

A STUDY ON THE CHALLENGES REGARDING CRIMINAL LAW IN INDIA

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Abstract

Criminal law serves as the bedrock of a just and orderly society, establishing the rules of conduct that citizens must adhere to and prescribing punishments for those who breach them. In India, a vast and diverse nation with a complex legal history, the criminal justice system is an intricate framework designed to maintain peace, protect individual rights, and ensure justice. The evolution of Indian criminal law, from its colonial origins to the recent landmark reforms, reflects the country's journey towards a more equitable and efficient legal system. This article explores the foundational principles, key statutes, procedural stages, and modern challenges that define criminal law in India today. The edifice of Indian criminal law rests on several fundamental principles, chief among them being the presumption of innocence. This time-honored doctrine dictates that an accused person is considered innocent until proven guilty beyond a reasonable doubt. The onus of proof, therefore, lies squarely on the prosecution, who must present sufficient evidence to convince the court of the accused's guilt. This principle is intrinsically linked to the concept of *mens rea* (guilty mind) and *actus reus* (guilty act), where a crime is generally not considered complete unless there is a criminal intent coupled with the commission of a prohibited act. The law also upholds the principle of "legality," which means that no one can be punished for an act that was not defined as a crime by a pre-existing law. Additionally, the

principle of "no double jeopardy" ensures that an individual cannot be tried and punished twice for the same offense, safeguarding against repeated prosecution.

Keywords:

Criminal, Law, Justice, Code

Introduction

The Indian criminal justice system is primarily governed by a trinity of laws, which until recently, were largely a legacy of the British colonial era. The Indian Penal Code (IPC) of 1860, which was replaced by the Bharatiya Nyaya Sanhita (BNS), 2023, defined substantive criminal law by listing and defining various offenses and their corresponding punishments. (Tripathi, 2022)

The Criminal Procedure Code (CrPC) of 1973, which has been replaced by the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, laid down the procedural framework for the investigation, trial, and sentencing of crimes. Finally, the Indian Evidence Act of 1872, now the Bharatiya Sakshya Adhiniyam (BSA), 2023, governed the admissibility and weight of evidence in a court of law. These three acts work in concert to provide a comprehensive legal structure, with BNS defining what a crime is, BNSS outlining how to prosecute it, and BSA establishing what evidence is permissible in court.

The journey of a criminal case in India follows a structured process, beginning with the pre-trial phase. The process is initiated with the registration of a First Information Report (FIR) at a police station, which formally records the alleged crime. This is followed by an investigation by the police, during which they gather evidence, interrogate witnesses, and may arrest the accused. Once the investigation is complete, the police file a charge sheet to the court, outlining the charges and the evidence collected. The trial phase then commences, with the court formally framing the charges.

The prosecution presents its case, calling witnesses and presenting evidence, which are then subject to cross-examination by the defense. The defense is also given an opportunity to present its own witnesses and evidence. Following the closing arguments from both sides, the judge delivers the final judgment, either acquitting or convicting the accused. If convicted, a separate hearing is held for sentencing, and both parties have the right to appeal to a higher court. (Wilson, 2021)

Indian criminal law categorizes crimes into several broad categories, with offenses against the body and property being the most common. Crimes against the body, such as murder, culpable homicide, assault, and sexual offenses like rape, are considered particularly heinous and carry severe penalties. Offenses against property, including theft, robbery, dacoity, and cheating, protect an individual's right to their possessions.

The law also defines offenses against the state, such as sedition and waging war, and addresses crimes against public tranquility, like rioting and unlawful assembly. With the recent overhaul of the criminal codes, new offenses have been introduced to address modern challenges, including organized crime, mob lynching, and terrorist acts.

