

**LAW OF CRIMES WITH SPECIAL REFERENCE TO NEWLY
ENACTED LAWS IN INDIA - AN ANALYTICAL STUDY**

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Abstract-

Criminal laws in India are changing in tune with the changing needs of the society. Rather a law should change according to the socio-eco-politico changes in the state. Parliament of India always strives to inculcate the changes be it technological, social, or psychological. Recently new criminal laws are enacted and implemented in India replacing the old laws governing the criminal justice system in India. These laws are of great significance and having serious impact on every person in India. This article dwells upon the areas of meaning and essentials of criminal laws, key issues to reform the criminal laws and salient features of newly enacted criminal laws in India. This article will help to understand the essential components to constitute an act as a crime, need of reforms in criminal laws and salient features of The Bharatiya Nyaya Sanhita, the Bharatiya Nagarik Suraksha Sanhita, the Bhartiya Saksha Adhinyam.



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Key words- BNS, Criminal justice system, BNSS, BSA, IPC, CrPC, Evidence Act

INTRODUCTION

The Indian legal system, a cornerstone of the nation's governance structure, continually evolves to meet the dynamic challenges of society. In recent years, significant legislative reforms have reshaped the landscape of criminal justice, aiming to bolster efficacy, equity, and transparency in adjudicating criminal matters. Central to this evolution are three seminal legislations: the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Indian Evidence Act. While these statutes have long served as pillars of India's legal framework, their contemporary relevance has been reinforced through comprehensive amendments and the introduction of new enactments.

The Bharatiya Nyaya Sanhita 2023, the Bharatiya Nagarik Suraksha Sanhita 2023, and the Bhartiya Saksha Bill 2023 represent paradigm shifts in criminal justice legislation. These updated

statutes reflect the imperatives of the modern era, incorporating provisions that address emerging challenges, align with international best practices, and fortify the rights of all stakeholders involved in the criminal justice process. As the successors to their predecessors, these new legislations signify a concerted effort by the Indian state to recalibrate the legal framework in response to contemporary realities.¹

Against this backdrop, this comparative study undertakes a comprehensive examination of the IPC vis-à-vis the Bharatiya Nyaya Sanhita 2023, the Cr PC in contrast with the Bharatiya Nagarik Suraksha Sanhita 2023, and the Indian Evidence Act juxtaposed with the Bhartiya Saksha Bill 2023. Through a meticulous analysis of the provisions, scope, and underlying principles of these legislations, this study seeks to elucidate the nuanced differences, assess the efficacy of the reforms, and discern the broader implications for the criminal justice system in India.

The significance of this comparative analysis lies in its capacity to shed light on the evolving contours of criminal law and procedure, the safeguarding of individual liberties, and the pursuit of justice in a pluralistic society. By delineating the evolution from traditional statutes to contemporary enactments, this study aims to provide policymakers, legal practitioners, and scholars with invaluable insights into the trajectory of legal reforms in India and the imperatives for future legislative interventions.

In the subsequent sections, this study will delve into the historical antecedents of the IPC, Cr PC, and Indian Evidence Act, delineate the key provisions of the Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023, and Bhartiya Saksha Bill 2023, and conduct a comparative analysis to ascertain the transformative impact of these legislative reforms on the Indian criminal justice system. Through this rigorous examination, this study aims to contribute to a deeper understanding of the evolving legal framework and its implications for the protection of rights, administration of justice, and the rule of law in India.

SIGNIFICANT COMPONENTS OF CRIME AS STATED IN INDIAN CRIMINAL LAWS

It is important to understand what and when an offence will become a crime to understand the criminal laws, so let's have a look at the significant components of crime as stated under criminal laws.²

¹ https://store.lexisnexis.in/combo-set-of-the-bharatiya-nagarik-suraksha-sanhita-2023-the-bharatiya-nyaya-sanhita-2023-the-bharatiya-nyaya-sanhita-2023?srsltid=AfmBOonOq5PTQubKG5VIm2_3iPvt_XMQ6B2w159p9-DxLnH6pc0qIJQ (Lastly accessed on 24/8/2024)

² <https://www.writinglaw.com/crime-ipc-definition/> (Lastly accessed on 24/8/2024)

Any activity that is against or punishable by the law can be said to be a crime. According to Blackstone, “crime is an act committed or omitted in violation of a public law either forbidding or commanding it.” Criminal liability in India is set up on the maxim ‘actus non facit reum, nisi mens sit rea’, meaning the act itself does not consist of guilt unless it is committed with a guilty mind. An integral point must be noted that this maxim is considered to be the basic principle of the whole criminal law. This maxim also gives out the two most crucial elements of a crime, namely:

1. actus reus and
2. mens rea.

