community service is proposed as an alternative punishment.

The Bill, for the first time, defines terrorism and offences such as separatism and armed rebellion against the government, challenging the sovereignty of the country, which were earlier mentioned under different provisions of the law. It proposes punishment for mob lynching which can go up to the death penalty, a move that has been taken after closely studying many such crimes.

Among the significant changes proposed in the Bill is the scrapping of Section 124A, which dealt with sedition. However, it adds a new section to prescribe punishments for exciting secession, armed rebellion, subversive activities, separatist activities or activities that endanger the sovereignty or unity and integrity of India. Committing any such acts may attract life imprisonment. A new provision has been inserted, with a 10-year imprisonment

³ "Menaka Guruswamy writes on Centre's proposed Criminal Code: The custody question", *The Indian Express*, 19 August 2023, <https://indianexpress.com/article/opinion/columns/bills-in-lok-sabha-parliament-monsoon-session-criminal-law-reforms-indian-justice-code-8898909/>.

⁴ "Union Home Minister and Minister of Cooperation, Shri Amit Shah introduces the Bhartiya Nyaya Sanhita Bill 2023, the Bharatiya Nagarik Suraksha Sanhita Bill, 2023 and the Bharatiya Sakshya Bill, 2023 in the Lok Sabha, today", Press Information Bureau, Government of India, 11 August 2023, <https://pib.gov.in/PressReleaseSelfFramePage.aspx?PRID=1947941>.

for sexual intercourse with women on the false promise of marriage. For crimes against women, video recording of the statement of the survivors has been made compulsory. The police are required to inform the status of a complaint to the victim or complainant within 90 days. If a case punishable by seven years or more is to be withdrawn, the police must consult the victim before doing so.

For filing of charge sheets, a limit of 180 days has been fixed. The police will have 90 days to file a charge sheet, while another 90 days can be granted by a competent court. On the prosecution of government officers, the law proposes to decide prosecution sanction against civil servants within 120 days or else it will be deemed to be permitted.

The Bill has attempted a comprehensive definition for 'organised crime' such as kidnapping robbery, trafficking robbery and other economic and cyber-crimes when committed by a group of individuals whether as members of a crime syndicate or for such a syndicate. Terrorism acts have been defined as acts that disturb public order, intimidate the general public or threaten the unity, integrity and security of India. Committing such acts, either by the use of explosives or by destroying public property or critical infrastructure, may attract a minimum punishment of five years, life imprisonment or even death.

The Bharatiya Sakshya Bill, 2023

The Bharatiya Sakshya Bill, which will replace the Evidence Act, will now have 170 sections instead of the earlier 167. In the new Act, 'documents' are to include electronic and digital records such as emails, server logs, files on computers; smartphone/laptop messages; websites, location data; and mail messages on digital devices.

As per the new Bill, 'evidence' includes any information given electronically, which would permit the appearance of witnesses, accused, experts and victims through electronic means. This implies that complete trials, including cross-examinations or recording of statements, could be done via video conferencing. The proposed Bill mandates that while recording statements of victims of sexual crimes, video recording will be mandatory. This has been provided as, quite often, witnesses are unable to appear in court, which makes the trials drag on for years. With this provision, the process will speed up significantly. It provides for the admissibility of an electronic or digital record as evidence and it shall have the same legal effect, validity and enforceability as paper records. It also seeks to expand the scope of secondary evidence to include copies made from the original as evidence. Oral accounts of the contents of a document given by some person who has seen it and gives a matching hash (#) value of the original record will also be admissible as proof of evidence in the form of secondary evidence.

Supreme Court Handbook of Gender Stereotyping

Recently, the Supreme Court released a handbook, correcting gender stereotypes and offering guidance on how to avoid utilising harmful gender stereotypes, in particular, those about women, in judicial decision-making and writing.

The handbook has been released to assist judges and legal practitioners in recognising, understanding and combating gender stereotypes present in legal language and judgments. It highlights common stereotypical words and phrases that are often used to describe women in legal documents. It points out instances where such language perpetuates antiquated or incorrect notions about women's roles and behaviour. It also provides specific examples of language that should be replaced with more neutral and accurate terms. For instance, it suggests using 'woman' instead of 'career woman', 'street sexual harassment' instead of 'eve teasing', and 'rape' instead of 'forcible rape'. The handbook aims to promote more equitable and unbiased language usage in judicial discourse.

The goal of the handbook is to encourage a shift towards language that reflects a more modern and respectful understanding of gender and promotes equal rights for all individuals, regardless of their gender. The handbook argues that the language a judge uses reflects not only their interpretation of the law but their perception of society as well. It argues that language is critical to the life of the law. Words are the vehicle through which the values of the law are communicated and even when the use of stereotypes does not alter the outcome of a case, stereotypical language may reinforce ideas contrary to our constitutional ethos.

Conclusion

The three Bills introduced by the government seek to make criminal justice more contemporary and easier to administer. The objective is to ensure speedy delivery of justice and create a legal system that meets the contemporary needs and aspirations of the people. It fulfils a crying need to overhaul the country's criminal justice system. It is hoped that the new Bills will be thoroughly and rigorously debated in parliament to fulfil the objective of making them citizen-centric and fulfilling the constitutional vision.

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