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I, Dr. Pradeep Kumar, hereby declare that the particulars given above are true to the best of my knowledge and belief.

Date: December 31, 2024

**Sd/-
Dr. Pradeep Kumar**

Forensic Evidence in India: A Critical Analysis of Legal and Procedural Issues

Dr. Gurmanpreet Kaur¹
&
Dr. Parineeta Goswami²

Abstract

India has recently implemented new criminal laws, moving away from the archaic statutes of British origin by fundamentally redirecting the emphasis of criminal jurisprudence from “punishment” to “justice”. The Indian criminal judicial system has a British heritage that began in the 19th century. The Indian Parliament has enacted numerous significant modifications in the new legislation. The forensic opinion regulations have seen minimal revisions, allowing for extensive debate and recommendations. This article addresses fundamental challenges in forensic science by providing practical and realistic answers, as well as presenting processes that may be used to ensure a trustworthy forensic opinion. The authors try to comprehensively analyse the legal framework that governs forensics by contrasting the past and present criminal laws in India.

The Authors seek to comprehensively evaluate the legislative framework regulating forensics, contrasting the previous and current criminal legislation in India. The article examines best practices from other jurisdictions, including crime scene management, forensic laboratory analysis and regulations, and the admissibility of forensic evidence in court, to identify solutions to the challenges encountered by various stakeholders in justice administration. The judicial methodologies of forensic legislation and practices across many jurisdictions are compared and studied to build a model for optimal practices in forensic justice.

Keywords: Expert Witness, Forensics, Evidence, Reliability, Crime Scene Investigation

Introduction

The paper emphasises that the new criminal legislation is on technology and forensics, incorporating technological applications at every phase, from crime scene examination to investigation and trial proceedings.³ The integration of technology and forensics in investigations is a crucial step aimed at modernising the criminal justice system and leveraging contemporary scientific advancements.

India has recently implemented new criminal laws, moving away from the archaic statutes of British origin by fundamentally redirecting the emphasis of criminal jurisprudence from “punishment” to “justice”. The Indian criminal judicial system has a British heritage that began in the 19th century. The Indian Parliament has enacted numerous significant modifications in the new legislation. The forensic opinion regulations have seen minimal revisions, allowing for

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³ Rowan Dunton, “Examining the Relationship Between Legal Systems and Forensic Science: Current Issues and Proposed Solutions”, 11 “Themis: Research Journal of Justice Studies and Forensic Science” 1, 2 (2023), <https://scholarworks.sjsu.edu/themis/vol11/iss1/2>.

extensive debate and recommendations. This article addresses fundamental challenges in forensic science by providing practical and realistic answers, as well as presenting processes that may be used to ensure a trustworthy forensic opinion. The authors try to conduct a comprehensive analysis of the legal framework that governs forensics by contrasting the past and present criminal laws in India.

The Authors seek to comprehensively evaluate the legislative framework regulating forensics, contrasting the previous and current criminal legislation in India. The article examines best practices from other jurisdictions, including crime scene management, forensic laboratory analysis and regulations, and the admissibility of forensic evidence in court, to identify solutions to the challenges encountered by various stakeholders in justice administration. The judicial methodologies of forensic legislation and practices across many jurisdictions are compared and studied to build a model for optimal practices in forensic justice.

Concept of Forensic Evidence

Forensic science is systematically structured and continuously developed to minimise human errors and cognitive biases in judicial decision-making. A forensic opinion grounded in scientific principles, neutrality, and impartiality enhances confidence in uncovering the truth essential for the delivery of justice. A crucial role in ensuring flawless justice is played by forensic evidence, which is testimony given by an impartial third party (an expert), silent, palpable, repeatable, and supported by scientific validation. Forensic evidence serves as a scientific tool for precise human identification, essential for resolving disputes in both civil and criminal cases. Forensic evidence is the subject matter of criminal procedural laws. The Criminal Procedure Code deals with the process of handling criminal cases, while the Evidence Act applies to any dispute that the court considers. The procedural laws regulating criminal trials in Indian courts comprise the former Indian Evidence Act of 1972 and the Criminal Procedure Code of 1973 have been replaced on 1st July 2024 by the Bharatiya Sakshya Adhiniyam, henceforth referred to as “the BSA,” and the Bharatiya Nagarik Suraksha Sanhita, henceforth referred to as “BNSS.”

There is a wide range of forensics types in the Indian Criminal Justice system which includes:

- DNA Evidence that provides a genetic fingerprint for individual identification.
- Fingerprint Analysis which is one of the earliest and most trustworthy types of forensic evidence.
- Ballistic Evidence that offers insight into the utilisation of firearms in criminal activity
- Digital Forensics which involve the recovery and examination of data from digital devices and becomes increasingly vital in the era of cybercrime.
- Toxicology which examines bodily fluids for the presence of chemicals and poisons.

Comparison of Old and New Provisions of Bharatiya Sakshya Adhiniyam and Bharatiya Nagarik Suraksha Sanhita

The subsequent tables present a comparison between the old and new provisions.

S. No.	Indian Evidence Act, 1872	Title	Bharatiya Sakshya Adhiniyam, 2023
	Sections		Sections
1.	45	Opinion of Experts	39(1)
2.	45-A	Opinion of Examiner of Electronic Evidence	39(2)
3.	46	Facts bearing upon opinion of experts	40
4.	47	Opinion as to handwriting and signature, when relevant	41(1)
5.	47-A	Opinion as to digital signature, when relevant	41(2)
6.	48	Opinion as to the existence of right or custom, when relevant	42
7.	49	Opinion as to usage, tenets, etc. when relevant	43
8.	50	Opinion on relationship, when relevant	44
9.	51	Grounds of opinion, when relevant	45

Table 1: Comparison between the Indian Evidence Act, 1872 and Bharatiya Saksha Adhiniyam, 2023

Table 2: Comparison between Criminal Procedure Code, 1973 and Bharatiya Nagarik Suraksha Sanhita, 2023

S. No.	Criminal Procedure Code, 1973	Title	Bharatiya Nagarik Suraksha Sanhita, 2023
	Sections		Sections
1.	53-A	Examination of person accused of rape by medical practitioner	52
2.	54	Examination of arrested person by medical officer	53
3.	54-A	Identification of person arrested	54
4.	164-A	Medical examination of victim of rape	184
5.	291	Deposition of medical witness	326
6.	291-A	Identification report of Magistrate	327
7.	292	Evidence of Officer of Mint	328
8.	293	Reports of certain government scientific experts	329
9.	294	No formal proof of certain documents	330
10.	311-A	Power of Magistrate to order a person to give specimen samples of handwriting or signature	349 Section has expanded the power of Magistrate to order a person to give specimen of

			handwriting, signature or voice sample
II.	No provision	Visit of forensic expert to the crime scene for collection of forensic evidence	176(3)

Role of Expert in Taking Forensic Evidence

The term “expert” remains undefined in the new Act as well, leading to interpretational dilemmas and ambiguity.⁴ An expert may originate from either scientific or non-scientific disciplines, depending on the domain. Scientific experts are classified as “forensic experts”. Expert opinion is not infallible; thus, forensic reports serve as corroborative evidence in judicial proceedings. Reducing the extent of errors in expert opinion presents a significant challenge.

Recently, the Supreme Court of India has examined several significant issues, highlighting concerns regarding procedural propriety in forensic opinion. In the instances of *Anokhilal v. State of M.P.*⁵ and *Rahul v. State (NCT of Delhi)*⁶, several cases necessitate a thorough examination of whether it is the forensic technique itself or the procedures that have faced scrutiny during judicial review. Anokhilal case represents a landmark case of DNA exoneration, potentially catalyzing the Innocence Movement in India. The Anokhilal case, which occurred on March 19, 2024, in Madhya Pradesh and was the first DNA exoneration of a death row inmate following the third trial, further emphasised the importance of forensic expertise to the legal system.

This development aims to rectify injustices and alleviate the suffering of those wrongfully convicted, while also aligning India with global jurisprudential standards to effectively address claims of innocence.⁷

Section 39 of the Bharatiya Saksha Adhiniyam, 2023 closely mirrors the previous provisions found in Section 45 of the Indian Evidence Act, 1872 regarding experts, with the addition of the phrase “any other field” to encompass additional areas of expertise. Analysis of Sections 45 and 39 indicates that the term “expert” is not explicitly defined but is suggested to refer to a “especially skilled person.”

The Court’s opinion on foreign law, science, art, or the identification of handwriting, fingerprints, or signatures is informed by individuals with specialised knowledge in these areas, referred to as experts. The term “forensic” is notably absent from the entirety of the Evidence

⁴G.K. Goswami, *A Need to Define Forensic Expertise*, The New Indian Express, Jan. 3, 2024, <https://link-to-article> (last visited Oct. 8, 2024).

⁵ (2019) 20 SCC 196; *Anokhilal*, In re, 2023 SCC OnLine MP 3126.

⁶ (2023) 1 SCC 83.

⁷ G.K. Goswami & Siddhartha Goswami, *Innocence Denied: Safeguarding Constitutional Rights Amid Wrongful Convictions*, in *Perspective on Indian Constitution and Development* 79, 79-102 (Nitesh Chandra & Manoj Kumar Sinha eds., 2023).

Act. The absence of a clear definition creates a dilemma in determining who qualifies as an expert, a matter that has been repeatedly addressed by the constitutional courts of India.

In *State of H.P. v. Jai Lal*⁸, the Supreme Court clarified the term “especially skilled” as defined in Section 45, indicating that an expert must possess specialised study or experience. Therefore, an expert must possess sufficient subject knowledge and skills.

In *State of Karnataka v. J. Jayalalitha*, (2017) 6 SCC 263, An expert is not a factual witness; rather, their testimony is advisory, and their responsibility is to provide the court with scientific standards to evaluate the veracity of conclusions. The court must render its impartial judgement based on expert opinions and the specific facts of each case. The court should not subordinate its judgement to that of an expert or delegate its authority to a third party but should evaluate expert testimony as it would any other evidence.

In *Basheera Begam v. Mohd. Ibrahim*, (2020) 11 SCC 174, Expert testimony does not necessarily provide conclusive evidence. Although there is a risk involved in adopting the opinion of an expert, this is not because an expert is not trustworthy as a witness; rather, it is since human judgement is prone to error. Even though the science of fingerprint identification has reached a point of perfection, where there is almost no possibility of an incorrect opinion being formed, the science of handwriting identification is not quite as perfect.

In *Sri Chand Batra v. State of U.P.*⁹, the Supreme Court of India recognised the Excise Inspector as an expert under Section 45 to ascertain the unlawful nature of the liquid through olfactory examination, due to his extensive expertise in relevant cases. This flawed subjective legal interpretation by an expert presents significant risks, resulting in miscarriages of justice, including false convictions and a deterioration of public trust in the judicial system.

An expert witness must assist the court by providing a pertinent report grounded in their expertise, accompanied by rationale, enabling the court to independently evaluate the information and reasoning presented by the expert to reach a sound conclusion. It is essential to remember that opinion evidence is advisory, and the court is not obligated to adhere to the expert's testimony.¹⁰

Various Aspects of Admissibility of Expert Evidence Under Indian Law

The admissibility of forensic evidence under Indian Law must fulfil four essential criteria to ensure its relevance and reliability in legal proceedings and to be considered acceptable in Court. Understanding these nuances is very important for the effective implementation of expert testimony in judicial processes. The four essential criteria are as follows:

- The evidence must be relevant to the case at hand and show a link, either directly or indirectly, to a crime or a person involved in it.

⁸ (1999) 7 SCC 280.

⁹ (1974) 4 SCC 247.

¹⁰ *Pattu Rajan v. State of T.N.*, (2019) 4 SCC 771.

- The evidence must be gathered and given in a way that follows the law and protects rights, such as the right not to be searched or seized and the right against self-incrimination.
- It's important to make sure that the methods used to gather and analyse the data are scientifically sound, which usually means getting approval from other experts.
- The individuals presenting the evidence, usually forensic experts, must possess credibility, appropriate qualifications, and a lack of bias.

A. Cross-examination of the Expert under Bharatiya Saksha Adhiniyam, 2023

The right to cross-examine a witness is an essential element of the right to a fair trial. Concerning the cross-examination of a forensic expert in court, Section 293(2) of the CrPC and Section 329 of the Bharatiya Nagarik Suraksha Sanhita, 2023, are identical, stating, "The Court may, if deemed appropriate, summon and examine any such expert regarding the subject matter of their report." Moreover, Section 330 of the Bharatiya Nagarik Suraksha Sanhita, 2023 establishes a stipulation that a forensic report, as a document, must be contested by the accused within thirty days following its provision, with the caveat that "the Court may, at its discretion, extend the time-limit with reasons recorded in writing." These legal provisions collectively suggest that lawmakers regard the "expert report" as an unquestionable truth. An expert report, in essence, constitutes merely an opinion and lacks admissibility unless it undergoes judicial scrutiny to assess its veracity, technological soundness, and procedural integrity.¹¹ A broad spectrum of topics must be scrutinised during judicial procedures before the acceptance of an expert opinion, which primarily includes the following:

- Protection of chain of custody.
- Accreditation of laboratory procedures.
- The report should include the expert's education and subject expertise.
- Testing, analysis, and reporting experience, as well as the hand notes and log files (metadata) from testing and analysis.

The Supreme Court of India in *State of Haryana v. Bhagirath*¹² stated, "The opinion provided by the expert constitutes merely opinion evidence and lacks substantive value unless the expert is examined as a witness in court." Forensic opinions significantly impact judicial decision-making. In this situation, the accused has legitimate grounds to cross-examine the forensic expert on several important aspects to evaluate the report.

Scope of Section 176(3) of Bharatiya Nagarik Suraksha Sanhita, 2023

Section 176(3) stipulates that upon receiving information regarding an offence punishable by seven years or more, the officer in charge of the police station must ensure that a forensic expert visits the crime scene to gather forensic evidence and document the process through videography using a mobile device or any other apparatus.

¹¹Dr. Gopal J. Mishra & Dr. C. Damodaran, *Perspective Plan for Indian Forensics* (Ministry of Home Affairs, Gov't of India, 2010), [http://dfs.nic.in/pdfs/IFS\(2010\)-FinalRpt_0.pdf](http://dfs.nic.in/pdfs/IFS(2010)-FinalRpt_0.pdf).

¹² (1999) 5 SCC 96.

This legislative intent is likely to increase the burden on the existing Central Forensic Science Laboratories (CFSLs) (CFSLs in India are located at Chandigarh, Hyderabad, Kolkata, Pune, Bhopal, Guwahati, and New Delhi.), 29 State Forensic Science Laboratories (SFSLs), and more than 50 regional laboratories across various states.

With over 140 million people and crime rates on the rise, India needs to bolster up its forensic services to satisfy the demands of Section 176(3). Governments will encounter difficulties in constructing sufficient forensic facilities within the allotted five years by the legislature. The Public Private Partnership (PPP) model may be suitable for addressing the situation. Nonetheless, it is contended that the confidentiality of forensic reporting is crucial, and private laboratories may jeopardise the integrity of reports¹³. Confidentiality breaches have been recorded in government laboratories. This challenge may be addressed by observing the coding and decoding procedures of the samples. Quality assurance (QA) and quality control (QC) may be ensured by strict observance of accreditation certification¹⁴.

Strategies for Ensuring the Integrity and Admissibility of Forensic Evidence

The integrity of forensic samples is a critical criterion for evaluating the admissibility of forensic opinion. Integrity pertains to the authenticity of samples and guarantees that manipulation or contamination does not compromise the sample. Upon evaluating the integrity of samples, the court broadly determines admissibility based on reliability and validity. Three critical factors are essential for maintaining sample integrity, which include:

- i. protection of the crime scene,
- ii. protection of chain of custody, and
- iii. anonymity of the samples by coding and decoding.

The timing of crime reporting and the promptness of police response to the crime scene are crucial for obtaining the most valuable evidence. Delays in responding to a crime scene increase the likelihood of loss, contamination, tampering, and manipulation of critical evidence¹⁵. The crime scene should be secured with established boundaries and regulated access, and it must be examined by trained professionals. The crime scene must be photographed and video graphed promptly upon arrival, in addition to being sketched. Appropriate methodologies should be employed for the collection and examination of samples and evidence¹⁶. Securing the chain of custody of the sample is essential following sample collection. Crime Scene Supervision largely involves steps like:

- iv. securing the scene,
- v. preliminary survey for assessment,
- vi. documentation including photography, videography, sketches, etc.

¹³*Fraud in Forensics: India Today Exposes Crime in Crime Labs*, India Today, Feb. 27, 2023.

¹⁴P. Gill & L. Bright, *Implementing Quality Management Systems in Forensic Laboratories*, 191 *Forensic Science International* 1, 1-7 (2009); S.J. Saltzburg, *Quality Assurance and Quality Control in Forensic Laboratories: A Review*, 52 *Journal of Forensic Sciences* 1158, 1158-62 (2007).

¹⁵B.A.J. Fisher, *Crime Scene Investigation: Best Practices and Methodologies*, 223 *Forensic Science International* 1, 1-7 (2012).

¹⁶Rahul Singh Rathore, *Legality and Admissibility of Search and Seizure: An International Overview* (2023), <http://dx.doi.org/10.2139/ssrn.4385261> (last visited Oct. 9, 2024).

- vii. use of specialised techniques for sample detection and collection,
- viii. coordination and communication,
- ix. necessary permissions from authorities or court,
- x. scene release, and
- xi. post-scene management.

The rigorous coding and decoding of samples are essential processes for guaranteeing accurate tracking, documentation, and safeguarding against manipulation or tampering¹⁷. Each sample must be designated a unique identification, such as a barcode or QR code, which securely encodes information about the sample, including the date, time, location, and the identity of the collector. In the contemporary digital age, blockchain technology may assist in the coding and decoding processes¹⁸.

Forensics comprises scientific methodologies that require formal approval from the accreditation authority. Accreditation is a structured process through which an authoritative body assesses and acknowledges an institution or organisation for its compliance with established criteria and standards. Accreditation ensures the consistency, correctness, and reliability of analyses required for the admission of forensic opinions¹⁹. This procedure encompasses evaluation, accreditation, and continuous oversight. Accreditation is a mandatory requirement in essential sectors such as civil aviation, healthcare, and forensic science, where the quality and reliability of operations are paramount.

Practical Challenges and The Way Ahead

In the Indian criminal justice system, the role and admissibility of forensic evidence are subject to ongoing development and change. Despite these challenges, this trend is more scientific, rigorous and right-aware application of forensic evidence. Forensic science can play a crucial role in the administration of justice through the interaction between legal and scientific communities along with technological processes. Several challenges are faced because of the integration of forensic evidence. Practical obstacles frequently arise from deficiencies in infrastructure, training, and the complex interaction between law and science. Some of the challenges are highlighted below:

- India's forensic infrastructure encounters challenges like understaffing, insufficient funding, and a deficiency of current equipment. This may lead to backlogs and postponed outcomes and hinder the justice process. The central and state governments have commenced multiple enhancements to forensic facilities, nevertheless, the momentum must be maintained to satisfy increasing needs.
- The reliability of forensic evidence is contingent upon the proficiency of the analysts involved. Continuous professional development and training in the latest forensic

¹⁷Lone A.H. & Mir R.N., *Forensic-Chain: Blockchain Based Digital Forensics Chain of Custody with PoC in Hyperledger Composer*, 28 *Digital Investigation* 44, 44-53 (2019), <https://doi.org/10.1016/j.diin.2019.01.002> (last visited Oct. 5, 2024).

¹⁸D.M. Jacobs, *Blockchain Technology and Its Potential Applications in Forensic Investigations*, 63 *Journal of Forensic Sciences* 1823, 1823-30 (2018).

¹⁹W. Neuteboom et al., *Quality Management in Forensic Science: A Closer Inspection*, 358 *Forensic Science International* 111779 (2023), <https://doi.org/10.1016/j.forsciint.2023.111779> (last visited Oct. 7, 2024).

methodologies are essential. Collaborations with international organisations and institutions may address knowledge deficiencies and enhance the quality of forensic practice in India.

- Standard operating procedures and quality control are essential for guaranteeing the dependability of forensic outcomes. India is developing standardised methods like the FBI's Quality Assurance Standards for Forensic DNA Testing Laboratories to improve the reliability of forensic evidence in judicial proceedings.
- The intricacies of forensic science frequently present difficulties for legal practitioners, such as judges and legal professionals, who may lack a scientific foundation. The heightened focus on forensic literacy within legal education and the inclusion of scientific advisors in court proceedings may reduce misinterpretations of forensic evidence.

The future of forensic science in India is expected to transition towards increasingly specialised domains, including neuro forensic science, which investigates the relationship between criminal behaviour and neurological disorders. The judiciary's willingness to embrace new scientific methodologies, provided they satisfy admissibility criteria, indicates a forward direction for forensic science within the Indian legal system.²⁰

The reliability and admissibility of forensic evidence have been considerably improved because of the recent enactment of three new criminal laws in India, which have strengthened the role of forensic evidence within the crime justice system. This represents a significant advancement in the integration of forensic expertise into the judicial process.

The regulations now require the immediate presence of forensic professionals at serious crime scenes upon receiving information and emphasise the necessity of validating laboratory operations. Nonetheless, there exists an imperative necessity to augment forensic infrastructure through the provision of a sufficient number of skilled professionals, extensive training, and capacity development, while concurrently safeguarding human rights and privacy. Addressing the coding and decoding of samples is essential for mitigating existing fraudulent practices in forensic reporting. Creating a mechanism for an ombudsman with legal authority is crucial for the oversight of forensic services in India. The future of forensics in India looks bright, signalling the onset of a new era of "Viksit and Surakshit" Bharat.



²⁰Ambily P. & Ashna D., *Faulty Foundations: A Socio-Legal Critique of the Regulation of Forensic Science Laboratories in India*, 7(2) NLUJ LR 191, 191-210 (2021).

Criminalization of Tax Non-Compliances and Tax Offences in India: A Policy and Compliance Perspective

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&
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Abstract

Tax crimes and tax offences represent a significant challenge to India's economic integrity and fiscal stability, one that is inimical to the preambular value of securing economic justice. Tax offences in India encompass a wide range of violations, including tax evasion, fraudulent claims, concealment and misreporting of income, and failure to comply with the taxing statutes. These infractions impact revenue collection, economic stability, and governance. The criminalization of tax non compliances serves as a deterrent, yet its effectiveness has been a matter of debate. This research paper seeks to examine the effectiveness of criminalization as a policy approach to addressing tax evasion, fraud, and non-compliance by exploring the complex interplay between legal deterrence, economic incentives, and systemic challenges in combating tax offences. Through analysis of existing literature, legal frameworks, enforcement mechanisms, judicial interpretations, case studies, and their socio-economic implications, the research provides a nuanced understanding of the current landscape of tax crime prevention in India. This research paper further explores the broader political and economic implications of tax criminalization, assessing whether strict penalties enhance compliance or create undue burdens on businesses and individuals while offering critical insights into the effectiveness of criminalization as a strategy for improving tax compliance and reducing economic irregularities.

Keywords: Tax crimes, tax offences, criminalization, compliance.

Introduction

Like any Nation, Tax laws in India serve as the backbone of the country's fiscal policy. The historical evolution of the taxing statutes reflects the country's never-ending challenge of balancing economic growth, fiscal responsibility, and robust compliance and enforcement mechanisms. There have always been challenges to broadening the tax base by tackling the loopholes that lead to tax avoidance and evasion. Taking time to discuss the tax system and the form to be taken by the taxes imposed is important as it has not only has profound economic effects but also wide interests and impacts in public finance and public administration. *Adam Smith*, the Father of Modern Economics, said, "The law, contrary to ordinary principles of justice, first creates the temptation (to avoid tax) and then punishes those who yield to it."³

India's taxation system has undergone significant transformations, with increasing complexity and sophistication in the legislative frameworks, restructuring, and rationalization in order to address tax crimes. Such violations of tax laws and offences range from deliberate tax fraud to

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³ Adam Smith, *Wealth of Nations*, Book V, Chapter II (1776).

willful or unintentional misreporting and non-compliance with the provisions of the statute. The Income tax law employs criminal sanctions such as arrest, imprisonment, fines, and seizure of assets to curb tax offences. However, the interplay between strict enforcement and the economic policy of the state raises concerns about over-criminalization. This paper assesses the effectiveness of the punitive measures undertaken by the tax authorities in addressing various tax offences and how political and socio-economic factors also help shape the enforcement mechanisms and compliance with the tax laws.

Offences under Tax Laws

At the outset, when looking at the term ‘tax offences’, we think of tax evasion, money laundering, and other forms of tax fraud leading to organized crime and corruption. This is because of the complicated nature of the tax administration and the complexity of tax laws, as well as the criminal sanctions at a bargain. The term ‘tax crimes’ widely encompasses not only Income tax and GST fraud, but also Customs fraud and Excise fraud, which may be linked with illicit trafficking or smuggling and predominantly affect the public treasury. Recent reformation is the inclusion⁴ of Economic offences like criminal breach of trust, counterfeiting, Ponzi schemes, financial scams and frauds, mass marketing frauds, Multi-level marketing (MLM) schemes, and Hawala transactions as part of Organized crimes under the BNS⁵, to ascertain encompassing of such crimes into the criminal law arena.

The OECD’s Task Force on Tax Crimes and Other Crimes gave out its Report as a guide for “*Fighting Tax Crime: The Ten Global Principles*”⁶ in order to ensure global efforts in combating these tax crimes. It is prescribed that the tax jurisdictions make it a point to apply criminal sanctions for violations of the provisions of law where the line of difference is drawn between a non-compliant behavior vs the criminal behavior of the violator. Non-compliance can range from failure to maintain records, file returns, maintain false documents, etc., but what is criminal could be an intentional, willful violation of law by deliberately destroying or falsifying evidence, records, fraudulent refunds/ credits, tax evasion, etc. Either way, it is the discretion of the jurisdictions to criminalize such activities and behavior of the taxpayers based on the policy of the government of that jurisdiction and the degree of aggravating circumstances.