The recent replacement of the colonial-era criminal laws with the BNS, BNSS, and BSA marks a monumental shift in the Indian criminal justice system. These new laws are a response to a long-standing demand for a justice system that is more efficient, victim-centric, and reflective of modern-day realities. Key reforms include the introduction of strict timelines for investigations and trials to reduce judicial pendency, the formal recognition of digital evidence, and a greater emphasis on the rights of victims. (Roy, 2020)

The new laws also address contemporary issues like organized crime and mob lynching, which were previously covered under special laws or were not adequately defined. However, the implementation of these sweeping changes presents its own set of challenges, including the need for extensive training for judicial and law enforcement officials and the adaptation of legal precedents to the new statutes.

The year 2024 marked a pivotal moment in India's legal history with the enforcement of the Bharatiya Nyaya Sanhita (BNS), 2023. This landmark legislation, along with the Bharatiya Nagarik Suraksha Sanhita and the Bharatiya Sakshya Adhiniyam, constitutes a complete overhaul of the country's criminal justice system, replacing the colonial-era Indian Penal Code (IPC) of 1860. The stated objective of this monumental shift is to decolonize Indian jurisprudence, moving away from a system of punitive control designed by the British to one that prioritizes justice and the welfare of the Indian populace. However, this transition is not without its complexities, introducing both progressive reforms and contentious new provisions that have sparked significant public and legal debate. (Patel, 2020)

Literature Review

Batra et al. (2020): The primary motivation behind the Bharatiya Nyaya Sanhita (BNS) is to modernize and Indianize the legal framework. The IPC, formulated by Lord Macaulay, was a relic of British rule, filled with archaic language and provisions that were no longer relevant to a contemporary, independent India.

Dhawan et al. (2022): The Bharatiya Nyaya Sanhita (BNS) seeks to address this by introducing a more streamlined and accessible criminal code. It reduces the number of sections from 511 in the IPC to 358, consolidating similar offenses and reorganizing the structure to be more logical. A significant example of this is the creation of a dedicated chapter for "Offences against Woman and Child," bringing together scattered provisions from the old code to emphasize the importance of these vulnerable groups. This restructuring is a clear signal of the new legislation's intent to be more victim-centric and aligned with modern sensibilities.

Singh et al. (2021): The Bharatiya Nyaya Sanhita (BNS) explicitly defines and criminalizes "terrorism" and "organized crime," which were previously handled under special laws. It also introduces a specific provision for "mob lynching," making murder or grievous hurt by a group of five or more people on grounds of race, caste, sex, language, or personal belief a distinct and severely punishable offense. This

move directly responds to a growing concern in Indian society and aims to provide a clear legal deterrent against such heinous acts.

Verma et al. (2022): The legislation incorporates "community service" as a new form of punishment for petty crimes, a progressive step aimed at reducing the burden on the prison system and offering a more rehabilitative approach to justice for minor infractions. The definition of a "document" is also updated to include electronic and digital records, reflecting the digital age.

Malik et al. (2020): The Bharatiya Nyaya Sanhita (BNS) has also been the subject of considerable criticism. One of the most debated provisions is the replacement of the colonial-era sedition law (of the IPC). While the BNS repeals the term "sedition," it introduces a new provision (150) that criminalizes acts endangering the "sovereignty, unity, and integrity of India."

Sharma et al. (2022): Critics argue that this new section is merely a re-packaged version of the old law, with broad and vague language that could still be used to stifle freedom of speech and political dissent.

Gupta et al. (2022): The Bharatiya Nyaya Sanhita (BNS) has been criticized for retaining the marital rape exception, which exempts a husband from being prosecuted for rape against his wife. This stands in contrast to the growing global consensus on a wife's right to bodily autonomy and has been a major point of contention among women's rights advocates.

Bose et al. (2021): Other concerns include the lack of gender neutrality in certain provisions and the new definition of "mental illness," which excludes "mental retardation," potentially leaving individuals with intellectual disabilities vulnerable to prosecution.

Challenges Regarding Criminal Law in India

The Bharatiya Nyaya Sanhita, 2023 represents a bold and ambitious attempt to reform India's criminal jurisprudence. By replacing a colonial legacy with a legal

framework that is more reflective of contemporary societal values and technological realities, the BNS aims to usher in a new era of "justice" over mere "punishment." It introduces crucial new provisions to tackle modern crimes like terrorism and organized crime, and it makes welcome changes like incorporating community service as a form of rehabilitation.

