

EVOLVING JUSTICE: THE SHIFTING PARADIGMS OF CRIME AND PUNISHMENT THROUGH THE LENS OF NEW CRIMINAL LAWS

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INTRODUCTION:

The relationship between law and society is very dynamic and complexly intertwined because both can influence and shape each other. Every change in law shows the response of social change and societal values. Laws embody moral and ethical standards of a community. A law to be efficient, must keep evolving to shape a healthy, just and equitable society. It is very much essential for a legal system to adapt to new challenges posed with the changing social realities. India has witnessed legion legal reforms recently with the aim to address the contemporary issues in the society and to introduce more uniformity and certainty in order to balance the traditional values with the modern principles of justice and equality. The new criminal laws represent a remarkable shift in India's legal landscape and a step towards transformative justice. Three major criminal laws, namely, Indian Penal Code, 1860, Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872, have been replaced by Bharatiya Nyaya Sanhita (BNS), BharatiyaNagarik Suraksha Sanhita (BNSS) and BharatiyaSakshyaAdhinyam (BSA) respectively. These new criminal laws have not only repealed the old criminal laws but also introduced much needed development in the criminal justice system, which contemplates an evolving path of justice in India. It is expected that the aim of new criminal laws shall be fulfilled by making punitive and procedural aspects of the laws less complex and more comprehensive. This research paper shall be an attempt to analyse the various nuances of recent changes in the triumvirate of criminal laws.

Every human being lives under the umbrella system of control that exists in society. It is very pertinent to note that these control systems evolve from time to time with certain advancements, to act as a guiding force to maintain social order by limiting certain exercises which impinge on the rights of an individual or group of individuals. In the ancient period there was no existence of criminal law in codified form yet it was the king's duty to protect the subject of his kingdom by imposing appropriate punishment on wrongdoers in order to administer justice. Amongst all the ancient sources of law, Manusmriti is considered as the oldest source of law wherein many wrongs were identified as crimes. Manu explained

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the ancient Indian theory of punishment. Later, in the Mughal reign Mahomedan law was the means to administer criminal justice.

2. REVIEW OF LITERATURE

When British rule plunged into India, the whole map of criminal justice administration underwent several reforms. Thomas Macaulay (1800-1859) is a figure well-known to historians but seemingly neglected by sociologists of law. His unusual characteristics render the legal history of India a unique phenomenon (Droz, 1999). India's codified penal law was drafted by the first Law Commission which was headed by Lord T.B. Macaulay along with the commissioners namely, J.M. Macleod, F. Millett and G.W. Anderson. It underwent various phases of revision under the supervision of Sir Barnes Peacock and several others and eventually it was passed in the year 1860 by the Legislative Council of India (Dhirajlal, 1948).

Richmond observed a fact that, "even after fifty years of practical application of colonial legislation, no part was altered at all, hardly any has been even verbally altered (Dhirajlal, 1948)." Since the colonial period this legislation on criminal law was praiseworthy, dealing with various offences mentioned therein but no section of Indian society irrespective of how laureate and subject expert they were, had been approached to make a substantive law for India. The original Code of Criminal Procedure was drafted in 1882 but it was subject to further amendments. During the decade from 1958 to 1969, Law Commission suggested various reforms and in response to the suggestions, CrPC was amended in 1973. Similarly, The Indian Evidence Act was enacted in the year 1872.

However, over the period of time numerous amendments were introduced till the year 2018, to meet the needs of the society but introduction and enforcement of new criminal laws still remained the exemplary step to deal with non-conventional crimes and criminality. Social and economic shifts continued to influence and affect India's crime and its patterns. J. Malimath committee report on criminal reforms also suggested that, "since the IPC was enacted in the year 1860, many developments have taken place, new forms of crimes have come into existence, punishments for some crimes are proving grossly inadequate and the need for imposing only fine as a sentence for smaller offences is felt. Variety of the punishments prescribed is limited. Thus, there is need to have new forms of punishments such as community service, disqualification from holding public offices, confiscation orders, imprisonment for life without commutation or remission etc. Hence the Committee is in favour to review the IPC (GOI, Committee on Reforms of Criminal Justice System, 2003)."

The prevalence of crime is adversely influenced by variables such as unemployment and poverty and the nature of crime has been changed from ancient laws and medieval period to colonial era till today. Therefore, an in-depth analysis of new criminal laws become

imperative to understand the approach towards overhaul and complete modernization of laws. India's most vital initiative that is, the enforcement of new criminal laws is a huge milestone. The new Criminal laws not only replace colonial era laws but also represent a commitment to adapt and evolve with the changing dynamics of Indian society.