The taxing statutes are often seen as conferring civil liabilities amongst those who violate their provisions. However, the paper concentrates on the part where they prescribe criminal liability irrespective of the degree of violation and quantum of monetary usurpation. The abuse of complex provisions by misusing the deductions and exemptions, credit and incentives available, under-reporting of profits, and over-reporting of expenditure⁷ and losses can happen with or

⁴ PwC, *Revamping India’s criminal justice system*, available at <<https://www.pwc.in/assets/pdfs/consulting/forensic-services/revamping-indias-criminal-justice-system-bns-bnss-and-bsb.pdf>> (last visited on 07 October 2024).

⁵ Bharatiya Nyaya Sanhita, 2023, S.111.

⁶ OECD, *Fighting Tax Crime: The Ten Global Principles*, OECD Publishing, Paris (2017), available at <https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/11/fighting-tax-crime_c9374f32/63530cd2-en.pdf> (last visited on 07 October 2024).

⁷ Matthias Morgner and Marie Chêne, *Tax Administration and Corruption*, (Transparency International, November 2014), available at

without the involvement of auditors and tax authorities. The introduction of e-filing and other e-tax administrative procedures with the object of increasing transparency and improving hassle-free processes to 'eliminate the interface between authorities and taxpayers to the extent technologically possible'⁸ is seen as a step forward to ensuring compliance through ease of access. The powers conferred upon the Income tax Authorities, equivalent to that of a civil court, under *sections 131 to 136* of the Income Tax Act, to search, seize, require books, call for information, survey, and attach property in certain cases may be of the nature of enforcing a civil liability. Criminal liability is only attached in those cases when non-compliance and contravention of civil orders occur, invoking imprisonment of upto 2 years.⁹

The Taxpayer's Charter¹⁰ expects an honest taxpayer to file his returns on time and disclose complete information along with compliance with other requirements under tax laws. Penal provisions are invoked to serve as deterrence to committing tax crimes and for effective enforcement of the tax statutes. Penal consequences range from imposing a penalty to instigating a criminal prosecution against the dishonest taxpayer. Such unethical tax practices are also addressed in the 'Black Money (Undisclosed Foreign Income and Assets) Act of 2015'. The penalty is imposed over and above the amount of tax and interest payable once found guilty of non-compliance¹¹ for those offences mentioned under *sections 270A to 275*¹² of the Income Tax Act after giving a 'reasonable opportunity to be heard.' These comprise concealment and misreporting of income, failure to maintain books and records, finding undisclosed income¹³ during the search, forged or falsified documents, failure to audit, furnishing inaccurate information, and refusal to comply with orders, among others¹⁴.

The criminal sanctions in the manner of punishable offences and prosecution are provided under Chapter XXII¹⁵ of the Income Tax Act, where Rigorous imprisonment of upto 7 years with a fine is prescribed for various offences, including tax evasion. Chapter V of the Black Money Act penalizes holding of undisclosed income and assets from foreign sources located outside India with RI of upto 7 years¹⁶ with a fine and upto 10 years for a willful attempt to evade taxes¹⁷ with the imposition of a fine.

<https://knowledgehub.transparency.org/assets/uploads/kproducts/Tax_administration_topic_guide.pdf> (last visited on 07 October 2024).

⁸ Income Tax Act, 1961, ss. 274(2A), 279 (1).

⁹ Income Tax Act, 1961, S. 275A.

¹⁰ Income Tax Act, 1961, S. 119A.

¹¹ ICAI, Chapter 19, *Provisions to counteract unethical tax practices*, available at <<https://resource.cdn.icai.org/83385bos191224g.pdf>> (last visited on 08 October 2024).

¹² Income Tax Act, 1961, Chapter XXI.

¹³ Income Tax Act, 1961, S. 271AAB.

¹⁴ SBI, *Understanding tax evasion and penalties in India*, available at <<https://www.sbilife.co.in/en/knowledge-centre/insurance-basics-financial-advice/what-is-tax-evasion-and-penalties>> (last visited on 07 October 2024).

¹⁵ Income Tax Act, 1961, S. 275A to S.280.

¹⁶ Black Money Act, 2015, ss. 49, 50.

¹⁷ Black Money Act, 2015, S. 51.

Under the Goods and Service Tax laws, all the penalties leviable under CGST Act, SGST/UTGST Act, and IGST Act¹⁸ are collectively imposed against certain offences like fraudulently obtaining a refund, utilizing Input tax credit (ITC), tampering with evidence, falsifying documents, supply and storage of goods liable to be confiscated, failure to pay/ evasion of tax¹⁹. Further, there is a power conferred to detain²⁰ or seize the goods/ conveyance till such penalty is paid. Not only does the CGST Act²¹ provide for the initiation of criminal prosecution for the mentioned offences, but it also classifies them as cognizable and non-bailable and non-cognizable and bailable. Those cognizable offences include wrongfully and fraudulently availing and utilizing ITC without the issuance of an invoice for supply and evading payment of tax to the government post collection, and those evasions exceed Rs. 5 crores. Tax laws even provide for compounding of offences, which is allowed after payment of tax, interests, and penalties due.

Criminalization of tax offences: the Policy perspective

It is settled principles in law that the taxing statutes are to be construed strictly construed. Tax liability may be imposed only with explicit law. Any benefit of doubt or ambiguity will go in favor of the tax payer and against the taxing authority. This approach has been widely accepted and practiced since the very inception of the tax laws. The Common law principles of justice and the intention of the legislature, which is derived from the words of the statute, govern the canons of construction of a tax law. This is because, like other penal statutes, the imposition of tax is seen as a burden or punishment due to it being a compulsory payment. As such, only those taxable events covered explicitly under the tax laws can be enforced in compliance. The state's ability to exact tax is only effective with a certain degree of extortion. This means that the threat of facing adverse consequences upon failure to pay tax is the ace up the sleeves of revenue. Most crimes necessitate the wrongdoer to know of the consequences of his act, yet deliberately involve himself in the lie and hide the truth. In taxation, using the law to pay less tax and legally calculating one's income in a prescribed manner cannot be treated as a criminal act.²²

The idea that tax is not a natural thing and that there can be limits and boundaries placed on taxation is something that left the minds of the judiciary a long time ago. The dilemma of dividing the thin line of fraudulent evasion and ingenious avoidance is real and difficult²³. The social attitude to evasion is tolerant, while the judicial attitude to avoidance is ambiguous. This is so because while one judge may allow tax planning within the permissible legal limits,

¹⁸ IGST Act, 2017, S. 20

¹⁹ Central Goods and Services Tax Act, 2017, S. 122.

²⁰ CGST Act, 2017, S. 129

²¹ CGST Act, 2017, S. 132.

²² David Goldberg QC, *The Criminalisation of Tax Law*, GITC Review Vol.XIV No.2 (March 2018) available at <<https://taxbar.com/wp-content/uploads/2018/04/DG-The-criminalisation-of-tax-law.pdf>> (last visited on 08 October 2024.)

²³ H.H. Monroe, *Intolerable Inquisition? Reflections on the Law of Tax*, The Hamlyn Lectures series; 33 (1981) available at <https://karnatakajudiciary.kar.nic.in/hcklibrary/pdf/HamylanLectures/33%20Intolerable_Inquisition_Reflections_on_the_Law_Tax_1.pdf> (last visited on 09 October 2024.)

another may be critical of it as devoid of public benefit. To make income tax consistent with justice, the hardened suffering of compelling taxpayers to fully disclose their income is necessary²⁴.

In the Indian context, the presumption of a culpable mental state²⁵ in order to initiate a criminal proceeding, overriding many judicial pronouncements by placing the burden of proof on the accused assessee, is one that infringes the universal principle of criminal law ‘presumption of innocence’ that considers the “accused of the offense innocent until proven guilty beyond reasonable doubt²⁶” and not by the existence of preponderance of probability. In *Union of India v. Bhavacha Machinery and Others*²⁷, it was held that “not a mere failure to file returns but a willful delay which is intentional, deliberate, calculated and conscious of the legal consequences that arise from such an act is what invokes a criminal proceeding and there should be no possible doubt of it being willful.” Though the judicial interpretation could be that the taxing authorities are to prove willfulness on the part of the accused assessee, this provision of presumption of *mens rea* before initiating the proceeding contravenes established criminal law principles. The justification for placing such a provision is that tax would have been evaded had the failure to furnish returns or other such offences not been detected.

The foundational principle of criminal law, “*de minimis non curat lex*,” until unless otherwise provided, is also followed in taxing laws in that a minor breach or violation, a rectifiable mistake with no fraudulent intention, is not penalized²⁸ based on the principles of natural justice and those governing international trade and agreement. The penalty imposed should always be commensurate with the degree of violation after providing the alleged an opportunity to be heard. Tax authorities must not only report and investigate tax evasion but also ensure that the tax violations that are potentially part of organized crimes must also be addressed²⁹. As such, global movements call for criminal prosecution of tax offences. A major comparative international perspective could be seen in the case of the US jurisdiction in *Sullivan*’s case,³⁰

where despite pleading guilty to tax evasion, he was sentenced to 11 years imprisonment. This is also the reason for misuse of the provisions of taxing statutes, which is due to fear of false allegations and other forms of oppression. In India, the threat of criminal prosecution and charge of a non-bailable offense is what causes mistrust among taxpayers of the taxing authorities without regard to the Taxpayer’s Charter³¹ provided for in the Income Tax Act, 1961. The

²⁴ Katharina Gangl & Benno Torgler, *How to Achieve Tax Compliance by the Wealthy: A Review of the Literature and Agenda for Policy*, Social Issues and Policy Review (December 2019) available at <<https://spssi.onlinelibrary.wiley.com/doi/10.1111/sipr.12065>> (last visited on 08 October 2024).

²⁵ Income Tax Act, 1961, S. 278E; CGST Act 2017, S. 135 and Black Money Act, 2015, S.54.

²⁶ Legal Information Institute, Wex definitions, “Presumption of Innocence” available at <https://www.law.cornell.edu/wex/presumption_of_innocence> (last visited on 07 October 2024).

²⁷ (2010) 320 ITR 263 (MP).

²⁸ CGST Act, 2017, S.126.

²⁹ Brun, Jean-Pierre, and others, *Taxing Crime: A Whole-of-Government Approach to Fighting Corruption, Money Laundering, and Tax Crimes*, Stolen Asset Recovery Initiative series, World Bank, (Washington D.C., 2022).

³⁰ *United States v. Sullivan*, 1931.

³¹ Income Tax Act, 1961, S. 119A.

mutual distrust and further treatment of the taxpayer like that of a criminal make the enforcement mechanism much harder. Additionally, there is also the alleged politically motivated institution of criminal proceedings and tax evasions that deepens the distrust in the tax administration, questioning the enforcement procedures and processes of the state.

Effectiveness of Criminalization: Theory and Compliance

The increasing trend toward the criminalization of tax violations is a function of behavioral economics and a serious misuse of the theories of behavioral psychology. Economic deterrence theory posits that the probability and severity of punishment significantly influence individuals' compliance behaviors. In the context of tax crimes, the idea is that the threat posed by criminal sanctions and legal penalties will force taxpayers to pay on time without trying to reduce their tax liability, which in turn reduces the cases of tax evasion. Theoretical perspectives like Gary Becker³² suggest that harsh penalties may deter tax offences in that rational economic actors weigh potential gains against potential legal and financial risks. Becker goes on to explain that a criminal action from an economic perspective is more of a social tort as it is to assess the public harm done by the defendants rather than to serve a punishment. The act is made criminal as the nature of harm remains uncompensated. Institutional theory emphasizes how organizational structures, normative frameworks, and cultural contexts shape the compliance behavior of the taxpayers in that community.

However, the empirical studies of Allingham & Sandmo³³ indicate that the probability of detecting the failure plays a significant role in compliance than the severity of punishment. Criminalization might produce greater criminality because the severe sanctions on errors only lead to greater efforts to cover up the errors than to mitigate them. Indeed, using a carrot-and-stick approach would motivate better compliance, where revenue authorities would reward what is seen as good fiscal behavior while balancing the penal consequences of willful default. Unfortunately, the taxing system seems to be too narrowly focused to see that. With the introduction of e-assessments and other e-procedures in India, there exists a likelihood of automatically criminalizing errors without testing the motive and intention of taxpayers.

However, criminalization is part of a worldwide populist movement, encouraged mostly by politicians and the ill-informed public, such that any failure to pay the so-called fair amount of tax is seen as the result of a crime or intention to engage in criminal activities. The growing tendency to make omissions rather than acts 'criminal' in the context of not only taxation but also corporate governance is dangerous.

³² Gary S. Becker, *Crime and Punishment: An Economic Approach*, Journal of Political Economy, Vol. 76, no. 2 (1968) pp. 169–217. JSTOR, available at <<http://www.jstor.org/stable/1830482>> (last visited on 08 October 2024).

³³ Michael G. Allingham, Agnar Sandmo, *Income tax evasion: a theoretical analysis*, Journal of Public Economics, Volume 1, Issues 3–4 (1972) pp. 323–338, available at <[https://doi.org/10.1016/0047-2727\(72\)90010-2](https://doi.org/10.1016/0047-2727(72)90010-2)> (last visited on 07 October 2024).

The High-profile Vijay Mallya case³⁴ exposed critical challenges in cross-border asset recovery and prosecution of economic offenders. The misuse of tax incentives and non-payment of indirect taxes resulted in criminal proceedings and asset seizures under the Prevention of Money Laundering Act (PMLA), 2002, while the entire proceeding revealed gaps in extradition processes and jurisdictional challenges, strengthening the need to foster better international cooperation.

The case of GST Fake Invoices Fraud (2020-2023)³⁵ highlighted the large-scale misuse of GST credit claims and the lacuna in the effort of the administration to crack down on fraudulent transactions.

Conclusion and Suggestions

The criminalization of tax non compliances in India represents a complex, multifaceted challenge requiring holistic approaches. Tax systems require a balanced approach as they are dependent on enforcement as much as policy³⁶. Criminal sanctions serve as a deterrent against tax offences, but their effectiveness depends on enforcement efficiency and economic implications. Over-criminalization may create unintended economic consequences, necessitating a balanced approach that incorporates criminal deterrence as well as compliance incentives. Harsher penalties may push individuals and businesses to operate outside formal tax structures and pave the way for an underground economy.

A stricter enforcement mechanism and simplification, as proposed in the income tax bill 2025, would influence tax compliance in a way that taxpayers would choose occupations where opportunities to evade taxes would be less,³⁷ and similarly, opportunities to aggressively plan taxes would be more. OECD³⁸ has prescribed that monetary penalties and increased transparent audits can be more effective than imprisonment and criminal repercussions. Also, there is a need to have a balance between deterrence provisions and economic incentives for effective tax compliance. With regard to horizontal equity, the rates of penalty and the frequency of audit should be designed so as to maximize the utility of the non-evaders and not impose hefty penalties to maximize tax revenues that might affect the interests of the poor compliers in order to punish the violations of the larger group of evaders of tax.³⁹

³⁴ Press Trust of India, "Vijay Mallya pursues annulment of UK bankruptcy order over 'unreal quality'" *Business Standard*, Feb. 22, 2024, available at <https://www.business-standard.com/india-news/vijay-mallya-pursues-annulment-of-uk-bankruptcy-order-over-unreal-quality-125022200521_1.html> (last visited on 08 October 2024)

³⁵ Efiletax, *Supreme Court's GST Ruling: Relief for Genuine Purchasers Over Fake Invoices*, Jan. 17, 2025, available at <<https://www.efiletax.in/blog/supreme-courts-gst-ruling-relief-for-genuine-purchasers-over-fake-invoices/>> (last visited on 08 October 2024).

³⁶ Rita De La Feria, *Tax Fraud and Selective Law Enforcement*, Journal of law and society, pp. 1-31 (2020).

³⁷ A.S. Kolm and Larsen, *Does tax evasion affect unemployment and educational choice?*, Working paper 2004: 4, IFAU, available at <<https://www.ifau.se/globalassets/pdf/se/2004/wp04-04.pdf>> (last visited on 09 October 2024).

³⁸ OECD, *Fighting Tax Crime – The Ten Global Principles*, Second Edition, OECD Publishing, Paris (2021) available at <<https://doi.org/10.1787/006a6512-en>>

³⁹ Agnar Sandmo, *The theory of tax evasion: A retrospective view*, Discussion paper 31/04, Dec 2004, <https://core.ac.uk/download/pdf/30834949.pdf>, accessed 09 October 2024.

Revenue maximization as a criterion for effectiveness has driven the tax enforcement agencies towards picking the low-hanging fruits⁴⁰ that bring more revenue with lesser administrative costs, thus showing improved efficiency. Increasing administrative discretion may be curtailed in tax enforcement.

While the introduction of technological developments is significant in detecting defaults and enforcement strategies, a blind approach to the criminalization of omissions and failure to comply without ascertaining the intention becomes ineffective. A real-time compliance monitoring mechanism with block chain-based technology and a specialized training programme for tax authorities with international cooperation seems to be plausible solutions. A stratified penalty system differentiating willful fraud and unintentional errors, with utmost transparency in the legal proceedings, is a workable model to enhance compliance rates among all classes of taxpayers.

A blended model incorporating both additional tax advantages for timely compliance and punitive sanctions for intentional default of a greater magnitude also seems to be much more effective at this juncture. Rational use of information technology needs to be relied upon to the possible extent to ensure self-compliance, robust disclosure norms, and real-time information to tax payers as to the fact that their economic transactions are being noticed. There is also a need to incentivize honest tax payers and deal with hard hands with those who fail to comply with the help of information technology.



⁴⁰ Y. Kuchumova, *The Optimal Deterrence of Tax Evasion: The Trade-Off between Information Reporting and Audits* 145 *Journal of Public Economics* (2017).

Reforming Justice: Community Service as A Punitive Measure in New Criminal Laws

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Abstract

This paper examines the role of community service as a punitive measure within the framework of New Criminal Laws. As a growing alternative to traditional incarceration, community service aims to balance accountability with rehabilitation, providing offenders an opportunity to contribute positively to society while addressing their criminal behaviour. The study analyses the legal foundations, implementation challenges, and effectiveness of community service programs in various jurisdictions. This paper explores the implementation of community service as a form of punishment under the New Criminal Laws. It examines the rationale behind using community service as an alternative to incarceration, focusing on its potential benefits for rehabilitation, offender accountability, and community restoration. The analysis considers various case studies and legal frameworks that have successfully integrated community service into their penal systems. Additionally, the paper addresses challenges, such as public perception, enforcement issues, and the need for adequate supervision and support for offenders. By evaluating the efficacy of community service as a restorative justice tool, this study aims to contribute to the on-going discourse on innovative and humane approaches to criminal justice reform. Ultimately, this research advocates for the broader adoption of community service as a restorative justice tool, emphasizing its potential to transform punitive practices into opportunities for personal growth and community healing. This paper will explore the theoretical underpinnings and practical applications of community service, drawing on case studies and legal analyses to assess its impact on recidivism, victim satisfaction, and overall community well-being. By investigating the potential of community service to reform punitive practices, we can better understand its role in shaping a more equitable and restorative criminal justice system.

Keywords: *community service, laws, implementation, criminal, justice.*

Introduction

We have to keep this thing in mind that the landscape of criminal justice is undergoing a significant transformation, as legal systems not only in India but worldwide and seek alternatives to traditional incarceration. Among these alternatives, the community service has emerged as best one and a compelling option, aligning with modern principles of restorative justice and rehabilitation and thus fulfil the theory of reformation. This shift reflects a growing recognition that punitive measures alone often fail to address the root causes of criminal behaviour and do little to facilitate reintegration into society.

When we talk about the Community service, as a form of punishment, it offers a dual benefit as: it holds offenders accountable for their actions while simultaneously allowing them to contribute positively to their communities. This kind of approach not only mitigates the social and economic costs associated with incarceration but also fosters a sense of responsibility and community engagement among offenders.

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In the context of New Criminal Laws, the incorporation of community service as a punitive measure invites a critical examination of its effectiveness, challenges, and implications for justice. We all are well aware that India's new Bharatiya Nyaya Sanhita (BNS) has replaced the Indian Penal Code (IPC), introducing community service as a penalty for minor crimes such as theft involving amounts under ₹5,000. This represents a shift towards rehabilitative justice, providing offenders with alternatives to fines or imprisonment. However, despite its positive intent, the implementation faces challenges due to unclear monitoring guidelines. Experts stress the importance of structured frameworks and specific tasks to ensure uniform application and effective contributions to the community, highlighting the reform's potential to blend justice with social welfare².

Understanding the Concept of Community Service

The Indian Penal Code (IPC) has historically prescribed five types of punishments: (1) Death; (2) Imprisonment for life; (3) Imprisonment, which is of two descriptions—rigorous and straightforward; (4) Forfeiture of property; and (5) Fine. However, the introduction of Section 4(f) of the Bharatiya Nyaya Sanhita (BNS) marks a significant change, adding a sixth form of punishment: community service. It is essential to explore the implications of this addition, especially in the context of the Indian legal system's retributive principles. However, Community service might seem like a new concept for us, but it has been lurking in the shadows, especially within the Juvenile Justice (JJ) Act. A recent example is the Pune Porsche accident, where the judge sentenced the offender to community service. Despite such precedents, the broader community service application remains to be seen.³

Current Legal Landscape

Community service as a punishment has been widely adopted in Western legal systems. Countries like the United States, the United Kingdom, and several European nations have successfully integrated community service into their sentencing frameworks. These systems have demonstrated that community service can be an effective alternative to incarceration, especially for non-violent offenders. In the United States, community service is often used for minor offences, allowing offenders to contribute positively to society while avoiding the negative impacts of imprisonment. Programs are typically well-structured, with clear guidelines and monitoring mechanisms to ensure compliance. Similarly, community service orders are a standard sentencing option in the United Kingdom, often combined with other forms of rehabilitation such as counselling or vocational training. Case studies from these countries highlight the benefits of community service, including reduced recidivism rates, positive behavioural changes among offenders, and cost savings for the criminal justice system. These

² BNSS launches community service initiative for petty theft and nuisance offenses, (29th September, 2024) <https://economictimes.indiatimes.com/news/india/bnss-launches-community-service-initiative-for-petty-theft-and- nuisance-ffenses/articleshow/111483497.cms?from=mdr>

³ Anurag Mishra and Yash Kashyap, Community Service: A Progressive Shift Introduced By Bharatiya Nyaya Sanhita, (29th September, 2024) [https://www.livelaw.in/lawschool/articles/community-service-bharatiya-nyaya-sanhita-indian-penal-code-juvenile-justice-act-national-crime-records-bureau-260813#:~:text=Section%204\(f\)%20of%20the%20BNS%20formally%20introduces%20community%20service,promoting%20the%20rehabilitation%20of%20offenders](https://www.livelaw.in/lawschool/articles/community-service-bharatiya-nyaya-sanhita-indian-penal-code-juvenile-justice-act-national-crime-records-bureau-260813#:~:text=Section%204(f)%20of%20the%20BNS%20formally%20introduces%20community%20service,promoting%20the%20rehabilitation%20of%20offenders)

examples provide valuable insights for India as it seeks to implement community service as a form of punishment under the BNS.⁴

Benefits of Community Service

Section 4(f) of the BNS formally introduces community service as a form of punishment in India. This legislative change aims to provide an alternative to traditional forms of punishment, addressing issues like prison overcrowding and promoting the rehabilitation of offenders. However, the success of this initiative depends on the precise definition and implementation of community service. The legislative intent behind this change is to align India's criminal justice system with global best practices, emphasizing rehabilitation over retribution. Community service is seen as a way to integrate offenders back into society, allowing them to make amends for their actions through constructive contributions. This approach also reflects a more humane and progressive view of justice, recognizing the potential for positive change in every individual⁵.

Challenges and Criticisms

Implementing community service as a form of punishment in India presents both challenges and opportunities. One of the primary challenges is ensuring that community service is used appropriately and consistently across different cases. This requires clear guidelines on the types of offences eligible for community service, the nature and duration of the service, and the mechanisms for monitoring and evaluating compliance. Another challenge is preventing the misuse of community service. Without strict guidelines and oversight, there is a risk that community service could be exploited or used as a lenient alternative to severe offences. To address this, the BNS must include provisions for stringent monitoring and accountability, ensuring that offenders complete their community service as required and that the service is meaningful and beneficial to the community⁶.

Case Studies: Over time, both the Legislature and the Judiciary have tried to incorporate punishments promoting the reformation of convicts. There have been failed attempts on the part of lawmakers to add community service such as the Indian Penal Code (Amendment) Bill 1978. The recommendations of the Malimath Committee and the 156th Law Commission Report to include community service did not come into effect as well⁷.

In *Babu Singh v. State of Uttar Pradesh*⁸ the Apex Court emphasized on the importance of reformatory measures within the justice system. In the words of Hon'ble Mr. Justice VR Krishna Iyer, "Restorative devices to redeem the man, even through community service, meditative drill, study classes or other resources should be innovated and playing foul with public peace by tampering with evidence, intimidating witnesses, or committing offences while on judicially

⁴ Ibid.

⁵ *Supranote* 3.

⁶ *Supranote* 3.

⁷ Kritika Malik, Navigating the New Criminal Laws |Part 2 | Community Service, (29th September, 2024) <https://bharatcuhgh.in/2024/06/05/navigating-the-new-criminal-laws-part-2-community-service/>

⁸ AIR 1978 SC 1000.

sanctioned “free enterprise” should be provided against. No seeker of justice shall play confidence tricks on the Court or community. Conditions may be hung around bail orders, not to cripple but to protect. Such is the holistic jurisdiction and humanistic orientation invoked by the judicial discretion correlated to the values of our Constitution”⁹.

The High Courts have also drawn from this and have been imposing conditions like tree plantation, teaching the underprivileged and maintaining toilets etc. while quashing FIRs or granting bail- which in itself is problematic as being a punitive condition at the time of bail¹⁰.

The Pune Porsche accident case is a notable example of community service being used as a punishment in India. In this case, a minor was involved in a fatal accident, and the court sentenced him to community service as part of his punishment. This decision sparked a significant public and legal debate on the appropriateness and effectiveness of community service as a form of punishment. However, the Juvenile justice board cancelled the bail order later and transferred the minor accused to an observation home. The case also highlighted the shortcomings of juvenile laws in India and their implementation¹¹.