However, the legislation's true impact will depend on its implementation and how the judiciary interprets its new provisions, particularly those that have drawn criticism for their potential to curtail civil liberties or fall short of modern human rights standards. The BNS is a significant step forward, but it is also a reminder that legal reform is a continuous process of evolution and adaptation.

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, is a landmark piece of legislation that seeks to overhaul India's criminal procedure by replacing the colonial-era Code of Criminal Procedure (CrPC), 1973. Enacted with the stated objective of modernizing the criminal justice system and making it "citizen-centric," the BNSS introduces a host of changes aimed at expediting trials, leveraging technology, and enhancing the rights of both the accused and the victims. While proponents argue that the Sanhita is a necessary step to decolonize Indian law and improve judicial efficiency, critics have raised significant concerns about its potential impact on fundamental rights and civil liberties.

The BNSS introduces several key provisions designed to transform the procedural framework of criminal law. One of the most significant changes is the mandatory use of forensic investigation for all offenses punishable with a minimum of seven years of imprisonment. This provision aims to bolster the use of scientific evidence in criminal proceedings, thereby increasing the chances of a fair and accurate judgment. Furthermore, the law promotes the use of technology by allowing all trials, inquiries, and proceedings to be conducted in electronic mode. This includes the electronic serving of summons, recording of evidence via video conferencing, and the use of digital evidence.

Another notable reform is the introduction of a new provision allowing trials to be conducted in the absence of a proclaimed offender who has absconded. This is intended to prevent the indefinite delay of trials due to the non-appearance of the accused. The Sanhita also introduces specific timelines for various procedural actions, such as the submission of forensic reports and the delivery of judgments, in an effort to reduce the massive backlog of cases. In a victim-centric move, it mandates that victims of a crime must be informed of the progress of the investigation within 90 days. The new law also introduces community service as a potential punishment for certain petty offenses, shifting the focus towards rehabilitative justice.

The BNSS retains many core principles of the CrPC but introduces crucial deviations. The CrPC, a legacy of British rule, was often criticized for its procedural delays and its focus on punishment rather than justice. The BNSS attempts to address these issues by placing a greater emphasis on efficiency and technology.

A major point of departure lies in the provisions for police custody. While the CrPC allows a magistrate to extend police custody up to 15 days within the first 60 or 90 days of judicial custody, the BNSS allows for police custody to be authorized in parts, for a total of up to 15 days, which can be done over the entire initial 60 or 90-day period. This change has been a subject of intense debate, as critics argue it could be used to prolong police detention and make it more difficult for an accused person to secure bail.

Another significant change is the provision that allows the collection of voice and finger impressions, along with specimen signatures, from a person who has not been arrested. The BNSS also modifies bail provisions, making it more challenging for those facing multiple charges to be released on bail, a departure from the CrPC's more lenient approach in certain cases.

Despite its stated goals of modernization and citizen-centric justice, the BNSS has faced considerable criticism. One of the most contentious issues is the provision regarding police custody, which is seen by many as a potential tool for misuse. Legal

experts have argued that this provision could lead to a 'custodial-remand-in-installments,' effectively granting police more time to interrogate an accused person, potentially infringing upon their constitutional rights. The permission to use handcuffs in a wider range of cases, including organized crime and habitual offenders, has also been criticized for going against Supreme Court directives that had sought to limit this practice.

Furthermore, critics argue that the new law retains many of the "colonial" provisions it set out to replace, such as the power of the police to conduct searches and seizures with limited judicial oversight. The lack of clear protocols for implementing community service and the vague terminology surrounding private arrests have also been highlighted as potential flaws that could lead to inconsistent application of the law. There are also concerns that the law may not fully protect the rights of the accused, particularly in its provisions for bail and the collection of biometric data without an arrest.