In the famous case of *Fowler vs. Padget* (1798), Lord Kenyon made a comment that “the intent and act must both concur to constitute a crime”. Now let us have a look at the essential elements that constitute a crime.³

A. HUMAN BEING/ INDIVIDUAL

The first element states that the wrong must be committed by a human being. Any wrongful act committed by an animal is not covered under criminal laws. Thus, the individual accused of committing a wrong should have a body, be under a legal obligation to act in a specific manner, and must be fit to be awarded a suitable penalty.

A point must be taken into consideration that, as per Section 11 of the Indian Penal Code, the word ‘person’ includes “any company or association or body of persons, whether incorporated or not.” Thus, the above definition includes a natural person, an artificial person (a company, association, or a body of individuals), and a legal person (such as an idol).

B. MENS REA

A guilty mind, i.e., the mens rea, is one of the most crucial ingredients of crime. There is no distinct definition of mens rea under the IPC or any other criminal law in India, but the same has been included in the following manner:

1. Provisions relating to the ‘state of mind’ necessary for committing a specific offence have been added in distinct sections of the IPC by using terms like intentionally, knowingly, voluntarily, etc.
2. The concept of mens rea is put into the provisions relating to the ‘General Exceptions’ under Chapter IV of the IPC. For instance, a juvenile aged 7 years is absolutely immune to any wrong he/she commits as per Section 82 of the IPC. Further, under Section 80 and Section 81 of the IPC, a person causing an accident while performing a lawful activity or doing it with the utmost necessity to prevent a wrong or further offence will have immunity from being liable to be guilty as there is no mens rea.

³ K. D. Gaur, *Law of Crimes* (Lucknow: Eastern Book Company, 2021).

Mensrea is of the following degrees:

1. Intention,
2. Knowledge,
3. Reason to believe (defined under Section 26 of the IPC), and
4. Negligence (defined under Section 52 of the IPC)⁴

C. ACTUS REUS

Another essential ingredient of a crime is actusreus, i.e., the act committed or omitted by a person which is forbidden by law, like homicide (killing of human beings), rape, theft, sedition, etc. Irrespective of the pain or harm the event has caused, it won't be considered to be actusreus unless it is restricted by law.

Interesting fact:

Prof. Kenny was the first writer to use the term 'actusreus' and he defined it as "such a result of human conduct as the law seeks to prevent."

D. HARM CAUSED

The subsequent element of a crime is the harm or injury or damage induced to the victim and is defined under Section 44 of the IPC as any harm or injury inflicted on an individual illegally in "body, mind, reputation or property."

Thus, looking at the above definition, it can be deduced that harm or injury can be caused to-

1. an individual (homicide, rape, etc.);
2. Property (robbery, theft, mischief, etc.);
3. Mind (cheating);
4. Reputation (defamation).

Further, a person is liable for the direct cause of his actions and not for any indirect cause of his actions. In simple words, a person is responsible for only the natural consequences of his actions under this Section.

E. FORBIDDEN ACT

As stated above, for an offence to have been committed, it has to be inhibited by the legislation or the existing legal system, unless said otherwise. It is a known rule of criminal law that no offence can be penalised retrospectively if the said act did not constitute an offence at the time it was executed.

F. PUNISHMENT

An act or omission has to be punishable under the penal system. Such a punishment can vary from capital punishment to imprisonment and/or fine. Further, it is vital that the offender is not

⁴ H. S. Dhani, *The Penal Laws of India* (Delhi: Universal Law Publishing Co., 2010).

vexed twice for the same offence, i.e., he/she is not being subjected to double punishment for the same offence.

G. EXTERNAL CONSEQUENCE

Crime will forever have a detrimental effect on society, be it social, personal, mental, or physical.

H. RELATIVITY

It is quite a complex subject to study, as an activity that might be considered to be a crime at a certain location may not be an offence elsewhere. For instance, drinking and gambling may not be considered offence when committed in a club. Such a varying description has been characterised by William Taft as ‘blue laws’.