The case highlights several key issues, including the need for clear guidelines on when community service is appropriate, the importance of monitoring and evaluating the offender's compliance, and the potential for community service to impact the offender's behaviour positively. The public response to this decision was mixed, with some supporting the rehabilitative approach while a significant population questioned its adequacy in addressing the severity of the offence. This case underscores the need for a well-defined framework for community service in India, ensuring that it is used appropriately and effectively. It also highlights the potential benefits of community service in promoting rehabilitation and reducing recidivism, provided that it is implemented with strict guidelines and oversight¹².

This stance experienced a notable change with the implementation of the Bharatiya Nyaya Sanhita 2023. This legal framework signifies a new era by integrating community service as a punitive measure. It mandates community service as a punishment for minor offenses, such as a public servant unlawfully engaging in trade, failure to appear in response to a summons under Section 84 BNSS, attempting suicide to coerce or hinder the exercise of lawful authority, public misconduct by an intoxicated individual, defamation, and theft of property valued at less than Rs. 5000 for first-time offenders who return the equivalent value or property.

Thoughts to Contemplate: 1) No clear definition of community service is given; the explanation for Section 23 BNSS states the following:

⁹ *Supranote 7.*

¹⁰ *Ibid.*

¹¹ *Supranote 3.*

¹² *Ibid.*

Explanation-“Community Service” shall mean the work which the Court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.

There is no definition of what exactly community service is. Is it planting trees? Or is it teaching? Or can it be cleaning toilets and trash? A missed opportunity was that community service could have been defined and clearly illustrated¹³.

2) Community service has been prescribed as a punishment in only 6 offences. In order to fully utilise the benefits, there could have been more offences where community service could be prescribed. The level of overcrowding in our prisons warrant for alternative forms of punishment¹⁴.

3) The provision for imprisonment in default of community service is vaguely termed¹⁵. What seems is that for any default of community service the imprisonment granted shall be of one year. There may be a case where the offender is unable to perform the community service or has performed a percentage of it but still will face imprisonment for one year. A pro rata allotment may have been clearer and just¹⁶.

4) The intent seems to be to grant community service in cases of petty offences. However, the addition of non-appearance in response to proclamation under Section 84 which is punishable with 3 years’ imprisonment and is a cognizable and non-bailable offence seems like an odd addition. Is contempt of lawful authority of public servants a petty offence? Would it have been better to leave out this offence?¹⁷

5) if the offence is punishable with fine or community service, the impressment which the court imposes in default of payment of the fine or in default of community service shall be simple, and the term for which the Court direct the offender to be imprisonment, in default of payment of fine or in default of community service shall not exceed,-

- a) two months when the amount of the fine does not exceed five thousand rupees;
- b) four months when the amount of the fine does not exceed then thousand rupees; and
- c) one year in any other case.

Recommendations for Reform

Numerous approaches are crucial to guarantee its successful execution in the present context of India. Initially, there is need for thorough guidelines, as India currently does not have standardized criteria for community service, resulting in variations. These guidelines should

¹³ *Supranote 7.*

¹⁴ *Ibid.*

¹⁵ *Supranote 7.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

explicitly specify what qualifies as community service, classify eligible offenses, and detail the procedures for assigning, overseeing, and fulfilling service obligations.

Additionally, personalization of community service assignments is crucial; instead of generic tasks, assignments should be tailored to match the offender's rehabilitation needs and skills, ensuring meaningful and beneficial contributions to the community. Collaboration with community organizations is another critical strategy; partnerships with NGOs, community organizations, and local authorities can help effectively design, implement, and supervise community service programs. Providing offenders with vocational training, counseling, and mentoring is essential for equipping them with the necessary skills and support to complete their service successfully. Utilizing technology can streamline program management and enhance participant engagement by tracking the effectiveness of community service projects. Rigorous monitoring and compliance verification are vital to ensure accountability and maintain the seriousness of community service as a form of punishment. Public awareness campaigns are needed to increase acceptance and trust in community service, highlighting its benefits through success stories and case studies. Finally, encouraging community involvement and engagement can foster a positive attitude towards the rehabilitation and reintegration of offenders. By implementing these strategies, India can effectively incorporate community service into its judicial system, promoting a more humane and progressive approach to justice¹⁸.

Future Directions

Despite these challenges, there are significant opportunities for community service to impact the Indian criminal justice system positively. Community service can promote rehabilitation by allowing offenders to contribute positively to society, develop new skills, and build a sense of responsibility and accountability. It can also reduce recidivism by addressing the underlying causes of criminal behaviour and promoting social reintegration¹⁹. Here are few of the strategies to ensure effective implementation in the current Indian scenario:

1. **Holistic Planning:** There is need to develop comprehensive strategies that consider all aspects of implementation, including resources, timelines, and stakeholder engagement.
2. **Stakeholder Engagement:** There is need to involve all relevant parties, including government bodies, local communities, and private sectors, to ensure broad support and collaboration actively.
3. **Capacity Building:** There is need to enhance skills and knowledge among personnel involved in the implementation process through targeted training and workshops.
4. **Monitoring and Evaluation:** There is need for the establishment of robust systems for tracking progress and assessing outcomes to make necessary adjustments and improvements.
5. **Resource Allocation:** It is very important to ensure optimal distribution of financial, human, and technological resources to support implementation efforts effectively.
6. **Policy Alignment:** There is need to align initiatives with existing government policies and frameworks to facilitate smoother integration and compliance.

¹⁸ Supranote 3.

¹⁹ *Ibid.*

7. **Public Awareness Campaigns:** There is going to be needed to conduct outreach programs to educate and inform the public about the objectives and benefits of the initiatives.
8. **Feedback Mechanisms:** The need will arise to create channels for receiving feedback from stakeholders to continuously improve the implementation process.
9. **Inter-agency Coordination:** The requirement of the time is to foster collaboration among various government departments and agencies to avoid duplication of efforts and ensure cohesive action.

These directions aim to strengthen the role of community service in the justice system, making it a more effective and rehabilitative alternative to traditional punitive measures.

Conclusion

In conclusion, community service emerges as a compelling alternative to traditional punitive measures, aligning with the evolving objectives of the New Criminal Laws. By emphasizing rehabilitation, accountability, and community engagement, community service bridges the gap between punishment and restoration. The analysis demonstrates that, when properly implemented with clear legal frameworks and adequate support systems, community service not only reduces recidivism but also fosters personal growth and societal well-being.

However, its success hinges on addressing implementation challenges, ensuring public trust, and providing consistent supervision. As criminal justice systems worldwide seek more humane and effective approaches, integrating community service as a central component of penal policy offers a promising path toward a more balanced and restorative model of justice.



The Bharatiya Nyaya Sanhita, 2023: A Comparative Analysis of Changes in Women and Child Rights Protection

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Dr. Jasdeep Singh²

Abstract

This present research paper presents a comprehensive study regarding the protection of children's and women's rights in India with special reference of Bhartiya Nyaya Sanhita, 2023³. The latest provisions under this Act have been compared with the provisions of Indian Penal Code regarding domestic violence, sexual offences, trafficking, harassment at the workplace, child labour, child sexual abuse and Juvenile Justice. The research paper examines the probable implications of these various amendments, the analysis, and the troubles encounter regarding their implementation, and additionally evaluates how flourishing the Bhartiya Nyaya Sanhita, has been toward its goal of tackling modern issues associated to women's and child rights. The analysis shows that while the Bhartiya Nyaya Sanhita, brings forward quite a number of progressive measures within the criminal justice system, its success will depend on its effectual implementation and addressing the troubles within the criminal justice system.

Keywords: *Bharatiya Nyaya Sanhita, Indian Penal Code, Child Rights, Criminal Law Reform, Sexual Offences, Women's Rights, Child Protection, Legal Analysis.*

Introduction

Bharatiya Nyaya Sanhita, 2023, is a milestone change in the criminal justice system of India and actually marks the end of an era ruled by majestic time's laws. For more than 160 years, the Indian Penal Code dated 1860 remained the supreme criminal code in India. In its wonderful run, the Indian Penal Code undergo several amendments during all these decades, but the main composition and most of its provisions were still based on 19th century British Colonial jurisprudence.

The necessity for severe reform of India's criminal laws is not anything new. It has long been felt by experts and legal scholars that the accessible laws were unacceptable in dealing with the workings of a modern crime situation, changing social conditions, and rising technologies. It also felt that the criminal justice system in India must convene the requirements of a self-governing India imbued with values, culture and social realities of Indians and not its regal legacy. Secondly, it was realized that India's criminal justice system must meet the necessities

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³ The Bhartiya Nyaya Sanhita (BNS) 2023 which means Indian Justice Code is the new criminal code in India replacing the Indian Penal Code(IPC) and came into effect into July 1,2024.

of an independent India imbued with values, culture, and social realities of Indians, rather than its regal legacy.

The Bharatiya Nyaya Sanhita, 2023, together with the Bharatiya Nagarik Suraksha Sanhita⁴ and Bharatiya Sakshya Adhiniyam,⁵ are part of an omnibus reform of the criminal justice system in India. The bills were introduced to the Lok Sabha on 11th August 2023 for amending the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872.

The Bharatiya Nyaya Sanhita adopts a modernist-indigenizing move toward to the structure of criminal law, responding to modern challenges and feeling the pulse of constitutional values. These include making provisions for new offences, modifying and bringing in competence measures within the processes of criminal justice.

Growth and Introduction of the Bharatiya Nyaya Sanhita

The Bharatiya Nyaya Sanhita, 2023, is a part of the set of three bills introduced in the Lok Sabha, the lower house of the Parliament of India, on 11th August 2023, all of which taken collectively shall modernize the criminal justice system of India:

1. *The Bharatiya Nyaya Sanhita, 2023 (to replace the Indian Penal Code, 1860)*
2. *The Bharatiya Nagarik Suraksha Sanhita, 2023 (to replace the Code of Criminal Procedure, 1973)*
3. *The Bharatiya Sakshya Adhiniyam, 2023 (to replace the Indian Evidence Act, 1872).*

Key Objectives of the Bharatiya Nyaya Sanhita

The Bharatiya Nyaya Sanhita, 2023, has a few foremost objectives⁶:

1. Envisioning criminal laws to suit current crimes and especially those pertaining to technology.
2. It should be a criminal code sparkling Indian values, ethics, and constitutional principles.
3. Use of the language of law easily available and comprehensible to the common citizen.
4. Provisions that deal with the protection of victims of crimes, in particular, those involving sexual offences and offences against children.
5. The penalties for various offences have been reviewed, mostly with the exasperation of punishment.
6. Inclusion of new kinds of offences, principally with terrorism, organised crimes, and cyber crimes.

⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023 is a new code of criminal procedure that replaced the Code of Criminal Procedure (CrPC) of 1973 aiming to modernize India's criminal justice system and enhance the use of technology in legal processes.

⁵ The Bharatiya Sakshya Adhiniyam, replaces the Indian Evidence Act, 1872 and reflects significant changes in the laws relating to evidence, particularly in relation to electronic records.

⁶ Available at : <https://testbook.com>.

Formation and Scope of the Bharatiya Nyaya Sanhita

The Bharatiya Nyaya Sanhita is extremely broad in its exposure, for it is the codified criminal law relating to various offences. There are a number of chapters that consider precise categories for crimes. Some of these are below⁷:

- Offences against the state and public tranquillity
- Offences relating to marriage and family
- Offences against the human body (including homicide, assault, and sexual offences)
- Offences against children and vulnerable persons
- Cyber crimes and offences related to digital technology
- Offences against property
- Environmental crimes
- Economic offences and corruption

Important Changes and Innovations

Some of the conspicuous changes and novelties in Bharatiya Nyaya Sanhita, 2023, have been:

1. Some new offences such as organized crime, financing of terrorism, and mob lynching.
2. Extensions of the definitions of previously existing crimes, chiefly relating to sexual offences, have been carried out by bringing in more blameworthy activities within their sphere.
3. More rigorous punishment for offences against women and children; the provision of capital punishment in some cases has also been provided.
4. Insertion of technology-related offences, including cyber frauds, cyber stalking, online fraud, and data theft.
5. Introduction of the community service as one of the options of punishment for certain petty crimes
6. Provisions of reimbursement and rehabilitation to victims: incorporated into the substantive part of the code of criminal procedure
7. Change in sedition provisions: Provocation in offences against the sovereignty and integrity of India
8. Reclassified offences: In effect, bail and trial can't be applied uniformly.
9. Offences relating to marriage and family

The Bharatiya Nyaya Sanhita, in the context of protecting vulnerable sections of society

The Bharatiya Nyaya Sanhita, 2023 is almost a renovate of the Indian criminal justice system, replacing the colonial Indian Penal Code of 1860. This research paper also dwells upon changes brought about by The Bharatiya Nyaya Sanhita, concerning caring women and child rights, vis-à-vis the provisions of Indian Penal Code in that regard. The body of analysis is to project the improvements, if any, and the net impact of such changes on the relevant legal framework for the protection of susceptible sections of society.

⁷ The Bhartiya Nyaya Sanhita, 2023 published by Universal's Lexis Nexis.

Major Changes in Women's Rights Protection**Sexual Offences**

The Bharatiya Nyaya Sanhita,⁸ has brought about many changes in sexual offences and tried to give more defense to women:

- a) **Extended Definition of Rape:** The Bharatiya Nyaya Sanhita, widens the explanation of rape to include more forms of non-consensual sexual acts. It minutiae cases of marital rape, such as when the wife is less than 18 years old and when the couple is separated.
- b) **Aggravated Sexual Assault:** There will be a new offence of “aggravated sexual assault” included into the new law in instances related to persons acting in positions of power, when the victim is a child, or when the offence is chiefly brutal.
- c) **Increased Penalties:** The Bharatiya Nyaya Sanhita, in general, enhances the penalty for sexual offences, including the provision for capital punishment in the most tremendous cases of rape.
- d) **Identification of Technology-facilitated Sexual Crimes:** Other crimes implicitly addressed will be things like reprisal pornography, cyber stalking, and harassment on the internet issues that are real in this current digital age.

Domestic Violence

While the legislative structure on domestic violence is chiefly retained in the Protection of Women from Domestic Violence Act, 2005⁹, Bharatiya Nyaya Sanhita, strengthens criminal provisions pertaining to this issue:

- a) **Definition:** The Bharatiya Nyaya Sanhita, extends the definition of the domestic violence to incorporate within its ambit poignant and economic abuse, thus in compliance to the meaning given by the civil law.
- b) **Severe Penalties:** The severity of penalties against a reiterate offender in a case of domestic violence increases with the new law.
- c) **Protection Orders:** Provisions of protection orders in cases of domestic violence are brought out, with more rapidly relief to victims in the Bharatiya Nyaya Sanhita,

Workplace Harassment

Construction on the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, The Bharatiya Nyaya Sanhita, introduces criminal provisions specifically addressing workplace harassment:

- a) **Criminal Liability:** The new law makes it a criminal offence for employers to fail to execute the provisions of the 2013 Act, including setting up Internal Complaints Committees.
- b) **Protection Against Retaliation:** The Bharatiya Nyaya Sanhita, introduces specific provisions to protect women who file complaints from retaliation or unfavorable job actions.

⁸ Crimes Against Women in India by Mamta Mehrortra.

⁹ The Protection of Women from Domestic Violence Act 2005 is an Act of Parliament of India enacted to protect women from domestic violence. The law came into force on 26 October 2006.

Trafficking

The Bharatiya Nyaya Sanhita, leads to huge progress in human trafficking legislation, which primarily focuses on the issue of women and children:

- a) Complete definition: The new Act gives a rather more comprehensive definition of trafficking, which bound to cover labour trafficking and organ is trafficking.
- b) Severe Penalties: The Bharatiya Nyaya Sanhita, provides for more severe penalties on the said traffickers, especially in cases where these involve under 18-year-old girls/women or offences with more than one victim.
- c) Protection of the Victims of Human Trafficking: The revised law has within its measures the arrest, protection, and treatment of such victims, including guard as witnesses.

Important Changes in Child Rights Protection

Child Sexual Abuse

The Bharatiya Nyaya Sanhita, builds upon the Protection of Children from Sexual Offences (POCSO)¹⁰ Act, 2012, intensification of the provisions related to child sexual abuse:

- a) Extended Definitions: The new act has extended the definition of sexual offences against children to cover more forms of abuse.
- b) Severe Penalties: The BNS has severe penalties for child sexual abuse to include life imprisonment and death in aggravated cases.
- c) Compulsory Reporting: While retaining the provisions relating to compulsory reporting of cases of supposed child abuse, the new legislation also provides for penalties for non-reporting.

Child Labour

While the basic legislation on child labour remains the Child Labour (Prohibition and Regulation) Amendment Act, 2016, The Bharatiya Nyaya Sanhita, makes certain criminal provisions to make possible rigorous enforcement of the provisions on child labour. Under these provisions:

- a) Criminal Liability for the Employers: The new legislation provides for criminal prosecution of employers who appoint children in hazardous occupations.
- b) Penalties to Middlemen: The Bharatiya Nyaya Sanhita, provides for the punishment of all mediators or agents.

Even as the Child Labour (Prohibition and Regulation) Amendment Act, 2016,¹¹ remains the primary legislation on child labour, The Bharatiya Nyaya Sanhita, introduces criminal provisions to reinforce enforcement:

- a) Criminal Liability for Employers: The new law introduces criminal liability for employers who appoint children in hazardous occupations.

¹⁰ POCSO stands for the Protection of Children from Sexual Offences Act, 2012 a landmark Indian law aimed at protecting children from sexual abuse and exploitation including sexual assault, sexual harassment and pornography.

¹¹ The Child Labour (Prohibition and Regulation) Amendment Act, 2016 prohibits the employment of children under 14 years old in any occupation.

- b) Penalties for Middlemen: The Bharatiya Nyaya Sanhita, includes provisions to penalize middlemen and agents involved in child labour trafficking.

Juvenile Justice

The Bharatiya Nyaya Sanhita, brings in amendments that affect juvenile justice legislation, though, the principal Act for the said is the Juvenile Justice (Care and Protection of Children) Act, 2015:

- a) Age of the Criminal Responsibility: The replica statute provides for retaining the age of criminal responsibility at 18 years subject to exceptions relating to dreadful offences under the 2105 Act.
- b) Special Provisions for Child Witnesses: The Bharatiya Nyaya Sanhita, provides child sensitive procedures for recording the statement and evidence of the child witness.

The Analysis of the Bharatiya Nyaya Sanhita with the Indian Penal Code

In relation to the Indian Penal Code, the Bharatiya Nyaya Sanhita, 2023, reflects a number of significant changes concerning its approach towards the protection of the rights of women and children:

- a) The issues covered by the Bharatiya Nyaya Sanhita, are totally modern in nature and were not dealt with under the Indian Penal Code, for example, cybercrime and sexually offensive acts done with the use of technology.
- b) On the whole, The Bharatiya Nyaya Sanhita, provides for more severe punishment for most offences against women and children as compared to the Indian Penal Code.
- c) The new Act has engorged the definitions of crimes, mainly sexually related offences, to extend to a larger area of offences amounting to destructive acts.
- d) The Bharatiya Nyaya Sanhita, incorporates a lot more sections intended at protecting the victim and their rehabilitation. Thus, it is found to disappear from a purely punitive approach under the Indian Penal Code.
- e) While the Bharatiya Nyaya Sanhita, still maintains the protection accorded to women and children, the phrasing used in the enactment is rather more gender-neutral when compared with that of Indian Penal Code.
- f) Many of these particular laws, such as the POCSO Act or the Domestic Violence Act, are amalgamated into the main criminal code in a holistic way within the Bharatiya Nyaya Sanhita, thus making it probable to increase integration and enforcement.

5. Detailed Comparison

This comparison highlights the significant advancements made by the BNS 2023 in addressing the various aspect.

Aspect	Indian Penal Code (IPC)	Bhartiya Nyaya Sanhita (BNS) 2023
Rape and Sexual Assault	Section 375: Defines rape and Section 376 prescribes punishment. Additional provisions for aggravated rape under Sections 376A to 376D.	Section 69 to 74: Enhanced definitions and punishments for various forms of sexual assault and rape. Emphasis on swift justice and victim compensation. Provisions for special courts and fast-track trials for rape cases
Domestic Violence	Section 498A: Addresses cruelty by husband or relatives. Punishment includes imprisonment and fines, but procedural challenges often delay justice.	Section 86: Specific provisions addressing domestic violence, including physical, emotional, and economic abuse. Focus on protection orders and support services for victims.
Sexual Harassment	Section 354A: Addresses sexual harassment, prescribing punishment for unwelcome physical contact, advances, and demands for sexual favours.	Section 71: Comprehensive definition and stringent punishment for sexual harassment in the workplace and public places. Emphasis on creating safe environments for women.
Human Trafficking	Sections 370 and 370A: Deal with the trafficking of persons for exploitation, prescribing stringent punishments.	Section 110 to 116: Detailed provisions for prevention, rescue, and rehabilitation of trafficking victims. Severe punishments for traffickers, with a focus on organised crime networks.
Acid Attacks	Sections 326A and 326B: Deal with acid attacks, prescribing stringent punishment and compensation for victims.	Section 85: Enhanced legal framework for the prevention and punishment of acid attacks. Focus on victim rehabilitation and compensation.
Child Sexual Abuse	Section 377 (unnatural offences) and the POCSO Act complement each other in addressing child sexual abuse, but IPC alone has limitations	Section 78 to 80: Stronger laws against child sexual abuse, including child pornography and online exploitation. Provisions for child-friendly judicial procedures.
Child Labour	Sections 370 and 374: Address trafficking and forced labour, but the Child Labour (Prohibition and Regulation) Act provides specific guidelines	Section 105: Stringent provisions against child labour, focusing on prevention, rescue, and rehabilitation. Emphasis on education and welfare of rescued children.

Dowry-Related Crimes	Sections 304B (dowry death) and 498A (cruelty by husband/relatives) address dowry-related offences.	Section 118: Comprehensive measures to prevent dowry harassment and deaths. Focus on strict enforcement and support for victims
Female Genital Mutilation (FGM)	No specific provisions under IPC; FGM may be prosecuted under general criminal laws like assault	Section 89: Explicit criminalization and stringent punishment for FGM. Emphasis on awareness and prevention programs
Sexual Offences Against Children	Sections 375 (rape) and 376 (punishment for rape) include provisions for child victims, supplemented by POCSO Act for more specific protection.	Section 78 to 80: Detailed provisions specifically targeting sexual offences against children, including grooming and exploitation. Child-friendly legal processes and victim support services.
Cyber Crimes Against Women and Children	Sections 354D (stalking), 499 (defamation), and IT Act Section 66E (privacy violation) address cyber crimes, but enforcement can be challenging	Section 106: Strong legal framework to address online harassment, cyber stalking, and distribution of intimate images without consent. Provisions for swift action and protection of victims' privacy.
Marital Rape	Marital rape is not criminalized under IPC except under specific circumstances (e.g., separated spouses).	Section 72: Explicit recognition and criminalization of marital rape. Emphasis on consent within marriage and protection of victims.
Protection of Child Rights	IPC provisions related to child abuse are supplemented by specific laws like the Juvenile Justice (Care and Protection of Children) Act.	Section 78 to 85: Comprehensive approach to protect the rights of children, including health, education, and protection from abuse. Provisions for child welfare committees and special courts
Prostitution and Exploitation	Sections 370 (trafficking) and 371 (habitual dealing in slaves) address exploitation, but implementation can be inconsistent.	Section 110 to 116: Stronger measures to combat exploitation in prostitution. Focus on rehabilitation and support for victims of sexual exploitation.

Sexual Crimes against Mentally Disabled Women	Section 376(2) includes provisions for aggravated punishment, but additional support mechanisms are limited	Section 75: Specific protections and enhanced punishments for sexual crimes against mentally disabled women. Emphasis on victim support and legal assistance.
Child Marriage	Section 375 (rape) includes provisions related to age, supplemented by the Prohibition of Child Marriage Act.	Section 108: Stringent measures to prevent child marriage and protect affected children. Focus on enforcement of legal age for marriage and rehabilitation.
Rehabilitation and Victim Support	IPC does not specifically address rehabilitation; provisions are included in various supportive laws and schemes.	Section 117: Comprehensive victim support systems, including legal aid, psychological support, and rehabilitation programs
Implementation and Enforcement	IPC implementation faces challenges such as delays, backlog in courts, and inconsistent enforcement across states	Emphasis on strict enforcement, fast-track trials, and special courts for speedy justice. Regular monitoring and evaluation of law enforcement effectiveness.

Challenges in Implementation

- The proper and effective working of the Bharatiya Nyaya Sanhita, 2023, has the following challenges with respect to the protection of women and child rights:
- The new act is going to need a lot of training and capacity building for stakeholders like law enforcement agencies and the judiciary to efficiently understand and pertain the provisions of the new act.
- Child friendly courts, victim protection mechanisms, and rehabilitation services under the act are going to necessitate huge infrastructure development.
- Extensive public awareness campaigns are required to inform people about new provisions and their rights through the BNS.
- Smooth execution will require harmonization among a large number of government agencies, including the police, courts, child welfare committees, and women's commissions.
- Unless there are effectual mechanisms for monitoring implementation as well as evaluation of impact, it is unlikely that the new laws will be effective.

Conclusion

The Bharatiya Nyaya Sanhita, 2023, is a far-reaching development in the statutory framework of law relating to the protection of women and children's rights in India. It covers many of the lacunas in Indian Penal Code and brings in modern thinking on criminal justice. Among the notable improvements are the enlarged definitions of offences, enhanced punishments, and emphasis on victim protection. Eventually, success lies in the proper accomplishment of these

legal reforms, which means changes not only in letters but also in law enforcement agencies, approaches in the judiciary, and societal attitudes at large. Further, the need for these stricter laws has to be harmoniously manipulated with safeguards against their possible misuse and principles of a fair trial and presumption of innocence.