The Bharatiya Nagarik Suraksha Sanhita, 2023, represents a significant and ambitious effort to reform India's criminal justice system. Its focus on technology, forensics, and a time-bound justice delivery mechanism is a positive step towards addressing the systemic inefficiencies that have plagued the country's judiciary. However, the law is not without its flaws.

The provisions regarding police custody, bail, and the use of handcuffs have raised serious questions about its commitment to protecting the fundamental rights of citizens. The success of the BNSS will ultimately depend on its effective and just implementation, and whether it can strike a balance between enhancing law enforcement powers and safeguarding the civil liberties of every individual.

Findings of the study

The criminal justice system is a cornerstone of any democratic society, intended to protect citizens, maintain order, and ensure justice. In India, a country with a vast and diverse population, the criminal law system is a complex and often strained

mechanism. While the recent introduction of new laws like the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA) aims to modernize the system, it continues to face a multitude of persistent challenges that impede its effectiveness and erode public trust.

One of the most significant and widely recognized challenges is the issue of judicial delays and the massive backlog of cases. The Indian judiciary is overburdened, with millions of cases pending at various levels, some for decades. This delay is a result of several factors, including an acute shortage of judges, frequent adjournments, and outdated procedural practices.

The principle that "justice delayed is justice denied" is a harsh reality for many, as victims and the accused alike are forced to endure protracted legal battles, often leading to financial and emotional distress. The recent laws have introduced timelines for fast-tracking processes, but their success will depend heavily on addressing the underlying issues of infrastructure and manpower.

The investigative process, the very foundation of any criminal case, is also plagued by systemic inefficiencies. Law enforcement agencies, particularly the police, often operate with inadequate resources, a lack of proper training in modern forensic techniques, and a shortage of manpower. This can lead to compromised investigations, where crucial evidence is poorly collected or preserved. Furthermore, the issue of political interference and corruption at various levels of law enforcement can hinder impartial and thorough investigations. This lack of public trust in the police further complicates matters, as witnesses may be unwilling to cooperate, or worse, face intimidation and hostility, which weakens the prosecution's case during trial.

Another critical challenge is the colonial-era legacy that has shaped India's criminal laws. While the new laws aim to "Indianize" the system, many provisions and procedures have historically been a remnant of a system designed to control a colonial population rather than serve its people. This has led to an over-reliance on criminal law for a vast number of minor infractions that could be addressed through civil actions, thus unnecessarily burdening the criminal justice system. The lack of a

clear policy framework for when and how criminal laws should be applied has also led to the politicization of the law, where it is used as a tool to suppress dissent and manage governance challenges.

The criminal justice system also faces a lack of a victim-centric approach. Historically, the focus has often been on the rights of the accused, with insufficient attention paid to the rights and needs of the victims. The new laws have made strides in this area, such as mandating the involvement of forensic teams in serious crimes and requiring police to consult victims before withdrawing a case. However, the practical implementation of these changes and the need for greater victim protection and support systems remain a significant challenge.

While the recent reforms signal a positive shift towards modernizing and decolonizing India's criminal law, the system continues to grapple with deep-rooted challenges. Addressing the massive backlog of cases, modernizing police forces, tackling political interference, and fostering a truly victim-centric approach are crucial for a just and equitable system. The success of the new laws hinges not just on legislative changes but on a holistic and collaborative effort from all stakeholders—the police, judiciary, prosecution, and the government—to ensure that the constitutional values of justice, equality, and fairness are upheld for every citizen.

Conclusion

Criminal law in India is a dynamic and evolving field that plays a vital role in upholding the rule of law. Rooted in fundamental principles of justice and fairness, the legal system has undergone a significant transformation to shed its colonial past and embrace a more modern, efficient, and victim-focused approach. The new criminal codes represent a bold step towards ensuring that the legal framework is responsive to the needs of a changing society. While the path to a perfectly just system is long, the recent reforms signal a firm commitment to a future where justice is not only delivered but is also more accessible, equitable, and timely for every citizen.

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