KEY ISSUES IN CRIMINAL LAW REFORMS

A Modernising the criminal justice system

The IPC, IEA, and a large section of the CrPC are older than independent India. Given that the Bills are replacing laws from the 19th and 20th century (though amended several times), the question is whether they reflect current norms of criminal jurisprudence. We examine nine aspects.

B SHOULD CRIMINAL LAWS BE REFORMATIVE OR PUNITIVE IN CHARACTER

In 1979, the Supreme Court indicated that reformation and rehabilitation of offenders were the foremost objects of the administration of criminal justice in India, rather than solely deterrence of crime.⁵ The idea of punishment being reformatory and aimed at reintegrating offenders into society is central to reforming the criminal justice system.⁶ The Report on the Draft National Policy on Criminal Justice (2007) recommended introducing certain reformatory elements into criminal law.⁷ These include: (i) decriminalising offences that can be dealt through civil process, (ii) mainstreaming settlement without trial (compounding and plea bargaining), and (iii) allowing compensation and community service for offences such as vagrancy. The Bills move the needle a bit towards reformatory justice by providing for community service as an alternative to incarceration for some offences. However, they largely retain the punitive character of the criminal justice system.

There are inconsistencies in classifying offences as bailable and compoundable. For instance, theft is punishable with rigorous imprisonment between a year and five years. The BNS adds that community service may also be imposed as punishment for theft. This is provided for

⁵ 1979 AIR 964, *Bishnu Deo Shaw @ Bishnu Dayal v. State of West Bengal*, Supreme Court, February 22, 1979.

⁶ *Criminal Justice Reform*, United Nations Office on Drugs and Crime.

⁷ *Report of the Committee on the Draft National Policy on Criminal Justice*, Ministry of Home Affairs, July 2007.

cases where: (i) the value of the stolen property is less than Rs 5,000 (ii) the person is a first-time offender, and (iii) the stolen property is returned or its value is restored. However, theft remains a non-bailable offence. On the other hand, the BNS adds snatching as an offence (aggravated form of theft) punishable by imprisonment up to three years but makes it a bailable offence. In addition, many minor offences that can be tried summarily are not compoundable and will require trial and conviction (even with a fine). For example, the BNS penalises keeping an unauthorised lottery office with imprisonment up to six months. Although, the severity of the punishment suggests that it is considered a minor offence and eligible for summary trial, it is not included in the list of compoundable offences under the BNSS.

There has been a move towards reformatory process in other jurisdictions. For example, the California Criminal Code was amended in 2022 to state that legislatures should intend for criminal cases to be disposed of by the “least restrictive means available”. It also requires judges to “consider alternatives to incarceration, including, without limitation, collaborative justice court programs, diversion, restorative justice, and probation”.⁸

CODIFICATION OF DIRECTIONS OF THE SUPREME COURT AND HIGH COURTS

Courts have laid down the procedure for several aspects of the criminal justice system. Codifying these procedures and guidelines in law is recommended for two important reasons. First, there may be multiple judgements dealing with the same issue, which may not be easily accessible or understood by the general public and law enforcement officers. Second, the legislature has the constitutional mandate and the deliberative processes to enact appropriate law with sufficient safeguards, while courts only fill the gap. For example, the Vishakha judgement which established guidelines to protect women against sexual harassment at the workplace, was followed by an Act of Parliament in 2013.⁹

These Bills partially adhere to the principle. The BNSS adds that every state will prepare and notify a witness protection scheme to protect witnesses. The inclusion of this provision may be attributed to the repeated emphasis on protecting witnesses by the Supreme Court and the subsequent implementation of the Witness Protection Scheme in 2018.¹⁰ However, the Bills do not codify certain other aspects, such as those related to arrests and bail. Since these functions are carried out by police officers and judges nationwide, codifying them would help bring about some uniformity in implementation. For instance, the Supreme Court (2021) held that for offences

⁸Section 17.2, Preliminary Provisions, California Penal Code.