Metamorphosis in the Administration of Criminal Justice: From Accused-Centric to Victim-Centric

Dr. Gopal Krishna Sharma¹

Abstract

Under the Criminal Justice System, there is a well-established principle that the accused will be presumed innocent until guilt is proven beyond all reasonable doubt. The Indian Constitution and the Code of Criminal Procedure protect the interests of the accused during arrest, investigation, and trial. In the criminal justice system, a 'fair trial' means a fair trial to the accused person. He or she should be given every opportunity to effectively defend his or her case before the criminal courts. The victim remains out of the scene throughout the criminal trial. The parliament recently enacted three new criminal laws to replace the old colonial criminal legislation. In this article, the author will explain how, in the present era, the criminal justice system is shifting from an accused-centric approach to a victim-centric one. In the 21st century, a key function of the Criminal justice system is to safeguard the rights and interests of crime victims. Criminal law is an intricate field that must reconcile established principles with changing societal dynamics. This includes various stakeholders- such as the state, perpetrators, victims, and civil society- who all hold distinct perspectives on criminal law. The current landscape, defined by post-truth narratives and a reputation-driven society, adds complexity to the situation. As a result, casuistry often overshadows systematic approaches, creating a gap between the foundational principles of criminal law and its intended societal outcomes. Modern criminal law functions across several dimensions, tackling individual, societal, and institutional levels while striving to balance the interests of these groups.

Keywords: Criminal Justice system, BNSS, BNS, Accused, Victim

*"The criminal law in India is not victim oriented and the suffering of the victim, often immeasurable is entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooks the by-product of crime i.e. the victims"*²

....Justice Krishna Iyer

Introduction

The criminal justice system in India consists of three main components: the police, the judiciary, and the correctional system. The police are responsible for investigating and apprehending criminals and enforcing the law. The judiciary is responsible for ensuring that trials are conducted fairly and that justice is served. The correctional system is responsible for rehabilitating offenders and preventing them from committing crimes in the future. The police serve as the primary contact for individuals impacted by crime and are tasked with gathering evidence and arresting offenders. They examine crime scenes, gather crucial evidence, and question suspects. Additionally, they play a vital role in upholding law and order throughout the nation. The judiciary ensures trials are fair and justice prevails. Judges oversee criminal trials, guaranteeing the accused receive their rightful protections. Meanwhile, the correctional system focuses on rehabilitating offenders to prevent future crimes.

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² V. R. Krishna Iyer, *Access to Justice- A case of Basic change* (1991) p. 14.

The main objective of the criminal justice system is to deliver justice.³ Additionally, it safeguards the rights of the accused while ensuring that victims receive justice. This system acts as a deterrent against crime by holding offenders accountable for their actions. Furthermore, it instils public security by ensuring that criminals face justice. Another aim of the criminal justice system is to punish offenders while compensating victims. It also guarantees fair treatment and appropriate rights for those accused of crimes. Ultimately, the criminal justice system seeks to protect societal interests and ensure public safety from criminal acts.⁴

Under India's criminal justice system, accused persons are given sufficient protection during arrest, investigation, and trial to defend their cases effectively. The principles of natural justice are implicitly embodied in existing procedural rules. On the criminal side, it covers concepts such as fair play, representation, the adversarial system, protection from double jeopardy, unlawful detention, and so on. On the other hand, Crime is a transgression not only against an individual but also against society. The state is responsible for prosecuting the accused, acting on behalf of the community's collective interest in pursuing justice. Yet, during the legal process, victims frequently become passive observers, overshadowed by the confrontation between the prosecution and the accused. The Indian Criminal Justice System, in its current form, does not appear to be victim-oriented and seems to be more favourable towards the accused, who has been granted various safeguards such as the presumption of innocence and the burden of proof resting on the prosecution, among others.⁵

The victim of any form of crime is considered the most neglected person in the Criminal Justice System worldwide, and India is no exception. While discussing the plight of victims of crimes, Justice V.R. Krishna Iyer observed that the fault of our justice system is that the victims are not given enough importance.⁶ The Criminal Justice System focuses on the accused, intending to establish guilt or innocence. It addresses the criminal's trial, conviction, retribution, reformation, and rehabilitation. However, the victim of crime is often treated as a mere witness in the prosecution of the offense. Victims endure physical, emotional, and mental trauma, and their economic losses are typically disregarded as they do not play a central role in the criminal justice system. Victims of crime can be broadly classified into three categories. The primary victim is the individual who suffers physical or economic harm due to loss of life, limb, dignity, honor, or property. The secondary victims are dependents of the victim who has either been killed or incapacitated from engaging in any economic activity. Society is the third victim, as it experiences a violation of its laws. Since the State must uphold law and order within society, it

³ P. K. Mishra and Vivek Kumar, *Criminal Justice Delivery System and Rights of Victim: Need For Introspection*, <https://ir.nbu.ac.in/server/api/core/bitstreams/8a38267f-8fd0-41f4-9b43-85d553bd71b7/content#:~:text=The%20purpose%20of%20the%20criminal,justice%20to%20the%20affected%20persons.>

⁴ Bhupinder Singh, Criminal Justice System and Governance in India, *Journal of International Criminal Law*, (2022) Vol. 3, Issue 1 at p. 11

⁵ Ashok Kumar, Need for victim-oriented criminal justice system, *The Times of India*, May 7, 2021.

⁶ *Rattan Singh v. State of Punjab*, 1980 AIR 84.

undertakes the prosecution of criminals on behalf of individuals who have suffered, as well as to deter potential offenders from committing crimes.⁷

The Justice Malimath committee formed in 2000 felt that the existing system “weighed in favour of the accused and did not adequately focus on justice to the victims of crime.” The committee made a series of recommendations to ensure justice to the victims, like victim compensation and providing an advocate of victim’s choice to plead on his/her behalf. In 1996, the 154th Law Commission Report suggested a paradigm shift in India’s criminal justice system towards a victim-centric notion of justice. The Code of Criminal Procedure (Amendment) Act, 2009 partially accepted this suggestion and granted some rights to the victims of crime as well. There has been a sustained demand for introducing uniform victim compensation schemes to provide recoupment by the criminal to the victim of the crime.⁸

One of the crucial aspects of victim-centric policies is to ensure that the justice system is responsive to victims’ needs. It means providing victims with access to justice, protection, and support throughout the criminal trial and aiding them in getting justice. Initially, the focus was more upon the individual offender and individual victim. the interaction between a victim and an accused, the challenges faced by the victim, etc. The focus, however, subsequently shifted from understanding and realising the causes of victimization and victimhood to having a more concrete meaning of victimology, which stressed legal recognition, access to justice, access to victim services, assistance, and compensation. The awareness regarding victim justice in India was realised only in 2009 with the insertion of section 2(wa) in CrPC, 1973, vide the amendment act of 2009. Through this Act, the victims were granted three substantive rights: to hire a private counsel (with limited participatory rights);⁹ the right to be compensated under section 357A, CrPC; and the right to file an appeal against the judgement of acquittal, conviction for lesser offence and inadequacy of compensation.

The new criminal laws aim to enhance the efficiency, fairness, and accountability of the criminal justice system. It recognises the victim as a stakeholder in the criminal proceedings, providing participatory rights and expanded rights to information for the victim. The law has been reformed to place victims at the centre of the criminal justice system, offering unprecedented rights and opportunities. The new definition of “victim” has been given as a ‘person’ (making it more gender neutral) who has suffered any loss/injury caused by act/omission of the accused person and includes the guardian or legal heir of such victim. This is a much broader definition that encompasses even the guardian or legal heir of the victim.¹⁰ Under the new law, a victim can get compensation even when the accused has not been formally charged with the offence. Thus, in an offence where the victim is known but the accused is not known, compensation can still be provided to the victim. Victim centric approach in the new criminal laws has been seen

⁷ M. A. Saleem, The victim of crime is treated as a mere witness in the prosecution of the offence, *The Hindu*, <https://www.thehindu.com/opinion/columns/victims-of-crime-are-the-neglected-pillars-of-the-criminal-justice-system/article68571631.ece>

⁸ Supra No. 4

⁹ Limited through section 301 and 302 of the code of criminal procedure, 1973.

¹⁰ Section 2(1)(y) of Bharatiya Nagrik Suraksha Sanhita, 2023

from three dimensions – ‘Right to Participation’, ‘Access to Justice’, ‘right to information’, ‘Transparency’, and ‘right to compensation’.

Right to Participation

Participatory rights, or rights that give victims a voice in the criminal process through the opportunity to be heard before a court, were incorporated into the criminal legal system primarily in the new BNSS. In an adversarial criminal justice system like India’s, the accused and the prosecution play principal roles in the criminal procedure, with the judge acting as an umpire. The victim must only be a prosecution witness during the evidence stage. However, as mentioned above, certain amendments to the Code of Criminal Procedure and the introduction of provisions in the BNSS have given the victim a much larger role. Under the amended Section 321 of the CrPC, “the victim can now appeal an acquittal decision, a conviction for a lesser offense, or insufficient compensation.

This right to participate is further strengthened by the amendment of Section 24 (8) of the CrPC, which allows courts to enable victims to hire counsel to assist with the prosecution. Additionally, the new Act gave victims of sexual assaults the right to have their statements recorded by a female police official in front of their parents/guardian, kin, or social worker at home or a location of their choosing.

The Act included a proviso to this section stating that, to the extent possible, a woman judge or magistrate must preside over the in camera trial for such offences, even though the CrPC previously allowed for one.¹¹ Regarding imparting justice through compensation, S. 395 BNSS gave the court the authority to mandate that the accused pay the victim’s expenses after being found guilty. Section 396 BNSS required State Governments to establish victim recompense schemes. The DLSA or State LSA has the authority to determine the amount of compensation and to mandate free medical care, first-aid facilities, or any other temporary remedy.

It is important to note that Section 360 of the BNSS, 2023, states that no court shall accept withdrawal from prosecution without first providing the victim an opportunity to be heard. This represents a significant advancement in victim justice jurisprudence. Furthermore, using audio-visual technology for investigations is a notable addition to the new criminal code, emphasising a victim-centric approach.

Section 176 of the BNSS outlines the procedure for investigating cognisable offenses. According to this provision, the victim’s statement can be recorded using audio-video technological devices like mobile phones. Additionally, witness statements can be recorded under Section 265(3) of the BNSS. This approach facilitates victim participation in investigations, making the process more accessible and less intimidating.¹²

¹¹ Ashtha Tiwari, Victim Centric Approach in the New Laws, *The Indian Police Journal*, Volume 71, Number 1 & 2, January- June, 2024, at 113

¹² *Ibid.*

Access to Justice

The institutionalisation of Zero-FIRs and the introduction of e-FIRs enhance accessibility, allowing victims to report crimes from anywhere, irrespective of the crime's location.¹³ For instance, Zero FIR is a provision under the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 that enables a person to register a First Information Report at any police station where information about a cognisable offense is provided, regardless of the area where the offense occurred. It allows individuals to file an FIR online without visiting a police station in person. The e-FIR system is designed for efficiency as it eliminates the need for individuals to travel to a police station and wait in long queues to file a complaint. This concept is not new to Indian jurisprudence; it has already been recognized in numerous judgments.¹⁴ However, the new BNSS provides statutory recognition to register such an FIR under S. 173 of the Sanhita. This is a blessing for victims who previously had to run from pillar to post to register their cases due to jurisdictional issues.

It should be noted that BNSS does not mention the term "Zero FIR. " Section 173 (1) (ii) of BNSS also allows for the electronic registration of FIRs. The incorporation of technology in crime registration enables victims to contact the police without having to visit the police station in person. This encourages the reporting of incidents that might otherwise remain unreported due to the stigma associated with certain crimes. This is especially beneficial for women and children who may be reluctant to report crimes against them because of societal pressure and stigma. There is a condition that the e-FIR must be signed by the informant within three days, which means the FIR will only be registered after getting signed by the informant.

Right to Information

The right of victims to seek information from the relevant authorities has been expanded under the new law in several ways. On one hand, Section 173 of BNSS empowers victims to obtain a copy of the FIR free of charge, ensuring they have a documented record of the report made to the police. On the other hand, Section 193 of BNSS requires the police officer to inform the victim about the progress of the investigation within 90 days. This 90-day period not only helps eliminate any delays from the police but also assures the victim that the criminal justice system is diligently monitoring the various stages of their case. It protects the victim's right to information against procedural glitches that may arise from police unaccountability during the investigation. This is crucial for a system to be "victim-centric," as the FIR is an important document and corroborative piece of evidence and a critical step to initiate the investigation. Victim participation at these stages highlights BNSS's focus on victims' rights.

In *Delhi Domestic Working Women's Forum v. Union of India*,¹⁵ the Supreme Court emphasised the importance of legal representation for victims of rape at every stage of the process – to support her while she is being questioned, explain the nature of the proceedings, prepare her for the case, assist her in the police station and help her seek relief from various agencies. Yet, no

¹³ Section 173 of BNSS.

¹⁴ *State of Andhra Pradesh v. Punati Ramulu*, 1994 Supp (1) SCC 590

¹⁵ (1995) 1 SCC 14 [15].

centralised mechanism has been created to implement this. While the BNSS has enshrined important rights to information, the intended purpose of these information rights, which is to ultimately enable active and meaningful participation in the criminal process, may not be achieved in the absence of a corresponding system of free legal aid.

Transparency

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 emphasises victims' rights to access information by ensuring the availability of police reports, FIRs, and witness statements. It also includes provisions dedicated to providing victims with essential information at various stages of investigation and trial. In case the officer in charge of a police station chooses to file a final report closing a case, a notice has to be issued to the victim/informant informing about the closure. Under section 339 of BNSS (section 302 of Cr.P.C), the court can permit an advocate on behalf of the victim to conduct the prosecution.

Right to Compensation

The victim compensation scheme signifies advancement in victim justice and support in India. It recognises the State's responsibility towards crime victims and offenders and provides a structured framework for their compensation and rehabilitation. The scheme's success relies on effective implementation, sufficient funding and awareness among stakeholders. Although challenges persist regarding consistency across states and timely disbursement, the scheme serves as a crucial safety net for crime victim and their dependents.

Victim-centric reforms in the Indian criminal justice system have generally taken the form of three rights: participatory rights, the right to information, and the right to compensation for the harm suffered. The 154th Law Commission Report (1996)¹⁶ and the Justice Malimath Committee Report (2003)¹⁷ identified 'justice for victims' and victimology as crucial areas for reform, making recommendations that focus on increasing victims' participatory role and enhancing compensatory justice. These recommendations were incorporated into amendments such as the Code of Criminal Procedure (Amendment) Act, 2008 ('Amending Act'), which aimed to strengthen the existing framework of victims' rights. Therefore, the current structure of criminal law has primarily been oriented towards participatory and compensatory justice rights.¹⁸

Despite having various mechanisms for compensation, victims have consistently been inadequately compensated. Although numerous state compensation schemes and support from the judiciary through many progressive pronouncements exist, they remain in the same position as they were a decade ago. To address this issue, a victim-centric approach is included in Section 65 of BNS, which mandates that fines must be paid to the victim to cover medical expenses and

¹⁶ *Ibid.*

¹⁷ Law Commission of India, 'One Hundred and Fifty Fourth Report on the Code of Criminal Procedure, 1973', (Law Commission of India Report No. 154, 1996).

¹⁸ Government of India, Ministry of Home Affairs, *Committee on Reforms of Criminal Justice System Report*, Volume 1 (2003).

rehabilitation. The new laws continue to impose severe penalties for committing sexual offenses. Sections 395 and 396 of the BNSS deal with the payment of compensation to victims. Section 395 allows courts to order compensation in cases where the offender is convicted, and Section 396 requires the establishment of victim compensation schemes by state governments. Section 397 is also mentioned about the Treatment of Victims; all hospitals will provide first aid or medical treatment to the victim free of cost.

Conclusion

Crime is a wrong against society and a violation of the individual rights of victims. The state should, therefore, ensure the effective recognition of and respect for the rights of victims concerning their human rights; they should, in particular, respect the liberty, security, property, dignity, and private and family life of victims and recognise the negative effects of crime on them.¹⁹ The state is required to ensure that the measures designed to protect victims' rights are applied without discrimination based on various factors such as sex, gender, race, religion, and others. This underscores the importance of equal treatment and access to justice for all victims, regardless of their background or circumstances. Criminal law theorists should examine how discrimination and bias can affect victims and offenders within the criminal justice system. This can lead to discussions about fairness, equity, and eliminating bias in law enforcement, prosecution, and sentencing. The Supreme Court of India has also emphasised in *Mallikarjun Kodagali v. State of Karnataka*²⁰ that "the accused person's rights frequently take precedence over the victims' rights. To ensure that criminal trials run smoothly and fairly, a balance must be struck between the rights of the accused and victims". The need for victims to participate in the criminal justice system through a legal representative was recognized by the Supreme Court in 1995 through the Delhi Domestic Working Women's Forum Case²¹, wherein "the Court elaborated on the role of the victim's lawyer—which is not only limited to explaining the nature of proceedings or preparing and assisting her in the case, but it also extends to providing her with the guidance as to how she might obtain help from a different nature from other agencies, for instance, counselling or medical assistance".

The recent revision of criminal laws represents a crucial advancement in creating victim-centered legislation in India. The term "victim" is fundamentally gender-neutral, affirming its relevance to all citizens. These updated laws not only emphasise the rights and welfare of victims but also enhance investigation processes through technological integration, ultimately expediting trials and faster justice for victims. Measures like "Trial in absentia" expedite the legal process, allowing victims to avoid lengthy delays caused by absent offenders.



¹⁹ Viacheslav Tuliakov, Criminal Law and its Victim-Oriented Development: An Academic Inquiry, *COPERNICUS Political and Legal Studies*, Vol. 2, Issue 3 (September 2023): pp. 70–74

²⁰ 2019 2 SCC 752

²¹ *Delhi Domestic Working Women's Forum v. Union of India*, 1995 1 SCC 14.

Evaluating the Impact of New Criminal Codes on Legal Education and Professional Training

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&
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Abstract

The introduction of the new criminal codes is often necessities required for adjustments to legal education and training programs. These changes can have far-reaching implications for the curriculum, pedagogy, and overall preparation of legal professionals. The study turns into how new codes have influenced the content of criminal law courses, the teaching methods employed, and the assessment strategies used. It analyses the challenges and opportunities that arise from incorporating new legal concepts into existing curriculum and adapting teaching methodologies to reflect the evolving legal landscape. Furthermore, the research examines the ethical dilemmas that legal professionals may encounter in light of the new codes introduced, such as the implications for client representation, the role of the prosecutor, the interpretation and application of new legal provisions and more. By examining various case studies from various jurisdictions, this research explores the multifaceted impacts of these changes on the teaching of criminal law principles, the development of practical skills, and the ethical considerations faced by legal practitioners. By identifying key challenges and opportunities, the study concludes by understanding the issues of the new criminal code for enhancing legal education to meet the evolving demands of the legal profession. Authors will provide the recommendations based on updates to curriculum content, faculty training, and assessment strategies. These are particularly important as current practitioners and student's transition from older criminal codes to the new frameworks, requiring additional support to adapt effectively. Ultimately, this study seeks to ensure that legal professionals acquire the knowledge, skills, and ethical understanding necessary to navigate the complex legal landscape shaped by the new criminal codes

Keywords: Criminal codes, legal profession, ethical consideration, practical skills, Legal education, curriculum.

Introduction

The criminal justice system is the foundation for maintaining law and order in society. It delineates acceptable behaviour and prescribes appropriate penalties for the code of conduct. As societies evolve, so must the laws that govern them. The introduction of a new criminal code represents not only a significant legislative shift but also a transformative moment for legal education and training. This research paper explores the multifaceted impact of the new criminal codes on legal curricula, pedagogical methods, and the overall preparedness of law students and practitioners in navigating the difficulties of contemporary legal challenges.

In recent years, many jurisdictions have undertaken comprehensive reforms to their criminal codes, reflecting society's changes, advances in legal theory, and a growing emphasis on human

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rights. These reforms require a reassessment of current legal education frameworks, which has compelled educators to modify their curricular content and teaching methodologies to guarantee that future legal professionals possess the necessary knowledge and skills to function effectively in the revised legal environment.

In recent years, many jurisdictions have undertaken comprehensive reforms to their criminal codes, reflecting societal changes, advances in legal theory, and a growing emphasis on human rights. These reforms necessitate a re-evaluation of existing legal education frameworks, compelling educators to adapt their teaching methodologies and curricular content to ensure that future legal professionals are equipped with the knowledge and skills required to operate effectively within the updated legal landscape. The Indian government has recently introduced three new criminal laws to replace the existing Indian Penal Code (IPC), Criminal Procedure Code (CrPC), and Indian Evidence Act.

The New Laws are

Bhartiya Nyaya Sanhita (BNS): This replaces the IPC and introduces new offenses, such as hate crimes, mob lynching, and terrorism. It also redefines sedition and expands the scope of theft to include data and intangible items.

Bhartiya Nagarik Suraksha Sanhita (BNSS): This replaces the CrPC and focuses on a victim-centric approach. It extends police custody, allows trials in absentia, introduces Zero FIR, and includes electronic summons and a Witness Protection Scheme. It also mandates forensic investigations for serious offenses and facilitates electronic trials.

Bhartiya Sakshya Adhiniyam (BSA): This replaces the Indian Evidence Act and introduces changes in the manner evidence is processed in India. For instance, it allows "electronic and digital records" as evidence.

Overall, the new criminal laws aim to modernize the Indian criminal justice system and make it more efficient and effective. However, there is also some concern that the new laws may be overly broad or restrictive. It remains to be seen how the new laws will be implemented and whether they will achieve their goals.

This paper will examine the effects of the new criminal code on various legal training and education components, such as curriculum design, experiential learning opportunities, and assessment mechanisms. By examining the challenges and opportunities presented by these legislative changes, this research aims to contribute to the ongoing discourse on legal education reform and highlight best practices for integrating new legal frameworks into training programs. Ultimately, this study seeks to provide insights that will foster a more responsive and relevant legal education system, better-preparing law students for the realities of practice in a dynamic and evolving legal environment.

Key distinctions between the new and old criminal laws:

BNS vs. IPC³:

- New offenses: The BNS introduces new offenses, such as hate crimes, mob lynching, and terrorism.
- Redefined sedition: The BNS redefines sedition as acts endangering national integrity (treason).
- Expanded scope of theft: The BNS expands the scope of theft to include data and intangible items.
- Reduced number of sections: The BNS reduces the number of sections from 511 to 358.

BNSS vs. CrPC⁴:

- Victim-centric approach: The BNSS focuses on a victim-centric approach.
- Extended police custody: The BNSS extends police custody from 15 to 90 days.
- Trials in absentia: The BNSS allows trials in absentia.
- Zero FIR: The BNSS introduces Zero FIR, which allows FIRs to be filed at any police station.
- Electronic summons: The BNSS includes electronic summons.
- Witness Protection Scheme: The BNSS includes a Witness Protection Scheme.
- Forensic investigations: The BNSS mandates forensic investigations for serious offenses.
- Electronic trials: The BNSS facilitates electronic trials.

BSA vs. Indian Evidence Act⁵:

- Electronic and digital records: The BSA allows "electronic and digital records" as evidence. Here's a refined sub-heading:

Surveying Perspectives: Assessing the Impact of India's New Criminal Codes on the Legal Profession and Society

A survey of legal professionals, academics, and people with knowledge of the justice system was carried out in order to determine the effects of India's new Criminal Codes on different facets of the legal profession and society. The purpose of the survey was to gather opinions on how these legislative changes would affect legal education curricula, everyday legal activities, the larger society, and the difficulties faced by legal practitioners. Both open-ended and multiple-choice questions were included in the survey to collect both qualitative and quantitative data. Respondents were questioned regarding the expected social impact of these rules, any difficulties they anticipate, and particular talents they believe are necessary under the new codes. The study aims to offer a comprehensive knowledge of the attitudes toward the new criminal code by examining these responses. Framework and to pinpoint areas that might need more assistance, modification, or attention from the legal community and larger society.

³ Yashpal Puliani, New Criminal Codes, *Karnataka Law Journal*, 1st ed. 2023, p.148.

⁴ *Ibid* at p. 42.

⁵ *Ibid* at p. 10.

In order to facilitate a thorough discussion of the anticipated effects of the new Criminal Codes on Indian society and the legal profession, this section summarizes the answers that were received, emphasizing significant patterns and issues. A survey of legal professionals, academics, and people with knowledge of the justice system was carried out in order to determine the effects of India's new Criminal Codes on different facets of the legal profession and society.

The purpose of the survey was to gather opinions on how these legislative changes would affect legal education curricula, everyday legal activities, the larger society, and the difficulties faced by legal practitioners. Both multiple-choice and open-ended questions were included in the survey to collect information that is both quantitative and qualitative. Respondents were questioned regarding the expected social impact of these rules, any difficulties they anticipate, and particular talents they believe are necessary under the new codes. Through the analysis of these replies, the study aims to offer a comprehensive knowledge of how the new criminal law framework is seen and to pinpoint areas that could need more attention, support, or adaptation from the legal profession and society at large. In order to facilitate a thorough discussion of the anticipated effects of the new Criminal Codes on Indian society and the legal profession, this section summarizes the answers that were received, emphasizing significant patterns and issues⁶.

The overall goal of India's new criminal codes is to provide a unified, updated legal system that takes into account the intricacies of modern life. This includes updating out-of-date statutes to suit contemporary social ideals and codifying present criminal laws to guarantee uniformity and clarity in interpretation. To ensure the legal system is prepared to tackle today's issues holistically, the rules also create new criminal charges to meet new and unexplored types of crime. The new codes seek to provide a legal framework that is understandable, pertinent, and sensitive to India's changing social demands by integrating these components.

In order to create a legal system that is more accurate, efficient, and responsive, the new Criminal Codes in India incorporate a number of significant modifications. These modifications include updated definitions of criminal offenses that are clearer and in line with contemporary legal norms, as well as harsher punishments for certain crimes that emphasize how seriously these acts are taken. Furthermore, the creation of new criminal charges enables the legal system to address new and unexplored types of crime. The efficacy, comprehensiveness, and deterrent potential of India's criminal justice system are all improved by these modifications taken together.