3. METHODOLOGY

The researcher used analytical method to pursue the study of new criminal laws. For the purpose of this paper secondary sources of data such as committee reports, books, and statutes, journal articles have been used.

4. ANALYSIS OF NEW CRIMINAL LAWS

Criminal laws confer significant influence on citizen's lives therefore it must function within a prescribed scope. The complete overhaul and Indianization of criminal laws, was felt as the need of the hour to meet the aspirations of people through a sound legal framework. J.Malimath committee report highlights, "the ultimate aim of criminal law is protection of right to personal liberty against invasion by others, protection of the weak against the strong law abiding against lawless, peaceful against the violent(GOI, Committee on Reforms of Criminal Justice System, 2003)."

On the 75th Independence Day of India, the concept of 'Amrit Kaal' was introduced by the Hon'ble Prime Minister of India, which depicts the vision of India till 2047. It aims for a 'New India' that will offer numerous opportunities to fulfill the aspirations of the nation successfully. He also mentioned about five core principles to be achieved in the era of elixir, also known as 'PanchPran' which include goals such as development of India, embracing and honoring our heritage, fostering unity and instilling a sense of duty among citizens and eradicating all the traces of colonial imprints on mindset (2024). Thus, one of the goals of 'PanchPran' encompasses the decolonization of centuries old British made rules and legislations. In the first part of this paper it is highlighted that India had enriched ancient legal framework way before the advent of colonial rule. Therefore, the decolonization of criminal laws depicts a significant shift from what was provided to us by Britishers to what our own vision is with regard to administration of justice as Indians.

When Ministry of Home Affairs proposed the draft legislations, it was informed that proposed criminal laws aim to deal with the problems existing in current legal system which includes complicated features and lacunae of the legal system such as huge pendency of cases, less convictions, overcrowding in prisons, lack of trained and modern technology in the legal system etc.

In the words of India's Chief Justice, Dr. DY Chandrachud, "new criminal laws are the watershed moment of our society, because no law affects the day to day conduct of our society like criminal law (scconline, 2024)." From 1st July 2024 new criminal laws have

come into force throughout India. These laws are a prudent transference of addressing modern emerging issues with an advanced approach in the interest of Indian society. It is a well understood concept that what constitutes an offence is determined by society's existing level of tolerance. Once an act crosses this threshold of what society considers acceptable behaviour, it would be condemned and thereby penalized (Sebastian, 2024).

4.1. Salient Features of Bharatiya Nyaya Sanhita, 2023

Bhartiya Nyaya Sanhita, 2023 (hereafter, shall be mentioned as BNS), which has been enacted to replace Indian Penal Code, 1860 incorporates a number of fundamental changes in order to combat the new facets of crime in society. BNS consists of 358 sections in 20 chapters, aiming at simplifying legal intricacies by making the provisions relating to offences and penalties more efficient and unambiguous. Prominent changes include inclusion of transgender in the definition of gender, deletion of archaic words like 'queen', British India etc. Abetment of an offence in India from abroad has been made a criminal offence under section 48. One of the peculiar changes is, offences against women and children have been dealt with through a distinguished chapter, i.e. Chapter V. It has been emphasized in J.Verma committee report that, "A fortiori, the duty of the State, therefore, is to provide a safe environment, at all times, for women, who constitute half the nation's population; and failure in discharging this public duty renders it accountable for the lapse. (Government of India, Committee on Amendments to Criminal Law, 2013)."

Previously in Indian Penal Code, 1860, all such provisions were scattered. Moreover, sexual intercourse with the intention to deceive has been made punishable under section 69 of BNS. Gender of the offender has been made irrelevant in order to make certain provisions gender neutral such as section 76 and section 77 wherein disrobing a woman and voyeurism has been made punishable offence, irrespective of the gender of the offender. Certain offences have been deleted as well, such as unnatural offences and adultery which had been declared unconstitutional by the Supreme Court in the case of Navtej Singh Johar and others vs Union of India and Joseph Shine vs Union of India, respectively.

It is noteworthy that though the offence of 'Sedition' has been deleted but section 152 has made secession, separatist activity, armed rebellion, subversive activities along with the act which endangers the sovereignty, unity and integrity of India, a punishable offence. Moreover, publication of false information which jeopardizes India's sovereignty, unity, integrity and security is also added as a new offence. Offences against property such as lurking house trespass by night and house breaking by night does not hold any position in Bharatiya Nyaya Sanhita, 2023. 'Organized crimes' which involves offences against economy, cybercrimes, human trafficking etc. and 'Petty organized crimes' such as theft, snatching, gambling etc. have been recognized as offences and made punishable under Section 111

and 112 of BNS respectively, which was also suggested previously by Malimath Committee report.