⁹*Vishaka v. State of The Sexual Harassment of Women at the Workplace (Prevention, Prohibition, and Redressal) Act, 2013. Rajasthan, Supreme Court, August 13, 1997,*

¹⁰ *Special Leave Petition (crl) No. 5191 of 2021, Satender Kumar Antil v. Central Bureau of Investigation, Supreme Court, July 11, 2021.*

punishable up to seven years imprisonment under the IPC, the Court may decide bail application of the accused in his presence without taking him in custody. ¹¹

The Bharatiya Nyaya Sanhita (BNS)

- The Bharatiya Nyaya Sanhita (BNS) retains most offences from the IPC. It adds community service as a form of punishment.
- Sedition is no longer an offence. Instead, there is a new offence for acts endangering the sovereignty, unity and integrity of India.
- The BNS adds terrorism as an offence. It is defined as an act that intends to threaten the unity, integrity, and security of the country, intimidate the general public or disturb public order.
- Organised crime has been added as an offence. It includes crimes such as kidnapping, extortion and cyber-crime committed on behalf of a crime syndicate. Petty organised crime is also an offence now.
- Murder by a group of five or more persons on grounds of certain identity markers such as caste, language or personal belief will be an offence with penalty of seven years to life imprisonment or death.

Key changes in the BNS include:

▪ **Offences against the body:**

The IPC criminalises acts such as murder, abetment of suicide, assault and causing grievous hurt. The BNS retains these provisions. It adds new offences such as organised crime, terrorism, and murder or grievous hurt by a group on certain grounds.

▪ **Sexual offences against women:**

The IPC criminalises acts such as rape, voyeurism, stalking and insulting the modesty of a woman. The BNS retains these provisions. It increases the threshold for the victim to be classified as a major, in the case of gangrape, from 16 to 18 years of age. It also criminalises sexual intercourse with a woman by deceitful means or making false promises.

▪ **Sedition:**

The BNS removes the offence of sedition. It instead penalises the following: (i) exciting or attempting to excite secession, armed rebellion, or subversive activities, (ii) encouraging feelings of separatist activities, or (iii) endangering the sovereignty or unity and integrity of India. These offences may involve exchange of words or signs, electronic communication, or use of financial means.

¹¹*Sentencing – Overview, General Principles and Mandatory Custodial Sentences', Crown Prosecution Service, United Kingdom, June 2023.*

▪ **Terrorism:**

The BNS defines terrorism as an act that intends to: (i) threaten the unity, integrity, and security of the country, (ii) intimidate the general public, or (iii) disturb public order. Punishment for attempting or committing terrorism includes: (i) death or life imprisonment and a fine of Rs 10 lakh, if it results in death of a person, or (ii) imprisonment between five years and life, and a fine of at least five lakh rupees.

▪ **Organised crime:** Organised crime includes offences such as kidnapping, extortion, contract killing, land grabbing, financial scams, and cybercrime carried out on behalf of a crime syndicate. Attempting or committing organised crime will be punishable with: (i) death or life imprisonment and a fine of Rs 10 lakh, if it results in death of a person, or (ii) imprisonment between five years and life, and a fine of at least five lakh rupees.

▪ **Mob lynching:** The BNS adds murder or grievous hurt by five or more people on specified grounds, as an offence. These grounds include race, caste, sex, language, or personal belief. The punishment for such murder is a minimum of seven years imprisonment to life imprisonment or death.

▪ **Rulings of the Supreme Court:** The BNS conforms to some decisions of the Supreme Court. These include omitting adultery as an offence and adding life imprisonment as one of the penalties (in addition to the death penalty) for murder or attempt to murder by a life convict.

The Bharatiya Nagarik Suraksha Sanhita, 2023

▪ The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeks to replace the Criminal Procedure Code, 1973 (CrPC). The CrPC provides for the procedure for arrest, prosecution, and bail.

▪ BNSS mandates forensic investigation for offences punishable with seven years of imprisonment or more. Forensic experts will visit crime scenes to collect forensic evidence and record the process.

▪ All trials, inquiries, and proceedings may be held in electronic mode. Production of electronic communication devices, likely to contain digital evidence, will be allowed for investigation, inquiry, or trial.

▪ If a proclaimed offender has absconded to evade trial and there is no immediate prospect of arresting him, the trial can be conducted and judgement pronounced in his absence.

▪ Along with specimen signatures or handwriting, finger impressions and voice samples may be collected for investigation or proceedings. Samples may be taken from a person who has not been arrested.

KEY FEATURES

The CrPC governs the procedural aspects of criminal justice in India. The key features of the Act include:

- **Separation of offences:**

The CrPC classifies offences into two categories: cognisable and non-cognisable. Cognisable offences are those in which the police can arrest and initiate an investigation without a warrant. Non-cognisable offences require a warrant, and in some cases, a complaint by the victim or a third party.