Legal practitioners must improve their understanding of criminal law to stay up to speed with the latest statutes and regulations because the new Criminal Codes have important ramifications. Practitioners must modify their methods to conform to the new legal framework as a result of these developments, which have an effect on court proceedings and legal strategy. Furthermore,

⁶ Ani, The Economic Times, Jul 01, 2024, 08:41:00 AM IST.

when legal practitioners negotiate new complications and take advantage of new opportunities inside the reformed system, the codes present both opportunities and problems. All of these elements work together to highlight the necessity of legal professionals' flexibility and continual education in order to function well in the changing environment of Indian criminal law.

Since attorneys must now handle new offenses and include them in their cases, the new Criminal Codes are probably going to have an effect on their day-to-day work. In order to comprehend and appropriately apply the most recent rules, this change will necessitate ongoing legal research and updated analysis. Lawyers must also modify their courtroom tactics and conform to new guidelines for presenting and challenging evidence due to modifications in court procedures and evidence rules. When taken as a whole, these elements will change the way that law is practiced on a daily basis, necessitating a larger investment in planning, flexibility, and procedural knowledge within the revised criminal justice system.

The updated Criminal Codes present a number of possible difficulties for attorneys, one of which is the difficulty of comprehending new provisions. This is because these revisions may contain complicated conditions that need careful examination and unfamiliar legal language. This is made more difficult by the uncertainty surrounding the application of new laws, since practitioners do not have established case law or precedents to direct their approach, which could result in ambiguity in legal strategy and decision-making. New transgressions may also give rise to moral conundrums when attorneys consider how these offenses may affect their clients and their obligations as professionals. When taken as a whole, these difficulties call for increased attentiveness, flexibility, and ethical consciousness from attorneys practicing in the criminal justice system's reform.

Legal education curricula will be drastically altered by the implementation of new criminal codes. In order to guarantee that students comprehend the most recent legal frameworks, law schools are probably going to implement specialist courses that concentrate on these updates. To give correct information about the changes, textbooks and instructional materials will also need to be updated. Additionally, a greater focus will be placed on applying these laws in real-world scenarios through internships, clinical experiences, and simulations. These changes demonstrate how legal education must adapt to modern criminal law in order to adequately prepare students for navigating the legal obstacles of the modern world⁷.

A number of abilities and fields of expertise will be especially beneficial for legal practitioners in light of the new Criminal Codes. First and foremost, a solid grasp of legal research and analysis is necessary since experts will need to carry out in-depth studies in order to properly analyse the new laws and comprehend their ramifications. The capacity to adjust to the ever-evolving legal environment is also essential; in order to successfully traverse these changes, attorneys must continue to be adaptable and receptive to new information. Furthermore, as legal practitioners must preserve the integrity of the legal system while making choices impacted by the new norms, ethical awareness and judgment will be crucial. When combined, these abilities

⁷ Ayushi Gupta, The times of India, Sep 27, 2023, 17:57 IST.

will improve a lawyer's proficiency and efficacy in handling the complexity that has been by the evolving new criminal law.

The new criminal codes have the potential to have a wide range of important effects on Indian society. First, by ensuring that legal frameworks are in line with modern principles and human rights norms, these codes may result in a greater protection of citizens' rights. This improvement has the potential to empower people and give them more legal options. By providing more precise definitions of crimes and associated punishments, the revised laws are also anticipated to have a stronger deterrent effect on criminal activity. Additionally, when society adjusts to new legal requirements and expectations, the implementation of these laws may cause a shift in social norms and values, which could promote a culture of accountability and lawfulness⁸.

There are a number of possible issues and objections to the revised Criminal Codes that need to be addressed. The overreach of government power is a significant problem, since opponents worry that the new laws may grant authorities undue authority and violate people's rights. Additionally, there is a great chance that law enforcement authorities may abuse their power, which might undermine public confidence by resulting in arbitrary arrests and profiling. Furthermore, the effects on marginalized communities are worrisome since the application of these regulations may disproportionately burden vulnerable groups, thereby escalating already-existing social injustices. In order to maintain justice while defending individual rights, these objections highlight the necessity of openness and accountability in the application of the new Criminal Codes.

A number of new developments in criminal law are probably going to be impacted by the new criminal codes. First, as law enforcement uses technologies like digital forensics and data analytics to improve their efficiency, there will be a greater use of technology in criminal investigations and prosecutions. Furthermore, a move toward combating transnational crimes and guaranteeing accountability for human rights abuses is indicated by the growing significance of international criminal law. Additionally, rehabilitation and restorative justice are heavily emphasized, with a focus on reintegration and healing rather than punitive measures. When taken as a whole, these developments show a revolutionary approach to criminal law that seeks to create a more efficient and compassionate legal system⁹.

Empirical Analysis of the Survey¹⁰

The responses suggest a broad consensus that the new criminal codes in India serve multiple purposes. Primarily, these codes focus on modernizing criminal law by aligning it with contemporary standards and practices. Many respondents emphasize the importance of bringing Indian criminal law into step with global legal norms. Additionally, the codification of existing laws was a prominent theme, as several responses highlighted the intention to formalize and standardize disparate laws within a cohesive framework. Though less frequently mentioned,

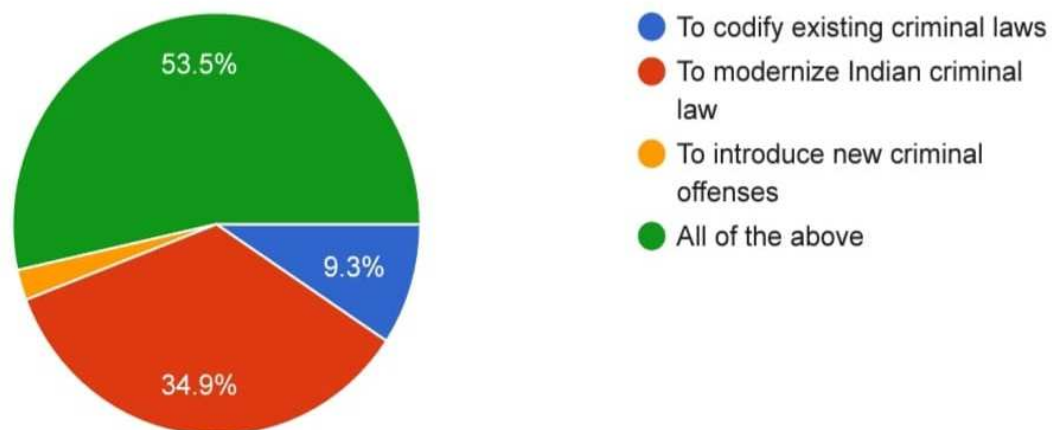
⁸ Prof (Dr.) Ranbir Singh, lexis nexis, February 8, 2024

⁹ ET OnlineLast Updated: Jul 02, 2024, 11:28:00 AM IST

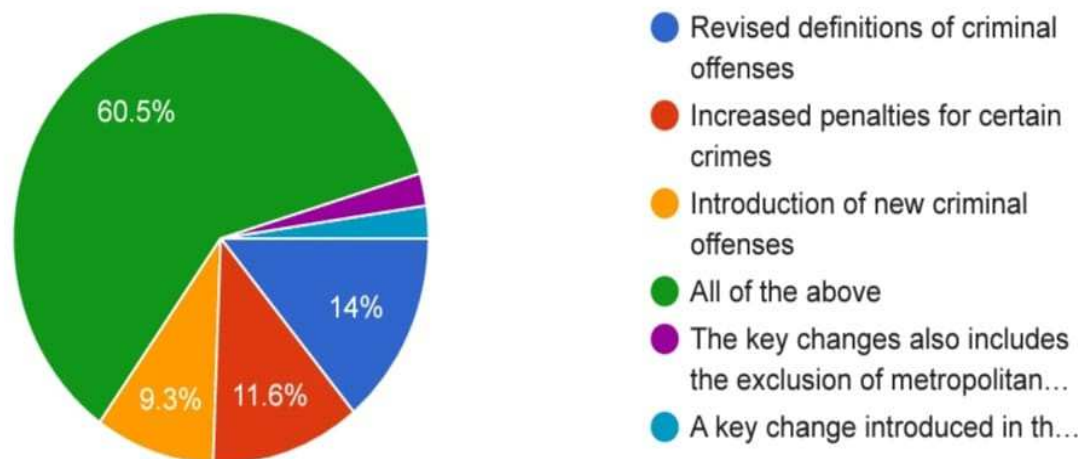
¹⁰ Survey responses

some respondents pointed to the introduction of new offenses, particularly those aimed at addressing emerging crime areas, such as cybercrime and economic offenses.

In terms of substantive changes, respondents widely recognize that the new criminal codes encompass several major shifts. These include comprehensive revisions aimed at providing clearer definitions of criminal offenses, which could facilitate more consistent legal interpretation. Additionally, the introduction of new types of offenses signals an attempt to address contemporary concerns, like cybercrime and gender-based violence.



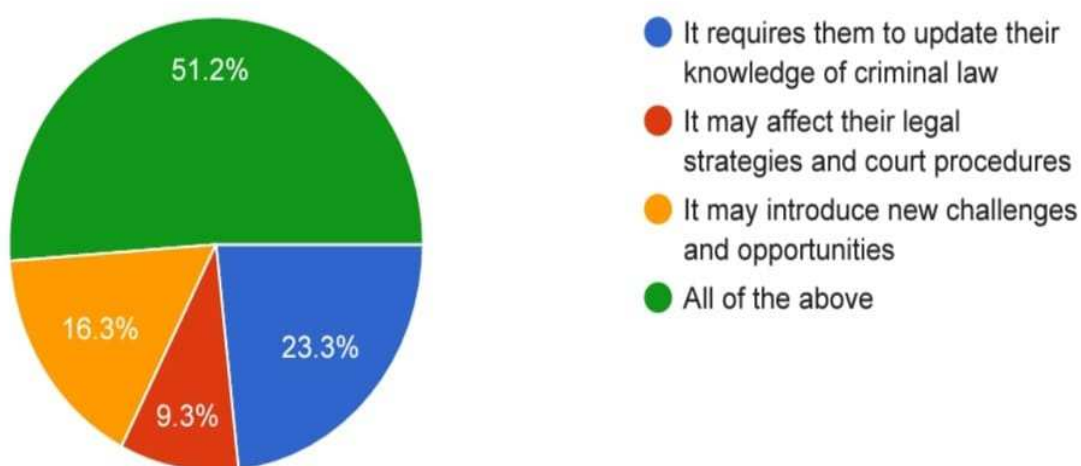
Many respondents also noted that penalties have increased, reflecting an intent to use stricter consequences as a deterrent. Significantly, there is also a special focus on women's safety, with some respondents highlighting a dedicated



chapter on crimes against women, underscoring the codes' targeted legal provisions to protect vulnerable populations¹¹.

The responses reveal a widespread recognition among legal professionals of the substantial impact the new criminal codes are expected to have on their practice. Legal professionals anticipate that they will need to update their knowledge of the revised codes to ensure they provide competent representation. The changes in definitions, penalties, and procedures will also necessitate strategic adjustments in case preparation and courtroom practices.

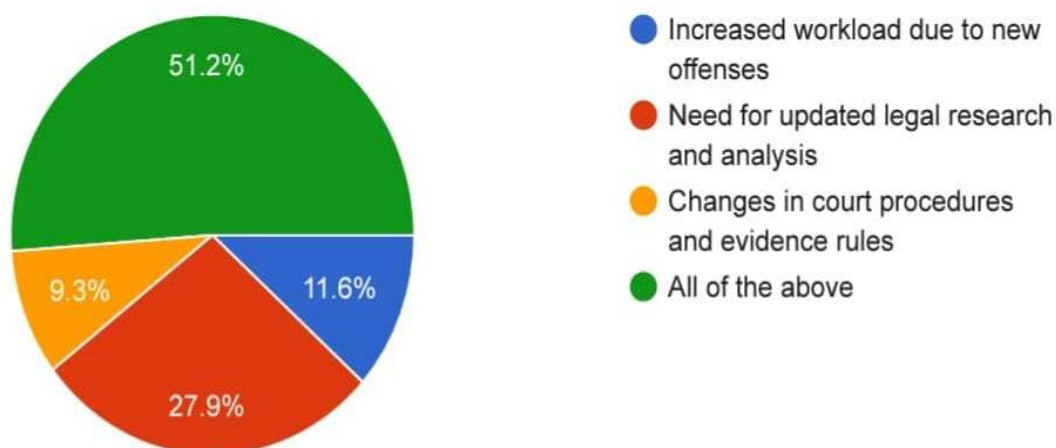
Alongside these challenges, the revised codes introduce new opportunities, such as growth in areas like criminal defence and specialized legal services, responding to the emergence of novel types of offenses.



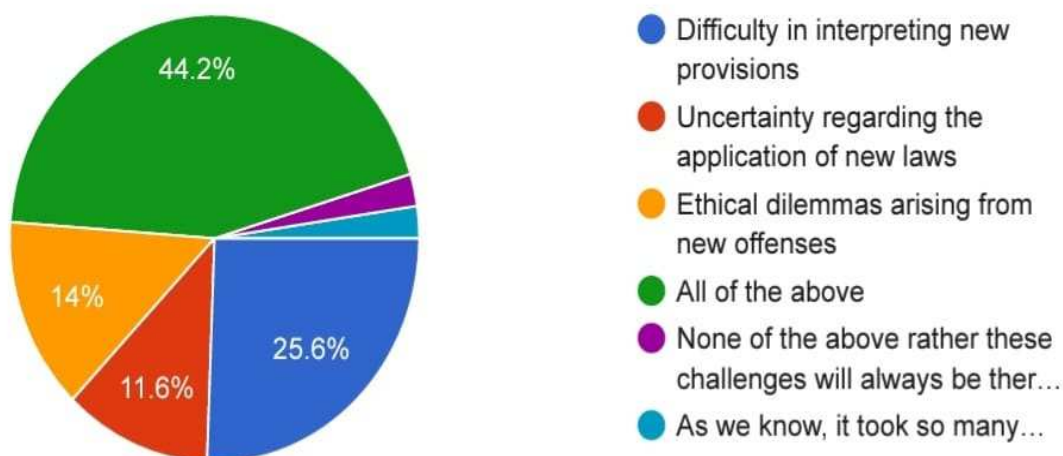
The new criminal codes are anticipated to significantly affect the daily practice of lawyers in various ways. Continuous legal research will become essential, as practitioners will need to stay informed on the updated definitions, penalties, and provisions.

Additionally, with the introduction of new offenses and potentially more complex cases, many respondents foresee an increase in workload that could strain time management and case handling. Changes in court procedures and evidence rules will also require lawyers to familiarize themselves with new standards, adapting their trial strategies to reflect these procedural adjustments.

¹¹ Universal Law Publication, Indian penal codes, 22. Lexis Nexis (4th ed 1960).

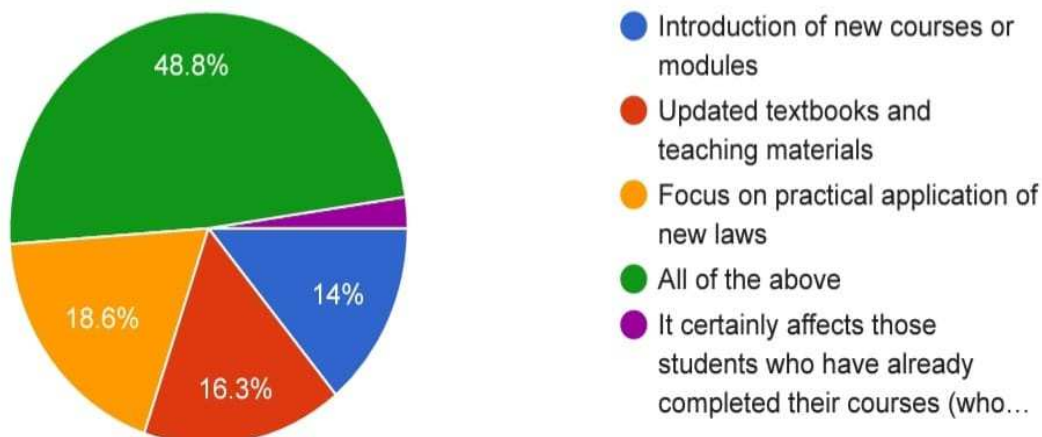


Despite these opportunities, the new codes may bring about several notable challenges for legal practitioners. New language and provisions could create interpretative challenges, as some aspects may be complex or unclear, necessitating careful analysis and potentially greater reliance on future case law to clarify meanings. Ethical considerations may arise, particularly in cases involving sensitive or previously unclassified behaviours, presenting dilemmas for legal professionals. Initially, some lawyers may struggle with understanding how courts will interpret and apply these new laws, especially if inconsistencies or gaps exist within the codes. As with prior criminal laws, lawyers may look to the judiciary over time to establish precedents that provide clearer guidance.

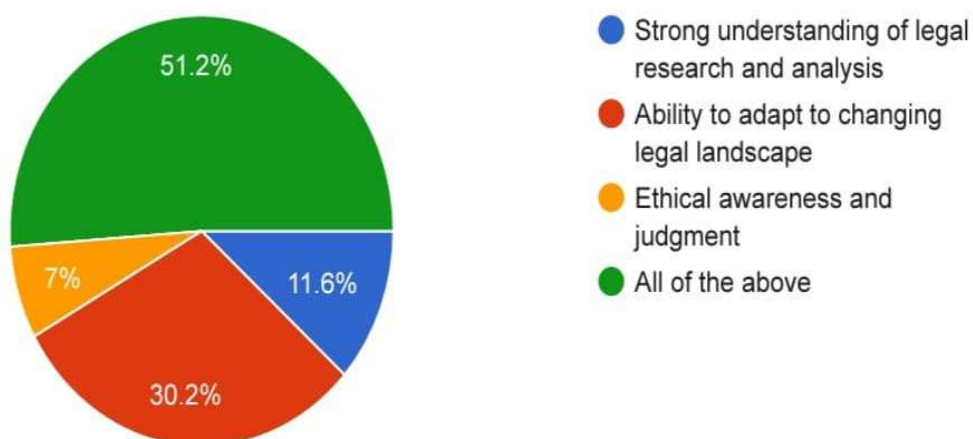


Responses indicate that legal education institutions will also need to make several adjustments in response to the new criminal codes. Law schools may need to update their curricula to incorporate the latest provisions, ensuring students are learning within a current legal framework. There is likely to be an increased focus on practical skills, with an emphasis on

teaching students how to interpret and apply new laws in real-world scenarios. This shift may include more interactive sessions, moot courts, and internships centered on criminal law. Additionally, textbooks, casebooks, and other resources will require updates to reflect the changes. Law programs might even introduce new courses or electives specifically addressing the recent reforms, helping students to develop specialized expertise.



The survey responses suggest that legal professionals will benefit most from a combination of adaptability, rigorous analytical skills, ethical judgment, and a thorough understanding of the new criminal codes. These competencies will be essential for staying current, interpreting complex legal changes, and applying the law effectively in practice.

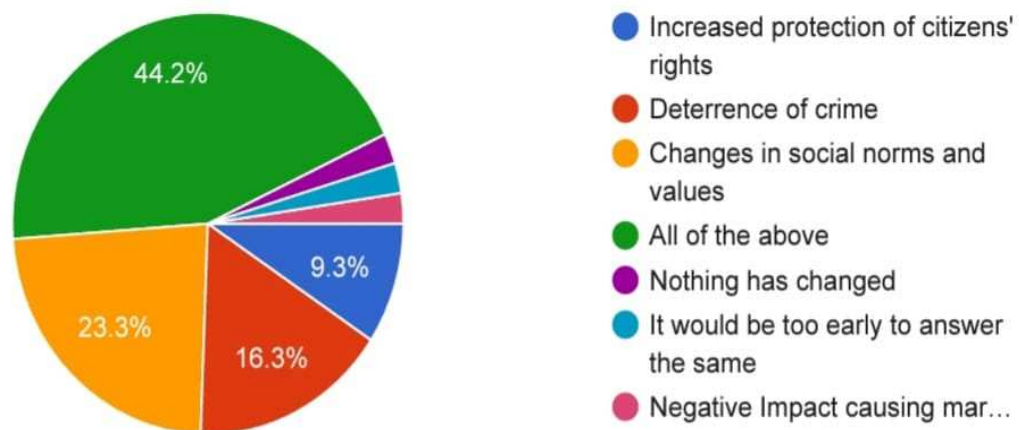


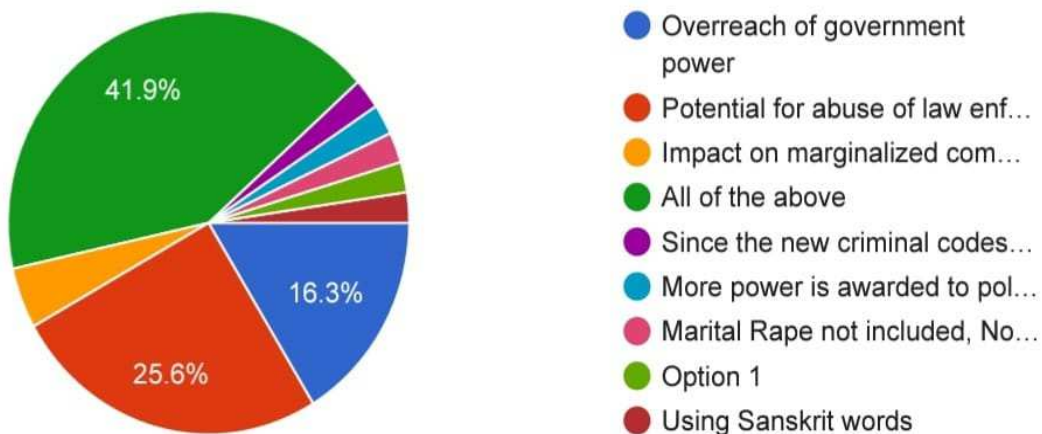
Opinions on the societal impact of India's new criminal codes are mixed. Stricter penalties may act as a deterrent to unlawful behaviour, potentially fostering a more law-abiding society. Some respondents anticipate shifts in social norms as awareness of crime and justice issues grows. There is an expectation that the codes will enhance protections for vulnerable groups, thereby increasing public trust in the justice system.

However, concerns about potential biases in law enforcement and legal application indicate the need for safeguards to prevent marginalization. Some respondents remain sceptical about the codes' ability to drive societal transformation without effective implementation.

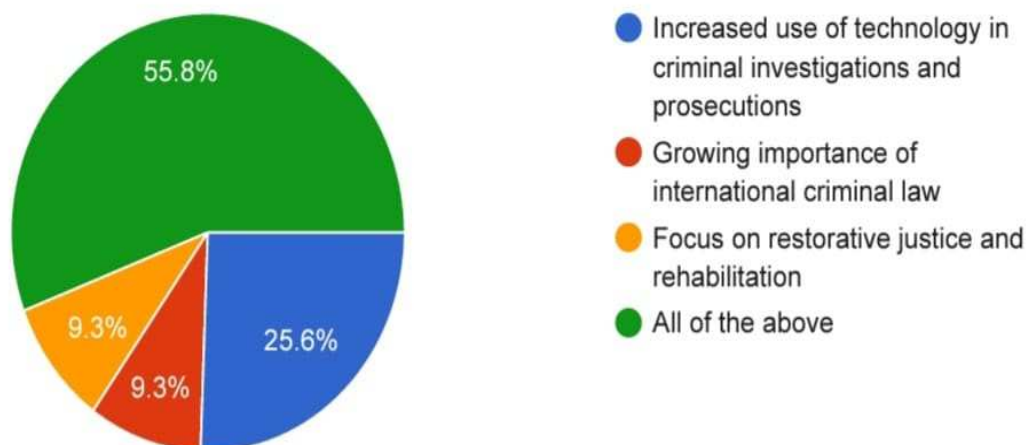
In summary, the new criminal codes have not been without criticism. Over 30 respondents expressed concerns on multiple fronts. Fears of government overreach were prevalent, with some respondents warning that the new laws could lead to excessive control and infringe on individual liberties.

Concerns about abuse of authority, especially towards marginalized communities, were also prominent. Additionally, specific legal issues were cited, including the exclusion of marital rape, lack of gender neutrality, insufficient definitions for mob lynching, and redundant provisions overlapping with existing laws. The use of Sanskrit terminology has also been criticized for its cultural insensitivity, as it may feel disconnected from the general public.





Lastly, the survey identifies significant emerging trends in criminal law influenced by the new codes. There is a growing focus on international criminal law, an emphasis on restorative justice and rehabilitation, and increased technological integration in investigations. These trends reflect a shift toward a more global and humanistic perspective on justice, prioritizing healing over punishment while seeking to improve law enforcement efficiency. However, the increased use of technology raises concerns about privacy and civil liberties. The consensus among respondents suggests that these changes are interconnected and indicative of a broader evolution within the justice system. Policymakers and legal practitioners will need to navigate these developments carefully to protect individual rights while adopting innovative approaches to meet contemporary challenges in criminal law.



Conclusion

The introduction of new criminal codes has far-reaching implications for legal education and training. These codes necessitate significant adjustments in curriculum, teaching methodologies, and assessment strategies to ensure that legal professionals are adequately prepared to navigate the evolving legal landscape.

This research has explored the multifaceted impacts of these changes on legal education, highlighting key challenges and opportunities. It has emphasized the need for continuous curriculum updates, faculty training, and student assessments that align with the new legal framework. Legal professionals must also adapt to the new codes by acquiring new skills, such as interpreting complex legal provisions and navigating ethical dilemmas.

The study concludes by underscoring the importance of ethical considerations in the application of the new codes. Legal practitioners must be mindful of the potential for abuse of power and ensure that the laws are applied fairly and justly. By addressing these challenges and seizing the opportunities presented by the new codes, legal education can play a vital role in shaping a more just and equitable society.