To protect the rights of citizens from being violated in unlawful manner, a new offence 'Mob Lynching' has also been recognized in Bharatiya Nyaya Sanhita, 2023. The Supreme Court in the year 2008 provided certain directions in response to the increasing cases of such unlawful activities. According to the Supreme Court, "there cannot be a right higher than the right to live with dignity and further to be treated with humanness that the law provides. What the law provides may be taken away by lawful means; that is the fundamental concept of law. No one is entitled to shake the said foundation. No citizen can assault the human dignity of another, for such an action would comatose the majesty of law. In a civilized society, it is the fear of law that prevents crimes. When the preventive measures face failure, the crime takes place and then there have to be remedial and punitive measures. Steps to be taken at every stage for implementation of law are extremely important. Hence, the guidelines are necessary to be prescribed."

The most laudable addition in Bharatiya Nyaya Sanhita is the inception of 'Community service' as one of the forms of punishments wherein the offender has to undergo activities ordered by the court that benefit the whole community. Even the human rights law has transformed the approach towards offenders. Focus has been shifted more on to rehabilitation and reformation than punishment to prevent the offenders from converting into habitual and hardened criminals. However, the offences which completely shake the humanity, punishment is the ultimate resort to be opted.

4.2. Salient Features of Bharatiya Nagarik Suraksha Snahita, 2023

Bharatiya Nagarik Suraksha Snahita, 2023 (hereafter shall be mentioned as BNSS) which has replaced Code of Criminal Procedure, 1973 also brought forth remarkable reformations in procedure to be followed after the occurrence of crime.

After being caught all the criminals want to avoid punishment because it is the most negative repercussion of their act. While trying to avoid the procedure, punishment and all the aftermath of their criminal activity, much effort is put to hinder the process of law enforcing authority. Continuous trap weaved to be freed from criminal liability and the fight for freedom is typically known as a criminal process. Therefore, the criminal process must be expeditious in order to be able to deal criminality, efficiently.

The object of such reformations in BNSS is to accelerate the process of imparting justice without compromising constitutional and democratic aspirations. To make the procedure of crime investigation and communication regarding the same quick off the mark, application of technology and forensic science has been infused into the system. It also defines audio-video electronic means, electronic communication. Moreover, power of courts

to impose fine has been increased from 10,000 to 50,000 for Magistrate of 1st class and 5,000 to 10,000 for Magistrate of 2nd class as per section 23. Handcuffing has been permitted legally under section 43 in heinous crimes and for habitual offenders. Many new additions such as power of police to take security from the accused in case he is not arrested immediately and producing the arrestee before the police within 6 hours in case the arrest is made by private person, period of police custody for a maximum period of 15 days and further detention of 40 to 60 days if the case may allow. In order to compel the appearance and to speed up the trial process, summons can be issued through electronic means. Similarly, as per section 173 of BNSS Zero FIR can also be filed electronically and the victim has the right to get a copy of FIR, without any cost. The infusion of technology can also be seen under section 105 of BNSS wherein all the search and seizures shall be video-graphed and under section 308, accused is permitted to be examined through audio-video means. But, Parliamentary Standing Committee in its 247th report of BNSS, 2023 raised the concerns regarding technological advancements, on one hand it offers multiple benefits but on the other hand many challenges are intertwined. Storing and collecting large amount of data raises many issues regarding data security and privacy. The committee recommended that strong gatekeeping mechanism is required to conduct E-trials and other communication, to make the process more authentic and guarded. It may lead to maintain the integrity of justice system by ensuring fair and accurate trial.

Another salient feature of BNSS is that in all the categories of trial the period of trial has been revised. In sessions and warrant cases the time to file a discharge petition is limited to 60 days as per section 250 and 262 respectively and delivery of judgement in summon cases shall be delivered within 30 days which can be extended upto 45 days under section 258 and in case of criminal trials, judgement shall be pronounced within 45 days from the trial conclusion under section 392. In order to prevent the offenders from being absconded, section 84 provides that any accused, charged with the offence punishable with 10 years or more shall be announced as a proclaimed offender and trial against such offender can be continued in his absence. This provision was added in response to the guided directions of the Supreme Court in a landmark case of 2017.

The most salient feature of BNSS is regarding bail. According to section 479 of BNSS, first time offenders can be granted bail if they have completed one-third of the maximum period of imprisonment as prescribed by law. Moreover, under section 480 of BNSS, bail shall not be denied in non-bailable offences on certain grounds. In order to effectuate the directions of the Supreme Court, under section 398, witness protection scheme has been recognized and given statutory force.

Underlying issues cannot be resolved by solely focusing upon recognizing certain

acts as crime. The conundrum is about enforcement of laws. A law proves to be inefficient if the procedure of implementation is flawed. Therefore, BNSS aims to simplify the process for accused as well as prosecution in order to fill the gap that arises while administering justice.