- **Nature of offences:**

The CrPC deals with various types of criminal offences, ranging from traffic violations to murder. It distinguishes between bailable and non-bailable offences, specifying the offences for which an accused has the right to bail from police custody.

The Bharatiya Sakshya Bill, 2023

HIGHLIGHTS OF THE BILL

- The Bharatiya Sakshya Bill, 2023 (BSB) replaces the Indian Evidence Act, 1872 (IEA). It retains most provisions of the IEA including those on confessions, relevancy of facts, and burden of proof.

- The IEA provides for two kinds of evidence - documentary and oral. Documentary evidence includes primary (original documents) and secondary (that proves the contents of the original). The BSB retains the distinction. It includes electronic records in the definition of documents.

- Under the IEA, electronic records are categorised as secondary evidence. The BSB classifies electronic records as primary evidence. It expands such records to include information stored in semiconductor memory or any communication devices (smartphones, laptops).

- Under the IEA, secondary evidence may be required under various conditions, such as when the original is in the possession of the person against whom the document is sought to be proved or has been destroyed. The BSB adds that secondary evidence may be required if the genuineness of the document itself is in question.

KEY FEATURES

The Bharatiya Sakshya Bill, 2023 (BSB) retains most of the provisions of the IEA. These include:

- **Admissible evidence:**

Parties involved in a legal proceeding can only present admissible evidence. Admissible evidence can be classified as either 'facts in issue' or 'relevant facts'. Facts in issue refer to any fact that determines the existence, nature, or extent of any right, liability, or disability claimed or denied

in a legal proceeding. Relevant facts are facts that are pertinent to a given case. The IEA provides for two kinds of evidence – documentary and oral evidence.

▪ **A proved fact:**

A fact is considered proven when, based on the evidence presented, the Court believes it to either: (i) exist, or (ii) its existence so likely that a prudent man should act as if it exists in circumstances of the case.

▪ **Police confessions:**

Any confession made to a police officer is inadmissible. Confessions made in police custody are also inadmissible, unless recorded by a Magistrate. However, if a fact is discovered as a result of information received from an accused in custody, that information may be admitted if it distinctly relates to the fact discovered.

Key changes proposed in the BSB include:

▪ **Documentary evidence:**

Under the IEA, a document includes writing, maps, and caricature. The BSB adds that electronic records will also be considered as documents. Documentary evidence includes primary and secondary evidence. Primary evidence includes the original document and its parts, such as electronic records and video recordings. Secondary evidence contains documents and oral accounts that can prove the contents of the original. The BSB retains this classification.

▪ **Oral evidence:**

Under the IEA, oral evidence includes statements made before Courts by witnesses in relation to a fact under inquiry. The BSB allows oral evidence to be given electronically. This would permit witnesses, accused persons, and victims to testify through electronic means.

▪ **Admissibility of electronic or digital records as evidence:**

Documentary evidence includes information in electronic records that have been printed or stored in optical or magnetic media produced by a computer. Such information may have been stored or processed by a combination of computers or different computers. The BSB provides that electronic or digital records will have the same legal effect as paper records. It expands electronic records to include information stored in semiconductor memory or any communication devices (smartphones, laptops). This will also include records on emails, server logs, smartphones, locational evidence and voice mails.

▪ **Secondary evidence:**

The BSB expands secondary evidence to include: (i) oral and written admissions, and (ii) the testimony of a person who has examined the document and is skilled in the examination of documents. Under the Act, secondary evidence may be required under various conditions, such as when the original is in the possession of the person against whom the document is sought to be

proved or has been destroyed. The BSB adds that secondary evidence may be required if the genuineness of the document itself is in question.

▪ **Joint trials:**

A joint trial refers to the trial of more than one person for the same offence. The IEA states that in a joint trial, if a confession made by one of the accused which also affects other accused is proven, it will be treated as a confession against both. The BSB adds an explanation to this provision. It states that a trial of multiple persons, where an accused has absconded or has not responded to an arrest warrant, will be treated as a joint trial.

CONCLUSION

The Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Bill, 2023 represent a significant reform initiative aimed at modernizing the Indian criminal justice system.

These reforms aim to address issues such as delays, inefficiencies, and outdated provisions within the Indian criminal justice system, aligning it more closely with international standards and enhancing its overall robustness.