The Role of Technology in Victim and Witness Protection Under New Criminal Laws in India

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Abstract

The evolving landscape of criminal justice in India is marked by significant reforms aimed at enhancing victim and witness protection, primarily through new criminal laws. This article examines the crucial role of technology in addressing longstanding challenges within the justice system. Historically, laws like the Indian Penal Code of 1860 have often overlooked the rights of victims and witnesses. Recent legislative changes, such as the Criminal Law (Amendment) Act of 2013 and the Criminal Procedure (Amendment) Act of 2020, establish essential protections, including legal aid, protection orders, and compensation, fostering a more victim-centric approach. The effectiveness of these reforms is closely tied to the strategic integration of technology. Digital platforms facilitate anonymous crime reporting, while mobile applications empower victims with vital information about their rights and available services. Surveillance technologies, including CCTV and wearable devices, enhance safety and deter potential threats. Additionally, advancements in data management allow law enforcement to identify crime patterns and allocate resources effectively. However, challenges persist. The digital divide hampers access for marginalized communities, while privacy concerns may deter victims from engaging with digital solutions. Resistance from traditional law enforcement and cyber threats also pose significant risks to the integrity of sensitive information. The article highlights successful initiatives like the Nirbhaya Fund and the E-Courts project, demonstrating technology's effectiveness in promoting victim and witness protection. Looking ahead, strengthening digital infrastructure, particularly in rural areas, and integrating artificial intelligence (AI) can further enhance protective strategies. Collaborative efforts among governmental bodies, NGOs, and tech companies are vital, along with establishing clear policies to safeguard rights.

Keyword: Victim Protection, Witness Protection, Nirbhaya Fund, Cyber Threats, Digital Infrastructure, Artificial Intelligence (AI), NGOs, Technology Integration, Emergency Response Systems.

Introduction

The landscape of criminal justice in India is undergoing a profound transformation, particularly with the introduction of new criminal laws aimed at enhancing the protection of victims and witnesses. Historically, the Indian legal framework has often prioritized the rights of the accused, sometimes at the expense of those who have suffered from crime. However, growing awareness of the vulnerabilities faced by victims and witnesses has catalyzed legislative reforms. These reforms underscore a crucial shift towards recognizing the rights and dignity of individuals who are often marginalized in the legal process³.

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³ Victim Rights in India: Historical Context and Legislative Reforms, Journal of Indian Law (2022).

As India confronts escalating crime rates, systemic delays in justice delivery, and significant human rights concerns, the role of technology emerges as a pivotal factor in safeguarding the interests of victims and witnesses. The advent of digital tools and platforms provides unprecedented opportunities to enhance safety, streamline processes, and foster a more supportive environment for those involved in legal proceedings. In this context, technology serves not only as an enabler but also as a protector, offering innovative solutions to longstanding challenges within the criminal justice system⁴.

One of the primary issues faced by victims and witnesses is the fear of retaliation and harassment, which often discourages them from participating in legal processes. Witness intimidation and victim-blaming culture contribute to a pervasive atmosphere of silence and impunity. To counteract these challenges, new criminal laws, such as the Criminal Law (Amendment) Act of 2013 and the Criminal Procedure (Amendment) Act of 2020, have been introduced to provide comprehensive frameworks for victim and witness protection⁵. These laws advocate for measures like anonymity, legal support, and protection orders, but their effectiveness is inherently linked to the adoption and integration of technology.

The role of technology extends beyond merely providing tools; it involves creating a holistic ecosystem that facilitates victim and witness support. Digital platforms enable anonymous reporting of crimes, ensuring that victims can seek help without the fear of exposure. Mobile applications specifically designed for safety and support have empowered individuals to take control of their circumstances. Moreover, advancements in surveillance technologies, such as CCTV and emergency alert systems, have the potential to act as deterrents against crime, fostering a safer environment for all⁶.

Despite the promising possibilities, the integration of technology into victim and witness protection is not without challenges. Issues such as the digital divide, privacy concerns, and resistance to change from traditional law enforcement agencies pose significant hurdles. Marginalized communities may lack access to the digital tools necessary for their protection, and there are ongoing concerns about the security of sensitive information shared online. Furthermore, the rapid pace of technological change can outstrip the capacity of existing legal frameworks to address emerging risks.

Given these complexities, a nuanced understanding of the relationship between technology and victim/witness protection is essential. This article aims to explore this intricate dynamic, assessing the current impact of technology within India's evolving legal landscape while identifying both the opportunities it presents and the challenges it faces. Through case studies and examples, we will evaluate how various technological initiatives have successfully

⁴ Technology in Criminal Justice: Enhancing Victim and Witness Protection, *Cyber Law Review* (2023).

⁵ The Criminal Law (Amendment) Act, 2013: Implications for Victim Protection, *Indian Criminal Law Journal* (2014).

⁶ Emerging Technologies for Crime Deterrence and Victim Support, *Journal of Safety Studies* (2024).

enhanced the protection of victims and witnesses, as well as how future innovations could further strengthen this critical aspect of the criminal justice system⁷.

Ultimately, the pursuit of justice must be underpinned by a commitment to protecting those who seek it. As India continues to reform its criminal laws, leveraging technology in the fight for victim and witness protection will be paramount. By fostering a culture of support and safety, the country can not only uphold the rights of victims and witnesses but also contribute to a more just and equitable society. In the following sections, we will delve deeper into the specific technologies currently being employed, the legal frameworks that govern them, and the vision for a future where victims and witnesses are empowered and protected within the Indian criminal justice system.

Historical Context

Evolution of Criminal Laws in India:

India's criminal justice system has its roots deeply embedded in the colonial era, primarily shaped by the Indian Penal Code (IPC) of 1860. Drafted by the British, the IPC established a legal framework that emphasized punitive measures and maintained social order under colonial rule. While it served as a foundational document for over a century, its provisions often failed to reflect the evolving socio-cultural dynamics of Indian society, particularly regarding the rights of victims and witnesses⁸.

As India gained independence in 1947, there was a pressing need to reform these colonial laws to align them with democratic values and the aspirations of a diverse population. Over the decades, various amendments were introduced to address specific crimes, such as sexual assault, domestic violence, and human trafficking. However, these changes were often reactive, spurred by high-profile cases that garnered public outrage rather than a proactive approach to systemic reform⁹.

The realization that the legal framework needed a comprehensive overhaul became increasingly apparent in the late 20th and early 21st centuries. Advocates for victim rights began to argue that the IPC and other laws inadequately addressed the needs of those who suffered from crime. The legal system often focused more on the rights of the accused, sidelining the dignity and protection of victims and witnesses. This oversight not only hindered victims from coming forward but also perpetuated a culture where crimes went unreported and unpunished, undermining the integrity of the justice system¹⁰.

⁷ Case Studies in Victim Support: Technology and the Criminal Justice System, Journal of Legal Innovations (2023).

⁸ R. Shankar, Victim Rights in India: Historical Context and Legislative Reforms, Journal of Indian Law (2022).

⁹ A. Kumar, Technology in Criminal Justice: Enhancing Victim and Witness Protection, Cyber Law Review (2023).

¹⁰ S. Mishra, The Criminal Law (Amendment) Act, 2013: Implications for Victim Protection, Indian Criminal Law Journal (2014).

The Need for Victim and Witness Protection:

Victims of crime in India frequently confront an array of challenges, including intimidation, harassment, and even violence, which significantly deter their willingness to participate in legal proceedings. This vulnerability is exacerbated by societal stigma and the fear of retaliation from perpetrators or their associates. In many cases, victims feel isolated and unsupported, leading them to withdraw from the legal process entirely. Witnesses, too, share similar vulnerabilities, often facing threats or coercion that can compel them to retract their statements or remain silent¹¹.

Such fears create a vicious cycle that undermines the very foundation of justice. When victims and witnesses withdraw, the chances of successful prosecutions diminish, allowing offenders to operate with impunity. This scenario not only erodes public trust in the justice system but also sends a message that crimes can be committed without consequence, perpetuating a culture of fear and silence.

Recognizing these pressing challenges, the Indian government has initiated a series of reforms aimed at strengthening the protection and rights of victims and witnesses. The Criminal Law (Amendment) Act of 2013, spurred by the infamous Nirbhaya case, marked a watershed moment in this regard. This legislation included provisions for enhanced penalties for sexual offenses, but it also laid the groundwork for broader reforms concerning victim rights, including the establishment of special courts to expedite trials for crimes against women¹².

Following this, the Criminal Procedure (Amendment) Act of 2020 further emphasized the need for victim and witness protection. This law introduced provisions for legal aid, protection orders, and compensation mechanisms, aimed at creating a more supportive environment for victims and witnesses. By recognizing their rights and dignity, these reforms seek to empower individuals, encouraging them to come forward and participate in the legal process without fear¹³.

In addition to legislative changes, the establishment of the National Policy for Victim Rights in 2015 marked a significant step towards recognizing the need for a holistic approach to victim support. This policy emphasizes the importance of safeguarding victims' rights throughout the legal process, ensuring that they receive adequate support, information, and legal assistance¹⁴. As India continues to evolve its criminal laws, the focus on victim and witness protection remains paramount. This historical shift towards a more inclusive and supportive justice system reflects a growing acknowledgment that the rights and dignity of victims and witnesses are essential to the efficacy and integrity of the legal process. Ultimately, enhancing victim and

¹¹ P. Gupta, The Role of Technology in Legal Reforms: A Focus on Victims, Tech and Law Review (2023).

¹² T. Sharma, Challenges in Integrating Technology for Victim Protection, Indian Journal of Human Rights (2023).

¹³ R. Jain, Case Studies in Victim Support: Technology and the Criminal Justice System, Journal of Legal Innovations (2023).

¹⁴ L. Verma, Future Directions for Victim and Witness Protection in India, Indian Law Review (2024).

witness protection not only strengthens individual cases but also fortifies the overall health of the justice system, fostering a culture where justice is accessible and equitable for all.

Legislative Framework for Victim and Witness Protection

The introduction of pivotal laws such as the Criminal Law (Amendment) Act, 2013, and the Criminal Procedure (Amendment) Act, 2020, has significantly advanced the legislative framework for victim and witness protection in India. These laws aim to ensure that victims and witnesses are treated with dignity and respect, reflecting a commitment to their rights and safety¹⁵.

- **Key Provisions in New Criminal Laws:**
- **Legal Aid and Support Services:** These laws establish mechanisms to provide essential legal assistance to victims and witnesses, ensuring they have access to guidance and support throughout the legal process.
- **Protection Orders:** Courts are empowered to issue protection orders, which safeguard individuals from intimidation and threats, thereby encouraging them to participate in legal proceedings without fear of retaliation.
- **Compensation Mechanisms:** Frameworks for financial support are instituted to assist victims of crime, acknowledging their suffering and the need for rehabilitation.

In addition to these legislative measures, the National Policy for Victim Rights, introduced in 2015, reinforces the state's obligation to protect victims and witnesses. This policy advocates for a comprehensive approach to victim support, ensuring that their rights are upheld at every stage of the legal process. Together, these reforms reflect a significant shift towards a more victim-centric justice system, aimed at empowering individuals and enhancing their participation in legal proceedings. By prioritizing victim and witness protection, India is taking crucial steps towards building a more equitable and just society¹⁶.

Victim and Witness Protection under India's New Criminal Laws:

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, which replaces the Code of Criminal Procedure (CrPC), introduces new provisions for victim and witness protection to enhance the criminal justice system. The focus is on safeguarding individuals who testify in court and ensuring justice for victims through streamlined legal processes.

Witness Protection Measures:

Clause 398 of BNSS mandates that every state government must prepare and notify a Witness Protection Scheme to ensure the security of witnesses. This provision builds upon the Witness Protection Scheme, 2018, which was recognized as law by the Supreme Court in *Mahender Chawla v. Union of India* (2019)¹⁷ until states establish their own regulations .

Key elements of witness protection include:

¹⁵ K. Reddy, Legislative Framework for Victim Protection in India, *Indian Law Journal* (2022).

¹⁶ A. Mehta, National Policy for Victim Rights: An Overview, *Indian Journal of Legal Studies* (2015).

¹⁷ *Mahender Chawla v. Union of India*, (2019) 14 SCC 1.

- Anonymity and Relocation: Witnesses at risk can be relocated or have their identities concealed.
- Threat Assessment Reports: Law enforcement agencies must evaluate threats and recommend appropriate protection levels.
- Physical Security and Financial Support: Depending on the risk, witnesses may receive security cover and financial assistance.

Additionally, Section 151 and 152 of the Indian Evidence Act (IEA)¹⁸ protect witnesses from scandalous or insulting cross-examination, while Section 327 of BNSS¹⁹ mandates in-camera trials for sensitive cases, such as rape, to protect victim and witness identities

Victim Protection Measures

The BNSS introduces measures to improve the protection of victims, ensuring their rights and safety during legal proceedings. Key features include:

- **Timely Investigation and Trial:**

BNSS aims to complete **investigations within 6 months** for serious offenses and **trials within a year**, reducing delays that often burden victims.

- **Use of Forensic Evidence:**

The law mandates forensic investigations for offenses punishable by **seven years or more**, enhancing the credibility of evidence and reducing wrongful acquittals.

- **Audio-Video Recording of Statements:**

Victim statements must be **audio-video recorded**, preventing coercion or tampering with testimonies.

- **Victim Compensation Schemes:**

States must establish compensation funds to support victims, particularly in cases of gender-based violence.

Challenges and Implementation Concerns:

While BNSS has strengthened the legal framework for witness and victim protection, concerns remain regarding:

- State-Level Execution: Since Clause 398 is only an enabling provision, its effectiveness depends on state governments drafting and enforcing robust protection schemes.
- Resource Constraints: Implementation requires financial and infrastructural support, including specialized police units for witness security
- Potential Misuse: Broader police powers could lead to misuse, raising concerns about human rights violations.

The new criminal laws represent a significant step forward in victim and witness protection, integrating modern forensic methods, technology, and structured legal processes. However, their success depends on state-level execution, judicial oversight, and adequate resources to ensure real-world impact.

¹⁸ Indian Evidence Act, 1872, Sections 151 and 152.

¹⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 327.

The Role of Technology in Enhancing Protection:

Technology has emerged as a vital tool in enhancing the protection of victims and witnesses within India's criminal justice system. One of the most significant advancements in this domain is the development of digital infrastructure that facilitates reporting and access to support services.

Online Reporting Systems

Many states in India have implemented online platforms that enable victims to report crimes anonymously. These systems play a crucial role in reducing the psychological barriers often associated with reporting offenses. Traditional reporting methods can be intimidating, particularly for victims who fear stigma or retaliation. By allowing victims to report incidents confidentially, these platforms foster a safer environment where individuals can seek help without the anxiety of exposure. This anonymity not only encourages more victims to come forward but also helps law enforcement gather crucial data on crime trends, facilitating better resource allocation and response strategies.

Mobile Applications

Mobile applications specifically designed for victim support represent another innovative leap forward. These apps provide users with vital information about their legal rights, access to services, and emergency contacts. By equipping victims with tools that enable them to understand their rights and navigate the complexities of the legal system, these applications empower individuals to take control of their situations. Features such as location tracking, emergency alerts, and direct communication with law enforcement offer victims discreet yet effective ways to seek help in critical moments.

Surveillance and Monitoring Technologies

Advancements in surveillance technology have become essential in enhancing the security of victims and witnesses, contributing to a more robust framework for their protection. Key innovations in this area include the widespread use of CCTV cameras and facial recognition systems, both of which serve to deter crime and provide critical evidence²⁰.

CCTV Surveillance

The installation of CCTV cameras in public places serves multiple purposes. First and foremost, it acts as a deterrent against potential criminal activity; the knowledge that they are being monitored can dissuade offenders from committing crimes. For victims and witnesses, the presence of surveillance cameras fosters a greater sense of safety, knowing their surroundings are under observation. Moreover, in the event of a crime, CCTV footage can be pivotal in legal proceedings, offering irrefutable evidence that can substantiate claims and aid law enforcement in identifying perpetrators²¹.

Wearable Technology

²⁰ P. Gupta, *The Role of Technology in Legal Reforms: A Focus on Victims*, Tech and Law Review (2023).

²¹ V. Rao, *Emerging Technologies for Crime Deterrence and Victim Support*, Journal of Safety Studies (2024).

Wearable devices equipped with GPS and emergency alert features are revolutionizing personal safety for victims. These devices allow individuals to send real-time alerts to authorities or trusted contacts if they feel threatened. The ability to immediately signal for help can be life-saving, encouraging victims to act promptly rather than hesitating out of fear. This technology not only empowers individuals but also integrates seamlessly into broader safety networks, enhancing overall community security.

Data Management and Analysis

Effectively managing and analyzing crime-related data is crucial for developing targeted protection strategies.

Big Data Analytics

Law enforcement agencies can leverage big data analytics to identify crime patterns and assess risks to victims and witnesses. By aggregating and analyzing data from multiple sources—such as crime reports, social media, and geographic information systems—authorities can pinpoint high-risk areas and allocate resources more efficiently, ensuring timely interventions where they are most needed²².

Information Sharing Systems

Integrated information-sharing platforms among law enforcement agencies, NGOs, and support services further enhance the coordination of victim assistance. Such systems facilitate streamlined processes, ensuring that victims receive timely and appropriate help when they need it most. By breaking down silos and fostering collaboration, these technologies create a more responsive and interconnected support network for victims and witnesses, ultimately contributing to a safer society.

Cybersecurity Measures

As technology increasingly integrates into victim and witness protection strategies, ensuring data privacy and security becomes paramount. The sensitive information related to victims and witnesses, if not adequately protected, can be subject to breaches and misuse, potentially causing further harm to those already in vulnerable positions. Therefore, implementing effective cybersecurity measures is essential.

Secure Data Storage

One of the foremost priorities in protecting victim information is the establishment of secure data storage practices. This includes employing robust encryption protocols to safeguard sensitive data both in transit and at rest. Encryption ensures that even if unauthorized individuals gain access to the data, they cannot decipher it without the appropriate keys. Additionally, secure storage solutions must adhere to strict access controls, allowing only authorized

²² R. Jain, Case Studies in Victim Support: Technology and the Criminal Justice System, Journal of Legal Innovations (2023).

personnel to access sensitive information. This minimizes the risk of data leaks and reinforces the confidentiality of victims' identities and personal details²³.

Furthermore, regular audits and vulnerability assessments should be conducted to identify and address potential security weaknesses within the systems. By adopting a proactive approach to cybersecurity, organizations can better safeguard victim and witness information from evolving cyber threats.

Training Law Enforcement in Cybersecurity

In parallel with technological safeguards, it is crucial to provide comprehensive training for law enforcement personnel on cybersecurity practices. Many law enforcement agencies have traditionally focused on physical security measures, often overlooking the digital realm. Training programs can equip officers with the knowledge and skills necessary to identify cyber threats, understand data protection laws, and implement best practices for safeguarding digital information²⁴.

By enhancing the cybersecurity literacy of law enforcement, agencies can better protect the sensitive information they handle, ensuring that victims and witnesses are supported without compromising their safety. This also builds trust within communities, as individuals will feel more secure knowing that their information is managed by well-trained professionals²⁵.

Case Studies: Successful Implementation of Technology

The 'Nirbhaya Fund': Established in 2013, the Nirbhaya Fund has played a pivotal role in deploying various technological solutions aimed at enhancing women's safety. This initiative funds projects such as emergency response systems and surveillance technologies. By leveraging technology, the Nirbhaya Fund has significantly contributed to victim protection and awareness, empowering women to report incidents more readily and access support services swiftly²⁶.

The 'Women Safety App

Various state governments have launched mobile applications dedicated to women's safety, providing features like location tracking, emergency contacts, and direct communication with law enforcement. These apps empower women to seek help quickly and discreetly, offering an additional layer of security. The widespread adoption of such applications highlights the effectiveness of technology in improving the safety of women, enabling them to feel more secure in their daily lives²⁷.

E-Courts Project

The E-Courts project aims to digitize the judicial process, making it more accessible and efficient. By allowing victims and witnesses to participate in hearings via video conferencing,

²³ K. Reddy, Legislative Framework for Victim Protection in India, *Indian Law Journal* (2022).

²⁴ A. Mehta, National Policy for Victim Rights: An Overview, *Indian Journal of Legal Studies* (2015).

²⁵ P. Kumar, Cybersecurity in Law Enforcement: Best Practices and Challenges, *Indian Cyber Law Review* (2023).

²⁶ A. Mehta, The Nirbhaya Fund: Enhancing Women's Safety in India, *Indian Women Studies Journal* (2015).

²⁷ S. Gupta, Women Safety Apps: A New Era of Protection, *Journal of Cyber Law and Technology* (2023).

the project reduces the necessity for physical presence, thereby mitigating intimidation and ensuring their safety. This digital approach not only facilitates easier access to justice but also enhances the overall efficiency of the legal system, ensuring that cases proceed without unnecessary delays²⁸.

Challenges in Implementing Technology

While the integration of technology into victim and witness protection offers numerous benefits, several significant challenges hinder its effective implementation in India. Addressing these issues is essential to maximizing the potential of technological advancements.

Digital Divide

One of the most pressing challenges is the digital divide, which refers to the unequal access to technology across different socio-economic groups. In India, marginalized communities often lack the resources, infrastructure, or skills to utilize technological solutions effectively. This disparity can limit their ability to report crimes, access support services, or benefit from protective measures. Without targeted efforts to bridge this gap, many individuals will remain vulnerable and unable to leverage the safety that technology can provide²⁹.

Privacy Concerns

The use of technology in victim and witness protection raises significant privacy concerns. Many victims may hesitate to engage with digital platforms for fear that their personal information could be exposed or misused. This apprehension is particularly pronounced among those who have experienced trauma, as the risk of re-victimization can deter them from seeking help. To address this concern, it is crucial to implement strong data protection measures and foster trust in the systems being established³⁰.

Resistance to Change: Implementing new technologies within traditional law enforcement and judicial systems often encounters resistance from personnel accustomed to conventional methods. This resistance can stem from a lack of familiarity with digital tools, fear of job displacement, or simple inertia. Change management strategies, including training programs and workshops, are essential to facilitate the adoption of technology and encourage a cultural shift within these institutions.

Cyber Threats

As reliance on technology increases, so too does the risk of cyber threats. The potential for data breaches, hacking, and other cybercrimes poses a significant risk to the integrity of victim and witness information. Ensuring the security of digital platforms is critical to maintaining trust in these systems. Robust cybersecurity protocols, regular audits, and continuous monitoring are necessary to safeguard sensitive data.

²⁸ R. Jain, The E-Courts Project: Bridging Justice and Technology, *Journal of Legal Innovations* (2022).

²⁹ V. Reddy, Bridging the Digital Divide in India, *Indian Journal of Human Rights* (2023).

³⁰ T. Sharma, Privacy Concerns in Digital Victim Support, *Cyber Law Review* (2023).

Future Prospects

Despite these challenges, there are promising avenues for enhancing victim and witness protection through technology.

Strengthening Digital Infrastructure: Investing in digital infrastructure, particularly in rural and underserved areas, is crucial for ensuring equitable access to technology. This includes expanding internet connectivity and providing the necessary devices to marginalized communities. Additionally, initiatives aimed at promoting digital literacy will empower more individuals to utilize technological solutions effectively.

Integration of AI and Machine Learning

The integration of artificial intelligence (AI) and machine learning can significantly enhance the efficiency and effectiveness of protection strategies. Predictive analytics could identify potential threats based on data patterns, allowing for pre-emptive actions to protect vulnerable individuals. Such technologies can also improve the responsiveness of law enforcement by streamlining processes and enhancing resource allocation.

Collaboration with NGOs and Tech Companies: Collaborating with non-governmental organizations (NGOs) and technology companies can lead to innovative solutions for victim and witness protection. These partnerships can leverage diverse resources, expertise, and community outreach to develop tailored interventions that meet the specific needs of different populations³¹.

Policy Reforms and Ethical Guidelines: Establishing clear policies and ethical guidelines governing the use of technology in victim and witness protection is essential. These frameworks should prioritize the rights and privacy of individuals while promoting safety. Transparency in data handling, consent mechanisms, and accountability measures can help foster trust among victims and encourage their engagement with technological solutions³².

Conclusion

The integration of technology into victim and witness protection under India's new criminal laws presents a transformative opportunity to enhance justice delivery. Despite existing challenges such as the digital divide, privacy concerns, and resistance within traditional systems, the potential benefits of technological advancements are substantial. By proactively addressing these issues—ensuring equitable access to technology, enhancing data protection measures, and fostering trust among users—India can develop a more robust and inclusive system that empowers victims and witnesses.

Furthermore, the successful implementation of technology can lead to more efficient processes within law enforcement and the judiciary, ultimately contributing to a stronger rule of law. As India continues to refine its legal framework, a concerted effort to embrace technology will be

³¹ L. Verma, NGO Partnerships in Victim Support: A Collaborative Approach, *Journal of Legal Studies* (2023).

³² A. Sharma, Ethical Guidelines for Technology in Victim Protection, *Indian Journal of Legal Ethics* (2023).

crucial. This integration not only aims to protect the rights of victims and witnesses but also to uphold their dignity and respect throughout the justice process.

Looking ahead, collaboration between government entities, NGOs, and tech companies will be essential to innovate and adapt solutions tailored to the unique challenges faced by victims and witnesses. By fostering an environment that values safety, privacy, and accessibility, India can set a precedent for effective victim and witness protection, ensuring that those who seek justice are supported and safeguarded in their journey. Ultimately, the intersection of technology and law holds the potential to redefine the landscape of victim and witness protection in India, promoting a more equitable and just society for all.



Victim Rights and Support System Under the New Criminal Laws

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Abstract

The revision of India's criminal laws marks a significant effort to adapt to the evolving social dynamics and developmental progress of modern society. Key amendments and stricter provisions have been introduced to address current societal challenges, with a focus on protecting vulnerable groups. However, a closer review reveals that certain areas remain overlooked, particularly the need for gender-neutrality within these legal protections. Although the Indian Constitution guarantees equality and equal protection for all, it has also historically provided special safeguards for women, children, and the elderly, justified at the time by the social vulnerabilities of these groups. This paper examines how these protections, while essential, are sometimes misused, particularly in cases involving false accusations in marital disputes and allegations of rape and harassment. Such misuse raises questions about whether certain legal provisions should now be made gender-neutral to better reflect the changing social landscape. Through an analysis of recent legal reforms, the study explores whether the current framework adequately balances the rights of genuine victims with safeguards against misuse. This balance is essential for a fair and equitable legal system that protects all victims—regardless of gender—while upholding justice and integrity within the law.