4.3. Salient Features of Bharatiya Sakshya Adhinyam, 2023

With the objective of providing corresponding evidentiary rules and principles, Indian Evidence Act, 1872 has been replaced by Bharatiya Sakshya Adhinyam, 2023 (hereafter shall be referred as BSA). Indian Evidence Act which was enacted in 1872, outlined the rules and regulations of presenting evidences before the court. It was a means to ascertain facts and circumstances through which judges could make informed decisions.

Amongst many commendable features of BSA, some of them are noteworthy. BSA has included electronic and digital records in the category of documents. Definition of evidence has also been enlarged wherein statements given through electronic means come under the periphery of evidence. According to section 22 'coercion' is identified as a new ground of irrelevant confession. Scope of primary and secondary evidence mentioned under section 57 and 58 has been increased. Primary evidence also includes digital electronic record and video recording stored in appropriate devices. Secondary evidence includes oral and written admissions, evidence produced by skilled and expert person. Certain words like lunacy have been substituted by 'mental illnesses' under section 124 of BSA. Through, these remarkable changes, India's criminal justice system is striving to respond against new challenges and emerging opportunities.

5. CONCLUSION

The society comprises two parts- the Government which is inclusive of the legislation, executive and judiciary, and its Subjects, those that are governed by the Government. The Subjects have the positive obligation to obey the laws laid down by the Government and the Government has the positive obligation to draft laws as and when the society requires it. The Government must ensure that in trying to impose laws on its subjects, it does so in a manner that respects individual rights, without excessive interference with individual autonomy (Sebastian, 2024). Enacting the law itself can never be sufficient unless it is implemented meticulously with public awareness to dispense its benefits. In the absence of implementation of the laws by efficient machinery, the laws remain mere rhetoric and a dead letter (Government of India, Committee on Amendments to Criminal Law, 2013)." Rule of law is quintessential for the functioning of state and peaceful society where law and order are also maintained, if the law is flawed, it leads to crime generally.

With every reformation in law some teething problems are bound to arise but continuous

review and analysis of issues are always warranted to respond against changes. New criminal laws have not only paved a path of responsive and efficient system but also shows an emulation of evidence based approach to meet the needs of 21st century. Criminal law is the mirror of society and an important tool to counter many problems that arise in society which poses threat to social and political order therein, therefore to prevent the stagnation prevailed through outdated laws is an absolute must. The essence of new criminal laws is to protect the fundamental rights of the citizens enshrined under the supreme law of the land. New criminal laws are not confined and limited to deterrence but to impart justice through reformative means of punishment in order to prevent the crime.

It is expected that the enactment of new criminal laws will certainly streamline the sluggish procedure and deduce the delays in the same by enhancing more transparency and accountability. It is vitally important to deliver justice in its true sense so that justice doesn't lose its meaning and people do not suffer after approaching courts. However, to instill the confidence of people in new dimensions of the criminal justice system will still be a challenge to overcome through continuous training and making citizens aware about technological know-how. It is undeniable that the step of reviving India's traditional 'nyayapadhati' in consonance with the dynamic and technologically advanced society by bringing citizen centric laws is crucial yet the need of the hour.

REFERENCES

1. (2024, January). Retrieved December 2024, from https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/16012024_112431_102120474.pdf
2. Dhirajlal, R. &. (1948). The Law of Crimes.
3. Droz, L. (1999). The creation and evolution of criminal law in colonial and post-colonial societies. 3, 77-78. Retrieved December 2024
4. GOI. (2003). Committee on Reforms of Criminal Justice System.
5. Henderson, C. R. (1913). Control of Crime in India. Journal of Criminal Law and Criminology, 1-25. Retrieved NOVEMBER 2024, from
6. <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1236&context=jclc>
7. Hussain and another Vs Union of India (The Supreme Court 2017).
8. India, G. o. (2013). Committee on Amendments to Criminal Law.
9. India, P. o. (2023). 248th report on the BharatiyaSakshya Bill.
10. Joseph Shine Vs Union of India (The Supreme Court 2019).
11. Mahender Chawla and others Vs Union of India and others (The Supreme Court 2019).
12. Navtej Singh Johar and others Vs Union of India (The Supreme Court 2018).
13. scconline. (2024, April 22). Retrieved November 5, 2024, from <https://>

www.scconline.com/blog/post/2024/04/22/conference-on-indias-progressive-path-in-the-administration-of-criminal-justice-system/

14. Sebastian, A. (2024). On Punishments and Offences: Examining the Dynamics of Law., (p. 122).
15. Tehseen S. Poonawalla Vs Union of India and others (The Supreme Court 2018).