Keywords: *gender equality, gender neutrality, legal reform, false accusations, victim protection, constitution etc.*

Introduction

The outdated criminal laws in India were revised to line up with the rapid development and changing social dynamics of modern-day society. Stricter provisions and significant amendments have been introduced to address the crucial challenges of the present day. However, a closer examination reveals that certain critical areas remain untouched, particularly with regard to ensuring gender neutrality in legal provisions.

The Indian Constitution guarantees "equality before the law" and "equal protection of the law" to all citizens³. It also allows for reasonable classifications, offering special protections for women, children, and the elderly. These provisions were justified at the time of drafting, as these groups were historically vulnerable and victims of widespread societal injustices.

While this approach made sense in the past, society has evolved considerably since then. Decades of progress and development have shifted societal dynamics, and in some cases, the tables have turned. Today, there is growing concern over the rise of victims in cases of false

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³ Article 14 The Constitution of India, 1950.

accusations, particularly in marital disputes, such as claims of cruelty, as well as allegations of rape and sexual harassment.

Although these laws were originally designed to protect vulnerable individuals, the misuse of these protections for personal gain has emerged as a troubling trend. As society advances, it is crucial to address these changing challenges and ensure that legal provisions strike a fair balance—protecting the genuinely vulnerable while preventing the abuse of the law. At the same time, it's important to recognize that genuine cases of cruelty, harassment, and sexual violence still exist, and many go underreported due to fear, stigma, or reprisal.

The goal is to analyze the recent changes in criminal laws related to the rights of victims, especially in cases of cruelty, rape, and sexual harassment, without any gender bias. The focus is on how these legal reforms are meant to protect victims while also ensuring fairness and justice for everyone involved, regardless of gender. It will also examine whether the current legal system effectively balances the rights of victims with measures to prevent misuse, considering the changing dynamics of society and the growing concerns about false accusations and the need for gender-neutral justice.

Comparative Analysis of Legal Framework

Rape

Section 375 of the Indian Penal Code (IPC) defines rape⁴, focusing primarily on the absence of consent. It lays down circumstances under which sexual intercourse is classified as rape, such as when it occurs without a woman's consent, through force, threats, or deceit. It also categorizes any sexual activity with a girl under 18 as statutory rape. A controversial aspect of this provision is the marital exception, which excludes non-consensual sex between a husband and wife—if the wife is over 15 years of age—from being considered rape. This exception has faced significant criticism for failing to recognize marital rape and perpetuating gender inequality within marriage.

Section 63 of the Bharatiya Nyaya Sanhita (BNS)⁵, introduced as a modern replacement for the IPC, also deals with rape but brings several progressive reforms. Like Section 375, it defines rape as non-consensual sexual intercourse but provides a more precise definition of consent, emphasizing that it must be informed, voluntary, and explicit. One of the most significant changes is the removal of the marital rape exception, making non-consensual sex within marriage a punishable offense, irrespective of the wife's age. This change marks a progressive shift toward recognizing women's autonomy and addressing marital rape, aligning Indian law more closely with international human rights standards.

Despite these progressive elements, both provisions remain gender-biased. Section 375 of the IPC and Section 63 of the BNS focus exclusively on female victims and male perpetrators, reinforcing the traditional view of rape as a crime committed by men against women. This

⁴ Section 375 Indian Penal Code (IPC), 1860.

⁵ Section 63 Bharatiya Nyaya Sanhita (BNS), 2023.

approach overlooks the fact that men and individuals of other genders can also be victims of sexual violence, and that women can be perpetrators. By not addressing these possibilities, the legal framework remains limited in its scope, failing to adopt a truly gender-neutral perspective. This bias raises concerns about whether the law is fully equipped to protect all victims of sexual violence.

While both sections aim to protect victims of rape, Section 63 introduces several key improvements over Section 375. Its broader definition of consent ensures greater legal clarity, and the removal of the marital rape exception reflects a more inclusive and just approach. However, the continued gender bias in both provisions indicates that more reforms are necessary to achieve a legal framework that offers protection to all individuals, regardless of gender.

In conclusion, Section 63 of the BNS represents a step forward by removing outdated exceptions and providing a clearer definition of consent, but both laws still suffer from a gendered approach to rape. Addressing this gender bias is essential for ensuring that the law truly delivers justice in a manner that is fair and equitable for all.

Cruelty

Section 498a⁶ of the was introduced to address the increasing incidents of cruelty against married women by their husbands or in-laws. The provision specifically targets cruelty in the form of physical or mental harassment, particularly when it is done to coerce the woman or her family to meet unlawful demands for dowry. This section is non-bailable and non-compoundable, meaning that the accused cannot get bail easily, and the case cannot be withdrawn or settled out of court. Section 498A was designed as a protective measure for women, offering legal recourse for cases of domestic abuse and dowry-related harassment.

Section 85⁷ of the Bharatiya Nyaya Sanhita (BNS), which seeks to replace the IPC, also deals with cruelty in marriage but makes some significant changes. Like Section 498A, Section 85 addresses cruelty committed by the husband or relatives of the husband, including physical and mental abuse. However, Section 85 attempts to rectify some of the criticisms surrounding the misuse of Section 498A. Over the years, Section 498A has been criticized for being misused by some parties to make false allegations, often as a tool to get support in marital disputes. Section 85 aims to strike a balance by introducing provisions that protect genuine victims of cruelty while also incorporating safeguards to prevent its misuse.

One of the key differences between Section 498A and Section 85 is the approach to handling complaints. Section 498A is non-bailable and non-compoundable, leading to immediate arrest upon filing of a complaint, which has led to concerns about harassment of the accused, including elderly family members. Section 85 of the BNS introduces procedural safeguards, such as pre-arrest inquiries and mediation options, which aim to prevent frivolous or false cases from

⁶ Section 498-A Indian Penal Code (IPC),1860.

⁷ Section 85 Bharatiya Nyaya Sanhita (BNS),2023.

leading to unnecessary arrests. This change reflects a more balanced approach, ensuring that victims of cruelty are protected while also safeguarding the rights of the accused.

Another important distinction between the two sections is their broader societal impact. Section 498A has long been viewed as a provision that, while necessary, often tilts in favor of the woman without sufficient checks to prevent misuse. Critics argue that it creates a presumption of guilt against the accused, making it vulnerable to false accusations. In response, Section 85 of the BNS incorporates specific guidelines to differentiate between genuine cases of cruelty and false allegations, aiming to ensure that justice is served for both the victim and the accused.

However, like its former, Section 85 remains gender-biased in its scope. Both provisions focus solely on women as victims and men as perpetrators, failing to recognize that men or individuals in same-sex relationships can also face cruelty in domestic settings. This gender bias limits the broader applicability of the law and does not reflect the diversity of modern relationships and family structures.

In conclusion, while Section 498A of the IPC was a pioneering law designed to protect women from domestic cruelty, its misuse and broad application led to the need for reforms. Section 85 of the Bharatiya Nyaya Sanhita addresses these concerns by introducing procedural safeguards and promoting a more balanced legal approach. However, both provisions remain gender-biased, emphasizing the need for further reforms to ensure that the law protects all victims of domestic cruelty, regardless of gender.

Recent Trends of Reporting

In recent years, data on crime trends provided by the National Crime Records Bureau (NCRB) has been essential in understanding shifts in criminal patterns and the judicial response in India. However, the NCRB website is currently under maintenance, with no new data available beyond the last report from 2022.

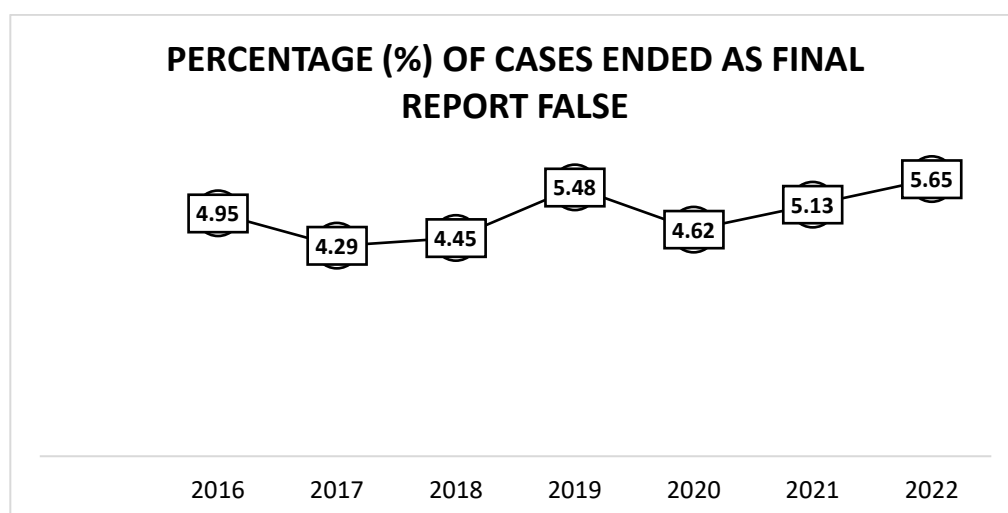
The following table provides a year-wise breakdown of data from 2016 to 2022, as recorded by the National Crime Records Bureau (NCRB). This data highlights total number of investigation reported, number of cases ended as a false report as well as the percentage of false reported cases. In the face of an ever-increasing crime rate, it's vital that we make sure that the rise in the statistics is only due to an increase in the number of crimes committed rather than a misuse of the legal system.⁸

Number of cases ended as final report False as per NCRB Data

<i>Year</i>	<i>Total Cases for Investigation</i>	<i>No. of Cases Ended as Final Report False</i>	<i>Percentage (%) of Cases Ended as Final Report False</i>
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⁸ Carrel, P. M., & Masters, W.H. 'Sexual molestation of men by women', [2007] Archives of Sexual Behavior, Vol. 11(2), 117.

2016	497482	24620	4.95
2017	529917	22716	4.29
2018	554936	24716	4.45
2019	591155	32497	5.48
2020	573049	26449	4.62
2021	631052	32345	5.13
2022	650033	36715	5.65



The rise in reported cases, viewed in a positive light, suggests a societal shift where people are now more open about their experiences, choosing to seek justice rather than staying silent due to fear of social stigma or shame. This increase reflects growing awareness and courage among individuals to address issues that were once hidden behind closed doors.

However, recent data also reveals a rise in false reports, adding complexity to the justice system's response. During the COVID-19 pandemic, when lockdowns kept people indoors, cases of domestic disputes, violence, and related offenses saw an increase, leading to a surge in investigations. This period exposed household vulnerabilities and highlighted an increase in contentious or disputed claims. These trends illustrate both the positive movement towards transparency and justice-seeking, as well as the challenges posed by potential misuse of the reporting system.

Sub analysis Under Different Heads

In addition to the previous table displaying annual data from 2016 to 2022, the following table categorizes reported offenses by type, percentage including the total number of cases reported alongside the number of cases identified as false.

<i>Crime Head</i>	<i>Total Case for Investigation</i>	<i>Cases ended as Final Report False as per NCRB Report 2022</i>	<i>Percentage</i>
Cruelty by Husband or his relatives	195393	7076	3.62
Rape	44785	4340	9.69
Attempt to commit rape	4990	760	15.23
Assault on Women with intent to Outrage her Modesty	115091	6821	5.93
Insult to the Modest of Women	14124	449	3.17
Dowry Prohibition Act	22714	356	1.57
Domestic Violence Act	870	11	1.26
Total Crime against Women	650033	36715	5.65

This data shows that although false reports don't make up a large portion of cases, they are still present and have been slowly increasing over time. Even though false reports aren't the majority, their steady rise highlights the importance of carefully handling these cases to prevent misuse of legal protections and ensure fairness in the justice system.

Victims of False Accusations

Victims of false accusations experience a serious kind of injustice. Laws meant to protect the vulnerable can sometimes be misused for personal reasons or revenge, causing real harm to those falsely accused. The effects of these accusations go beyond simple inconvenience, often damaging the person's reputation, finances, and mental well-being. Although there are safeguards in place for real victims, misuse of certain legal protections has become a concern in India, especially in specific sections of the law mentioned in the above table but most notably under Section 498A of the Indian Penal Code (IPC)/Section 85 of the Bharatiya Nyaya Sanhita (BNS) addressing domestic cruelty, as well as Section 375 IPC/Section 63 BNS pertaining to sexual offenses.

Section 498-A IPC and Section 85 BNS: Misuse and Judicial Observations

Section 498A of the IPC, now reflected in Section 85 of the BNS, was initially introduced to protect married women from cruelty by their husbands or in-laws, a commendable effort to curb harassment and abuse. However, various court cases and reports from the National Crime Records Bureau (NCRB) have indicated misuse of this provision. In recent cases, individuals have used Section 498A to harass or retaliate against their spouses, leading to a growing judicial concern about false accusations. Data suggests that while many cases under Section 498A are genuine, a considerable number are filed with ulterior motives.

The Supreme Court has frequently highlighted the challenges posed by misuse of this section. With friction rising in marriages, there is “increased tendency to employ provisions such as 498A IPC”, which was “aimed at preventing cruelty committed upon a woman by her husband and her in-laws by facilitating rapid state intervention..., as instruments to settle personal scores against the husband and his relatives”, Supreme Court⁹. Furthermore, in the case of *Sushil Kumar Sharma v. Union of India*¹⁰, the Court remarked that many complaints under Section 498A are filed not out of genuine grievance but as a way to pursue personal vengeance. The Court acknowledged the misuse of Section 498A in another landmark case, *Preeti Gupta v. State of Jharkhand*¹¹, where it observed the need for the Legislature to reassess this provision in light of its misuse. Similarly, in a recent decision, the Supreme Court imposed a fine of Rs. 5 lakh on the father of a complainant who had filed false cases across different jurisdictions to harass the husband, demonstrating the courts' growing frustration with these instances of malicious litigation.¹²

False Accusations in Rape Cases: NCRB Data And Legal Implications

The misuse of legal provisions is not limited to domestic disputes. Section 375 of the IPC, dealing with rape, now reflected in Section 63 of the BNS, is a critical law for protecting the rights and dignity of sexual offense victims. Unfortunately, it too has seen instances of alleged false accusations. According to NCRB data, less than 10% of rape cases under investigation were ultimately found to be false¹³. Although this is a small percentage, the consequences for those falsely accused are severe, as accusations of such nature carry intense social stigma and can lead to prolonged mental and financial suffering, even when proven unfounded.

The Supreme Court has acknowledged that while the protection of genuine victims is of paramount importance, there is also a need to safeguard against the misuse of laws intended to prevent heinous crimes. This delicate balance between protecting true victims and preventing

⁹ <https://indianexpress.com/article/india/sec-498a-being-used-to-settle-personal-scores-against-husband-his-kin-sc-7763471/> visited on 22-10-2024

¹⁰ 2005 6 SCC 281

¹¹ AIR 2010 SC 3363

¹² <https://www.livelaw.in/supreme-court/s-498a-ipc-supreme-court-imposes-rs-5-lakh-cost-on-wifes-father-for-filing-false-cases-at-different-places-to-harass-husband-255624> visited on 15-10-2024

¹³ <https://www.thenewsminute.com/news/what-data-false-rape-cases-doesnt-tell-us-163631> visited on 18-10-2024

the victimization of the falsely accused underscores the need for legislative re-evaluation and judicial vigilance.

Support System in India

Victim (noun)- a person or animal that is injured, killed or hurt by somebody/something. In legal terms, the word *victim* is a gender-neutral term, referring to any individual—whether male, female, or otherwise—who has been harmed, injured, or killed by an act of violence, negligence, or accident. Despite this neutral definition, India's legal system and support structures have largely differentiated the types of protections and resources available to male and female victims, especially when it comes to addressing violence, harassment, and abuse. While it is acknowledged that women have historically been more vulnerable to certain crimes, leading to dedicated support systems, male victims and their specific challenges are less frequently addressed in India's support network.

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No.20 of 1990 of Govt.of India) to review the Constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting women.¹⁴ The NCW operates several specialized cells to address the diverse issues women face in India. The NRI Cell focuses on complaints and marital disputes involving Non-Resident Indians, providing legal and procedural assistance to women who often face significant challenges due to the complexities of international marriage and legal jurisdictions. The Policy Monitoring and Research Cell is tasked with examining the socio-economic conditions impacting women across the country. This cell not only monitors existing policies but also conducts research to suggest improvements, ensuring that the evolving needs of women are consistently reflected in socio-economic initiatives.

The North East Cell addresses the specific issues faced by women from India's North Eastern states, who often encounter unique challenges due to geographical, cultural, and economic factors that may not be fully understood or represented in mainstream policymaking. This cell works to amplify their voices and advocate for resources tailored to these needs. Furthermore, The Women Safety Cell is responsible for keeping track of acid attack cases, a severe crime in India that mostly affects women. This cell works with policymakers to create Victim Compensation Schemes, which offer financial and medical support to help survivors recover and rebuild their lives. Through these specialized cells, the NCW addresses a wide range of issues, providing focused support and help to women from different backgrounds and with different needs.

Additionally, each state in India has a *Crime Against Women (CAW) Cell* or *Mahila Aayog* (Women's Commission) that addresses women's grievances and enforces legal protections. Numerous government-funded women-centric NGOs and helplines also operate nationwide,

¹⁴ <http://ncw.nic.in/commission/about-us/brief-history#:~:text=The%20National%20Commission%20for%20Women,20%20of%201990%20of%20Govt> visited on 24-09-2024.

providing safe, reliable resources for women facing abuse, harassment, or exploitation. This comprehensive network allows for immediate and impactful assistance to female victims, offering legal support, counseling, and, in some cases, financial aid through schemes like the Nirbhaya Fund, aimed at enhancing women's safety in both urban and rural areas.

In contrast, support systems for male victims in India are not much and is largely underdeveloped. Despite the existence of private NGOs and helplines dedicated to men's issues, there is no equivalent to the NCW or a dedicated government body that addresses the challenges men may face as victims, whether of false accusations or abuse. This lack of a structured, government-backed support system for men has led to limited resources for redressal and support. As cases of alleged false accusations in domestic violence and harassment claims rise, particularly involving accusations of cruelty or dowry demands under laws like Section 498A of the IPC, the absence of a formal support network for men has become a growing concern.

Also, women victims have access to support systems like women's cells, fair compensation, and often have their legal expenses covered if needed. Courts also consider the mental, physical, and emotional impact on women, which helps provide them with better support. However, male victims don't receive the same help. Even when men are found innocent, they get very little compensation, and there is hardly any support for the social stigma they face. Male victims go through similar emotional and financial struggles but have far fewer resources available to help them recover and move forward.

Furthermore, the lack of a structured support network means that male victims have limited access to legal assistance, counselling, or victim compensation, making it challenging for them to pursue justice effectively. Thus, while India has made significant progress in creating a support system for female victims, there remains an imbalance that fails to recognize the needs of male victims adequately.

Conclusion

In conclusion, this research paper examined the reasons behind the introduction of new criminal laws in India, specifically the Bharatiya Nyaya Sanhita (BNS), with a focus on Section 63 of BNS (formerly Section 375 IPC, dealing with rape) and Section 85 of BNS (formerly Section 498A IPC, addressing domestic cruelty). The main objective was to determine whether certain laws, initially crafted to protect vulnerable groups, should now be made gender-neutral due to instances of misuse over time.

A close analysis of NCRB data showed that while false accusation cases are not the majority, they still make up a significant percentage of reported cases. What's more, the rate of these false accusations has been growing in recent years. Courts have acknowledged this issue in several cases, noting how some legal protections are being misused, yet changes to address this problem are still minimal. The newly updated criminal laws, while a step forward, still lack comprehensive support and recognition for all victims, with most protections and resources focusing primarily on female victims.

While the grave nature of these offenses means that genuine cases of assault, cruelty, and abuse must absolutely be taken seriously, it is equally important to consider the other side of the issue. Fair and balanced treatment for all victims, regardless of gender, is essential for a justice system that supports every individual affected by crime. Recognizing this need for gender-neutral support will help in building a more just and equitable legal framework for everyone.



The Bedrock of Criminal Trial: Exploration of “Arrest” Under the Bhartiya Nagarik Suraksha Sanhita, 2023

Ms. Sumedha Saxena¹

Abstract

The main function of the court is to render justice by resolving any legal or factual issue, which arises between two parties. In criminal cases, justice finds its way when offender gets punished for his crime beyond reasonable doubt through finding the truth with the help of relevant evidences. The police, the investigating agencies, the court play a pivotal role in administering justice but the road map of finding the truth through evidences and rendering justice is so long. So, the entire process can be divided into three major stages: pre-trial, trial and post-trial stage. Unnecessary delay in pre-trial procedure leads to delay in trial and hence in justice too. In criminal justice system it is also said that- “Justice Delayed is Justice Denied”. The provisions relating to arrest of persons are part and parcel of pre-trial procedures. In this article it will be endeavoured to analyse the new existing provisions related to arrest under Bhartiya Nagarik Suraksha Sanhita, 2023 along with mentioning ratio decidendi of few landmark judgements of honourable supreme court of India which have set a lot to change in arrest procedure outlook keeping in view the changing needs of the society and its comparison with the Code of Criminal Procedure, 1973, the previous procedural law.

Keywords: *Pre-trial procedure, arrest, justice, relevant evidences, investigating agencies*

Introduction

Article 21 of the Indian Constitution declares:

“No person shall be deprived of his life and personal liberty except according to the procedure established by law”²

Here, the phrase ‘procedure established by law’ provides an exception to this right meaning thereby that the law of the land prescribes the circumstances and procedure under which the personal liberty of the person can be curtailed through arrest and detention. Arrest can be made when crime is committed and for this, there is however a special state agency which helps in detecting and preventing the crime. Therefore, each state has its police force for this purpose. According to sec.23 of the Police Act, 1861, police officers have an obligation to stop crimes from being committed, find and prosecute criminals and apprehend anyone whom they have the legal authority and sufficient grounds to do so³. Moreover, failure to fulfil this obligation carries a penalty under sec. 29 of the same Act⁴.

Arrests are made by police to begin most of the criminal prosecutions, obtain control of individuals regarded as dangerous and to address issues that arise in the community. Since the act of making an arrest is so fundamental to our conception of law enforcement, the sheer

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² INDIA CONST. art. 21.

³ The Police Act, 1861, §23.

⁴ The Police Act, 1861, §29.

number of arrests that police officers make is frequently used to gauge their effectiveness. The fundamental tenet of criminal justice policy is that arrests are necessary for law enforcement. Personal liberty is the inherent right of every individual as well as fundamental right, as has been prescribed by our Indian Constitution under part III of it. But this personal liberty can be curbed through government coercion by public servants when it becomes necessary to achieve the public aims and makes the practice of such arrest legitimate.

So, to set the criminal law in motion and to keep a civil tongue for maintaining a civilized society, arrest plays a pivotal role. There are three stages of a criminal proceedings in India namely pre-trial stage, trial stage and post-trial stage. Further, crime is the very essence of these three stages of criminal law which may be cognizable or non-cognizable. Commission of the crime leads to registration of the first information report by the police or complaint to a magistrate. Then arrest, anticipatory bail, investigation by the police etc. come into play before magistrate who takes cognizance of the matter at the trial stage. Arrest ensures the presence of the accused at the time of the trial. The term arrest evinces the time during which an accused person is deprived of his liberty including detention in police lockups to the accomplishment of criminal trial including the time of appeal.

The Diminish Origin

The concept of arrest is not new in India. Ancient Hindu legal system has the oldest pedigree of any known system of jurisprudence. As, at that time no separate department used to exist for arresting the accused as in the present time. Arrest used to be the judicial process of a court wherein an accused was taken into the custody. An inference can be drawn from the incident of Lord Krishna's birth as he was born in prison. It means at that time there used to be arrest and existence of prison too. At that time there were no settled rules regarding arrest and the grounds of arrest were alien to the legal system. In Medieval period arrest used to be for wrong doers, for slaves and for specific class of people depriving their freedom without any uniform settled rules.

Moreover, in the modern world, the scientific and industrial revolutions along with the renaissance and reformation gave the impoverished and oppressed a newfound awareness of their rights. As a result, there was a revolution in political frameworks as well as in societies and ideas. Liberty prevailed over illegal and arbitrary arrest and detention after the two world wars and was protected by the U.N. Charter and various international covenants and saved the future generations from the scourge of war and the dignity of the human being was recognised then. However, the one whose liberty used to curtail through arrest began to pursue proceedings of the court. So, different provisions as to the arrest was made in various countries as per the rule of law prevailing in such countries. In India, arrest provisions are dealt with in Chapter V of *Bhartiya Nagarik Suraksha Sanhita, 2023* from section 35-62.

Jurisprudence of Arrest

Arrests are the quintessential police actions. At first glance, it seems unbelievable that any police officer has the *de facto* authority to stigmatize someone for rest of his life. An arrest is basically nothing more than the police officer's judgement, whether correct or incorrect, that

there was a reasonable suspicion that a specific individual had committed a specific crime at that specific moment. Depending on the circumstances such as personal grudge or the arrestee's race, religion, caste, politics or organizational affiliation, the officer may have been acting dishonestly or entirely incorrect. Because of this, the law demands that there should be a judge's determination of probable cause before an arrest can be made without a warrant. But the judge's finding of probable cause only proves that there is a reason to suspect that the suspect committed a crime. It would appear to be an egregious violation of the presumption of innocence to infer guilt from a brief and *ex parte* determination of probable cause as the Indian criminal law follows this cardinal principle of "presumption of innocence" and the basis of the criminal law lies in the same. Hence, this right to remain innocent shields a person from detrimental government actions until after a verdict or plea of guilty. As the intention of the state is not to punish but to prevent the offender from becoming fugitive, the pre-trial detention in jail is 'regulatory' and not 'punitive'.

Furthermore, Indian criminal law is based on the reformatory theory of punishment and follows "hate the sin, not the sinner". So, the provisions of arrest somehow protect and help the criminal justice system as these provisions do not result in convictions. They are mere deterrent in nature and paves way towards justice following the cardinal principles of criminal law and the principles of natural justice. Moreover, the arrest ensures the presence of the accused at the time of trial. So, it can be considered that the provisions of arrest gain its authenticity as a foundation of criminal trial through the fundamental principle of law that states that "an accused person is presumed innocent until proven guilty." However, there should be a link between Art.21 of Indian Constitution and the presumption of innocence which must be followed by the law enforcement agencies.

Meaning of Arrest

There is no universal definition of an arrest, and there is no common nomenclature for the various police practices that initiate the criminal process and deprive people of their liberty. However, a functional definition of arrest can be regarded as, 'when a person is seized and confined by a valid and lawful authority' may be considered as arrested. According to the study of United Nations, arrest is:

*"The act of taking a person into custody under the authority of law or by compulsion of another kind and includes that period from the moment he is placed under restraint up to the time he is brought before an authority competent to order his continuous custody or to release him."*⁵

The term arrest has neither been defined in any substantive criminal law nor was defined in the code of criminal procedure, 1973. Even it has also not been defined in the present Bhartiya Nagarik Suraksha Sanhita, 2023. However, in simple terms it can be stated as taking custody of the body of a person under legal authority resulting in deprivation of his liberty. The word arrest

⁵ B. P. Srivastava, *Right Against Arbitrary Arrest and Detention Under Article 9 of the Covenant as Recognized and Protected Under the Indian Law*, 11 IND. LAW REV. 29-56 (1969).

has been originated from the French word 'arret' which means 'to stop or stay'⁶. The purpose of the arrest is two-fold, firstly, to ensure the presence of the accused before the magistrates during the trial proceedings and secondly, to prevent any person from committing a cognizable offence or to apprehend habitual offender or an ex-convict or a person under suspicious circumstances or as precautionary measure. The police can also arrest a person who has committed a non-cognizable offence in order to obtain his correct credentials.

Types of Arrest

The previous Code of Criminal Procedure, 1973 contemplated and now, in present the existing Bhartiya Nagarik Suraksha Sanhita, 2023 contemplates two types of arrest:

- Arrest with warrant
- Arrest without warrant

If a person commits a non-cognizable and bailable offence then a warrant of arrest is a prerequisite condition to accomplish the arrest of such person. However, if a person commits a cognizable offence then an arrest may be made without obtaining an arrest warrant from the magistrate to prevent such person from immediately absconding from the crime scene. It would be inane to insist on obtaining a warrant of arrest in such situations. It is mandatory for the police officer to record the reasons in writing in his case diary for arresting or not arresting the accused as was held in *Joginder Kumar v. State of Uttar Pradesh*⁷. The aforesaid reasons are subject to judicial scrutiny and where it seems the arrest is unjust, the court may grant bail to the accused.

Changes in Arrest Procedure Under Bhartiya Nagarik Suraksha Sanhita, 2023

An important development in India's legal system is Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred as BNSS) which addresses the multifaceted nature of arrest procedures with greater focus on protecting individual rights while upholding public order. The BNSS which has been enacted to update redundant and antiquated clauses and brings it into compliance with the modern legal and human rights norms, provides detailed guidelines for arrests made by the police, private citizens, and magistrates. This new law guarantees transparency, accountability and the preservation of the civil liberties by outlining the duties and procedures that must be followed during an arrest.

The BNSS aims to strike a balance between the need for the law enforcement and the fundamental rights of the citizens of our nation by requiring an accurate identification of arresting officers, the creation of thorough arrest memorandums and the right to legal representation. The new arrest provisions under the BNSS, 2023 which replaced the previous Code of Criminal Procedure, 1973 are being compared here as follows:

- Firstly, if the arresting officer wants to arrest the infirm or aged persons for a crime carrying a sentence of less than 3 years, he cannot do the same unless he gets the prior assent of an officer not lower than the rank of the DSP as per sec.35(7) of BNSS.

⁶ Muneeb Rashid Malik, *The Dynamics of Arrest*, GREATER KASHMIR (July 20, 2024), <https://www.greaterkashmir.com/opinion/the-dynamics-of-arrest/>.

⁷ *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 SCC 260 (India).

- Along with the attested arrest memo by a family member as a witness, the person who used to be arrested had a right to choose a friend or relative to whom the arresting officer could inform about his arrest under the old Code of Criminal Procedure, 1973 under sec.50-A. However, under sec.48 of BNSS, the person who will be arrested, may now designate “any person” (not just a friend or family member) to be notified about his arrest. So, the scope of this section has been widened now.
- Thirdly, according to the sec. 41-C of the CrPC, the State Government was mandated to set up control rooms for information of arrestees at the district and state levels. However, under sec.37 of BNSS, in addition to these control rooms, the State Government must assign a police officer to each district and police station under the BNSS in order to keep the track of the arrestees and the offences they have committed. Every district headquarters and police stations must have this information prominently displayed, including digitally.
- Fourthly, under sec.43 of CrPC, when an arrest was made by a private person of any proclaimed offender or any such person who used to commit any cognizable or non-bailable offence, then after such arrest, the private person was required to handover the arrested person to the police without ‘unnecessary delay’. No time was prescribed as to which such arrestee should be handed over to the police. However, as per sec.40 of BNSS, the private person must hand over the arrested person to the police within 6 hours of arrest.
- Fifthly, BNSS gives the discretionary power of using the handcuffs to the police while arresting or producing a person before court if he is a habitual offender or as a repeat offender has escaped from custody or has committed certain specified grave offences e.g. (murder, rape, terrorist acts, organised crimes, drug related crimes etc.). This list of specified offences is exhaustive in nature.
- Sixthly, Section 53 and Section 53A of CrPC, respective section 51 and 52 of BNSS respective have widened their scope by enabling “any police officer” in place of the phrase “police officer not below the rank of the sub-inspector”. Now any police officer can seek the medical examination of an accused. It is also now mandatory for the medical practitioner to immediately forward the examination report to the investigating officer, which was not explicitly stated in the CrPC.
- Seventhly, Section 54 of CrPC respective to Section 53 of BNSS, one more proviso has been added which provides for an additional examination of a female arrestee, meaning thereby, if a female arrestee considers it necessary to do so then the registered medical practitioner has the discretionary power to do the same.
- Eighthly, Section 57 of CrPC respective Section 58 of BNSS now provides that the accused shall not be detained in custody for more than 24 hours and shall be produced before any magistrate irrespective of the appropriate jurisdiction.

Analysis of the Changes in Arrest Procedure under BNSS

Firstly, in sec. 48 of BNSS, the obligation of a police to inform regarding the arrest of accused to his friends, relatives or any such person nominated by him, has been replaced by the phrase “any other person mentioned by him”. There is a difference in words “nomination” and “mention”. The word “mention” shows restriction in volition of the arrestee while the word “nomination” lays emphasis on his choice. The word ‘mention’ may cover a wide range of

persons regardless of arrestee's choice or interest in having such persons informed. Thus, BNSS now weakens the scope of this safeguard by restricting accused's choice.

Secondly, section 43(3) BNSS gives discretionary power to police as to 'handcuffing' in case of certain mentioned offences in the clause but the introduction of this statutory power curtails the well settled constitutional right which has been mentioned under art. 21, provides person's right to live with dignity. It has been also held by the Apex court in case of *Prem Shankar Shukla v. Delhi Administration*⁸ that to bind the arrestees and prisoners with handcuffs or some other iron fetters is prima facie unconstitutional because of its being arbitrary and also it affects human dignity. Further, the Supreme Court has set some principles in case of *Sunil Batra v. Delhi Administration*⁹ for handcuffing which should be followed in arrest cases, which are as follows:

- Prisoner should have a credible tendency of violence.
- If handcuffing is being used then it should be used only for a short spell of time.
- The grounds on which such fetters are being used should be communicated to victim and arrestee both and also be recorded in a journal.
- There should be a quasi-judicial oversight on use of such fetters and if it needs extension then permission from the judicial magistrate should be a pre requisite condition.

In both these cases, the Supreme Court held that mere risk of escape should not be the only reason for handcuffing. Further, the new sub-clause emphasises that handcuffing may be made keeping in mind 'the nature and gravity of the offense'. This phrase is vague and hence unclear in its implication because it does not clarify whether it alludes towards the 'kind of offence' or the 'manner of commission of the offence'.

Further, the new provision relating to handcuffing may be misused to harm the dignity of the offenders accused of committing offences within the heads of 'offence against state', 'acts endangering the sovereignty, unity and integrity of India' and 'economic offences.' This simply runs counter to the adversarial system of trial wherein the accused remains 'innocent' until proven guilty. Thirdly, section 51 and 52 of BNSS has widened the scope by enabling "any police officer" in place of "police officer not below the rank of sub-inspector". This restriction of rank of police officer has now been removed and has made the procedure a bit downhill. While on the other hand, widening the scope of 'any police officer' may create risk of collection of samples improperly by those junior officers who have less skills or are only trainees and hence removes the safeguard present in CrPC which requires police officer who is qualified to be a rank of sub inspector and with it shall also affect accused's right of fair trial.

Conclusion

In summation, the provisions relating to arrest in BNSS are almost identical to provisions relating to arrest in CrPC. Some new provisions have widened the scope of arrest while some have narrowed its scope. The insertion of new clause relating to handcuffing in certain enlisted offences in arrest procedure is a welcoming step. However, the same provision may be

⁸ *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526 (India).

⁹ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 494 (India).

politically misused to downgrade the political opponents in cases of economic offences, offences against state and acts endangering the sovereignty, unity and integrity of India. The inclusion of the term 'any police officer' in place of 'police officer not below the rank of the sub-inspector' in section 51 and 52 of the BNSS has eased the procedure relating to the medical examination of the accused, however the same may also add fuel to the fire of already existing numerous cases of police atrocities across the country.

So, the legislature should strive to provide safeguards in respect of these new provisions because the law should be made for proper functioning of society and societal interest must be supreme. On the other hand, the rights of the accused should also be safeguarded by the legislature and the cardinal principle of criminal trial, that is, presumption of innocence of the accused until proven guilty' should be upheld in all respect.



Community Service as a Restorative Justice Tool: Its Applicability with Special Reference to the offence of Theft

Ms. Sudiksha Kejriwal¹

Abstract

It is apparent that the criminal justice system has to keep going on its path of steadfast reformation in light of evolving conditions. The traditional punitive measures such as imprisonment or fines, often fail to address the underlying causes of offences or foster rehabilitation for offenders. The recent adoption of community service sentencing as a form of punishment under the Bharatiya Nyaya Sanhita, 2023 has offered a reformative approach that emphasizes accountability, reparation, and reintegration into society. This paper examines the principles of restorative justice and how community service aligns with its objectives by encouraging offenders to actively contribute to the well-being of victims and the community at large. The adoption of Community Service reflects a growing recognition of the importance of social responsibility, civic participation, and active citizenship. Through an analysis of legal frameworks, case studies, and comparative practices from other countries, the paper advocates for the systematic implementation of community service as an alternative to incarceration for minor offences and lay down specific guidelines with regard to offence of theft. Community sentencing in India is still a relatively unexplored area, despite there being an abundant amount of literature discussing alternatives to custodial sentencing. This paper delves into the role of community service, examining its wider social, cultural, and developmental dimensions as well.

Keywords: Community Service, reformation, petty offence, theft, restorative justice.

“Punishment is not for revenge, but to lessen crime and reform the criminal.”

.... Elizabeth Fry

Introduction

The foundation of all criminal jurisprudence is the idea that an offence must be specified; an incident that is committed by an individual but is not classified as such on the day it occurs is not interpreted as such. An offender must be punished for whatever offence they do, and this is where the notion of punishment enters the picture. From the very beginning, the objective of punishment has been a contentious topic. Some scholars contended that it serves as a deterrent to criminals, while others contend that it serves as a reformative tool. Following the midway through, the Indian criminal justice system embraced both the approach. The Indian Penal Code (IPC), 1860 was the principal law on criminal offences in India for a very long period. Offences covered include those affecting: (i) human body such as assault, hurt and murder, (ii) property such as extortion and theft, (iii) public order such as unlawful assembly and rioting, (iv) public health, safety, decency, morality, and religion, (iv) defamation, and (v) offences against the state and etc.

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The IPC has undergone numerous amendments over the years to add new offences, modify the existing ones as per the changing needs of the society. Previously, *necessitas non habet legem*, a legal maxim found in the Indian Penal Code, had limited application and was only applicable in cases of necessity where it was necessary to prevent greater harm. However, the legislature expanded the scope of this maxim in the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as BNS, 2023) and it now applies to petty offences as well, for which community service is the punishment. This does not absolve the offender of criminal responsibility, but it ensures that no harm is done to them. Though it does not exonerate the offender from criminal liability but it ensures that no harm is caused to the offender.

Over time, the idea of punishment has changed from being solely retributive to being more reformative and rehabilitative. Among these, community service provides a constructive response to crime while promoting the welfare of society. By involving offenders in productive work that helps the community, community service serves as a reformative penalty that emphasizes rehabilitation. Offenders can make a real contribution to society through community service, it is particularly effective for non-violent and petty offences. Offenders learn responsibility and the importance of making a constructive contribution to society by taking part in projects like cleaning public areas, helping out at community centers, or contributing in social welfare initiatives.

Community service reduces the risk of reoffending by fostering empathy, skill development, and a sense of belonging. It also adheres to the ideals of restorative justice, which promote restoration and reconciliation over harsh punishments. Imprisonment often results in overcrowded prisons and stigmatization of offenders. By providing offenders an opportunity to engage in constructive work for the betterment of society, community service ensures accountability while fostering personal growth and social reintegration. It reflects a progressive understanding of crime and punishment, where offenders are seen as individuals capable of change, deserving of a second chance. This paradigm shift not only benefits the offenders but also reduces the burden on the penal system, promoting a justice model that is humane, restorative, and forward-looking. A progressive change in the legal framework of BNS, 2023 is reflected by introducing community service as a reformative punishment, it is one of the various kinds of punishment suggested by the BNS, 2023. It emphasizes the idea that possibilities for rehabilitation as well as punishment can be used to combat crime, leading to a society that is more secure and compassionate in the years to come.

Origin and Development

When a crime is committed, it is not only committed against an individual alone, but it affects the entire society at large. Section 53 of IPC enlists five types of punishments which may be imposed upon a convicted person - death, life imprisonment, simple or rigorous imprisonment, forfeiture of property and/or fine. While there is ample punitive severity in these forms of punishment, with the evolution of correctional approaches and brimming prisons, it has become

imperative to explore the utility of community service as an alternative to imprisonment in suitable cases.²

The Law Commission Report also examined Clause 27 of the Indian Penal Code (Amendment) Bill, 1978, which sought to define the parameters of community service, and the proposed amendment of Section 53 of the Indian Penal Code to include community service as one of the permitted forms of punishment.³ Eventually, it refused to support the implementation of community service as a criminal punishment, suggesting instead that the open-air prison system was a better correctional solution. It was in the Committee on Reforms of Criminal Justice System (Malimath Committee) chaired by Dr. Justice V.S. Malimath which endorsed the use of community service as an alternative to custodial punishment in the Indian justice system.⁴

Further, in 2012, the Supreme Court in *State Tr. P.S. Lodhi Colony New Delhi v. Sanjeev Nanda*⁵ directed the convict to do community service for two years, arranged by the Ministry of Social Justice and Empowerment, along with a compensation of Rs. 50 lakhs. It observed that: “Community Service for Avoiding Jail Sentence - Convicts in various countries, now, voluntarily come forward to serve the community, especially in crimes relating to motor vehicles. Graver the crime greater the sentence. But, serving the society actually is not a punishment in the real sense where the convicts pay back to the community which he owes.

Conduct of the convicts will not only be appreciated by the community, it will also give a lot of solace to him, especially in a case where because of one’s action and inaction, human lives have been lost.”⁶ This judgment shows that the use of community service in the criminal justice system is not a novelty in India. The Juvenile Justice Act, 2015 empowers the Juvenile Justice Board to order a child to perform community service under the supervision of an organization/institution/specified person(s) identified by the Board.⁷

In 2024, the Law Commission Report No. 285 acknowledged this addition to the new penal law and observed that by giving an alternate punishment of community service for the offence of defamation, the law now safeguards the interest of the victim as well as mitigates the scope of any misuse.⁸

The BNS, 2023, has for the first time introduced ‘Community Service’ as an alternate to imprisonment. This welcome step marks a significant shift in the sphere of penology under the

² Prison Reforms in India, Members Reference Service, Lok Sabha Secretariat, (July 2017).

³ Law Commission of India, *156th Report on The Indian Penal Code*, (1997)

⁴ *Committee on Reforms of Criminal Justice System*, MHA, Government of India, (March 2003)
<https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf> accessed on 25 April 2024.

⁵ *State Tr. P.S. Lodhi Colony New Delhi v. Sanjeev Nanda*, 2012 INSC 320.

⁶ *Report on Prisons in India*, Centre for Research and Planning, Supreme Court of India (October 2024), available at <https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/uploads/2024/11/2024110677.pdf>, accessed on 10th October, 2024

⁷ The Juvenile Justice (Care and Prevention of Children) Act, 2015, s. 18(1)(c)

⁸ Law Commission of India, “*The Law on Criminal Defamation*” (Law Com no 285) p. 7.6, 2024.

Indian criminal justice system. Punishments seek to serve various objectives, some of which are retribution, justice, deterrence, reformation etc.⁹ Modern sentencing policies reflect a combination of these objectives, striving to balance the need for accountability with the goal of rehabilitation.

Meaning of Community Service

*“Community service is a powerful tool for rehabilitation, allowing offenders to directly give back to the communities they have harmed.”*¹⁰

The word community service in itself is open for interpretation of different meaning, the term is made up of two different words. Community and service, community should not be understood in its strict sociological sense rather we may refer it as a group of individuals who are together because of any reason such as workplace, school etc. Service has a broader meaning because it is coupled with responsibility and failure to fulfill the responsibility must result in some sort of sanction. This raises the question of whether it is appropriate to punish someone for not performing the sanction in accordance with the norms, if any and if so, what kind of sanction should be applied. All of these factors need to be considered before community service is awarded as a form of discipline.

Community Sentencing is viewed as a novel kind of punishment and as a measure of the reformatory idea of punishment. The idea behind it is ‘restoring it back’. In the Indian context, it is crucial to not only reduce overcrowding but also to instil in the criminal a sense of responsibility to the community and society. According to a number of criteria that establish its applicability from the community’s perspective, it is a pillar of the justice delivery system. It makes an effort to include the sense of service, which over time fosters empathy for those who have committed minor offences and offers them a chance at reformation by avoiding imprisonment.

According to the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as BNSS), community service is defined as “work which the court may order a convict to perform as a form of punishment that benefits the community, for which he shall not be entitled to any remuneration.”¹¹ Usually, community service is reserved for first-time offenders, non-violent offences, and minor offences. This guarantees that the penalty is appropriate for the offence.

Based on the specifics of the case, the offender’s history, and the nature of the offence, judges have the authority to impose community service. Community Service tasks may include public cleaning drives to clean parks, streets or roads, volunteering at local NGOs, maintenance of

⁹ Shakil, Fauzia ‘Community Service’ Under The BNS – An Incomplete Yet Promising Penological Advancement, Live Law (2024), available at <https://www.livelaw.in/articles/community-service-under-bhartiya-nyaya-sanhita-262322>, accessed on 10th May, 2024.

¹⁰ Judge Jane Doe, “The Role of Community Service in Criminal Justice Reform,” *Journal of Criminal Law and Criminology* (1976), 213.

¹¹ Bharatiya Nagarik Suraksha Sanhita (Act No. 46 of 2023), s.23 (Explanation).

public property, environmental conservation activities such as participating in tree plantation drives or cleaning rivers and lakes.

“Everyone can be great, because everyone can serve.”

Martin Luther King, Jr.

Community service provides a more compassionate and progressive approach to justice, recognizing each person’s capacity for positive transformation and prioritizing rehabilitation over retaliation. We can endeavor to create a more equitable and inclusive society where offenders are given the chance to atone for their crimes and make constructive contributions to their communities by integrating community service into the Indian judicial system. With an efficient monitoring mechanism and defined rules in place, community service performed by the convict has a strong potency to deter the potential offenders while being a part of society and atone for the crime committed by making up to the community he offended.

In the BNS, 2023, there is no specific definition provided for the term community service may be because the legislature does not want to fit in a straight jacket rather keeps it open for various definitions as per the need of the hour. Community service is a non-custodial restorative justice strategy that aims to reintegrate convicts into society. The magistrate has the discretion to decide the type of community service the accused individual is required to undertake. Since the BNS does not define what community service will entail and how it will be administered. The Standing Committee on Home Affairs (2023) recommended defining the term and nature of ‘community service’.¹² It states that Community Service represents a form of unpaid work that offenders might be obligated to undertake as an alternative to incarceration. The Committee, therefore, recommends that the term and nature of ‘community service’ should be specified and suitably defined.¹³

The BNS has introduced community service for six specific offences, including:

- Non-appearance in response to a proclamation under Section 84 BNSS (Section 209 BNS).
- Public servant unlawfully engaging in trade (Section 202 BNS).
- Attempt to commit suicide to compel or restrain exercise of lawful power (Section 226 BNS).
- Petty theft (involving property worth less than ₹5,000) by first-time offenders upon returning the stolen property (Proviso to Section 303 BNS).
- Misconduct in public by a drunken person (Section 355 BNS).
- Defamation (Section 356 BNS).

For these specified cases, magistrates can now impose non-custodial sentences under this reformatory approach. This innovative reform promotes rehabilitation and reintegration while simultaneously relieving the burden on the jail system by reducing congestion. Community

¹² Report No. 246, The Bharatiya Nyaya Sanhita, Standing Committee on Home Affairs, Rajya Sabha, November 10, 2023

¹³<https://indianexpress.com/article/india/six-month-jail-term-proposed-parliamentary-panel-selling-adulterated-food-9026409/>, accessed on 15th July, 2024

service encourages a sense of personal accountability and advances constructive social outcomes by giving people the chance to atone while retaining their independence. Several judgments can be cited where courts have directed the accused to perform community service as a condition for granting bail or as an alternative measure:

In *Parvez Jilani Shaikh v. State of Maharashtra* (2015)¹⁴ the Court directed the accused to render community service at B.A.R.C Hospital after parties sought to quash the criminal proceedings with the claim to have settled the matter amicably. Similarly in case of *Sunita Gandharv v. State of Madhya Pradesh* (2020)¹⁵ the court held that the accused was enlarged on bail in which condition of *community service* was incorporated to appear regularly at district hospital to work as an ambulance driver of emergency to address any emergent situation. The clause of *community service* in bail order has been voluntarily performed by the accused and he reformed himself by this condition and got an occupation also of driver of ambulance. There are various significant cases where while granting bail the petitioner had to perform *community service* as in Government Primary School situated nearest to residence of the petitioner.¹⁶

On June 03, 2019 the petitioner in *Salmanul Farish v. State of Kerela* (2019) was ordered to do community service in the District Headquarters Government Hospital for two hours every day for a period of one year. Some other judgements where court re-established the significance of community service sentencing in India to reform the criminal law justice system include *Francis Pasha Dias v. State of Maharastra & Anr.* (2014), *Selina Bibi & Others v. State of West Bengal* (2017), *Ashutosh Vir Dhaval Meher and Another v. Abdul Rahim Juned Ansari and Another* (2019), etc. This approach supports the BNS's commitment to restorative justice, which seeks to repair the harm caused by criminal acts and promote a society that is more inclusive and just.

International Adaptability

Community service is not applicable for serious offences, but it is a punishment for non-violent offenders and those with little to no criminal past. The primary component of community service, as the name implies, is that it contributes to community improvement. Since its introduction in England and Wales in 1972, community service orders have grown to be one of the most significant community sanctions in both European and non-European nations. In addition to replacing shorter imprisonment, community service is becoming important, especially for offenders who are unable to pay a fine. For reference we may take example of several countries which have already enforced community service as a punishment model.

Australia

In Australia, each state has its own criminal justice administration system and their own community service programmes and schemes popularly referred to as "Community Based

¹⁴ Writ Petition No. 4260 of 2015

¹⁵ 2020 SCC Online MP 2193

¹⁶ Dr. Neha Padam v. Central Bureau of Investigation (2022)

Corrections”.¹⁷ In some states, diversion programs allow minor offenders to avoid criminal records by participating in community service or educational programs. This is particularly effective for young and first-time offenders, giving them a second chance without the stigma of a conviction. In certain regions, indigenous offenders can participate in community service programs designed to connect them with their culture and community, promoting rehabilitation through cultural education and community engagement. According to data available on the website of the Australian Bureau of Statistics, there were at least 70,000 people serving community-based correction orders every year between 2018 and 2022.¹⁸

Georgia

Since 1999, community service as a form of punishment has been recognized by Georgian law. According to the Code, certain types of offences are exempt from community service as a punishment, including traffic violations, ordinance violations, non-violent, non-destructive, or non-injurious misdemeanors, non-violent felony offences, and any other offence the court deems appropriate. The establishment of community service as a punishment in Georgia was prompted by the need to humanize criminal laws because strictness in the law wasn't always the answer to the rise in negligent or minor offences. The historical significance of these different nations experiences with community service as a component of their legal systems allows us to better understand the opportunities for Indian implementation as well as the potential obstacles we may encounter.

Germany

In Germany, community service is often included in offender-victim mediation agreements. This approach encourages offenders to take responsibility for their actions and directly address the harm they caused, fostering empathy and accountability. Community work that is closely related to the offence is usually assigned under the German system; for example, vandalism offenders may be required to assist with community restoration initiatives. This gives criminals a firsthand look at the repercussions of their behaviour.

United Kingdom

Community orders are a well-established system in the UK that enables judges to customize sentences according to the requirements of the offender and the nature of the offence. If the required community service is not completed, there may be further sanctions, such as a prison sentence. The official name of the punishment is 'Community Payback Order'. Sections 15 to 19 provide the statute's description, procedure, and rules. First-time offenders, people with mental health conditions and those who show promise of reformation are awarded unpaid work of forty to three hundred hours depending on the gravity of the crime. This kind of punishment is given to first-time offenders who have been found guilty of less serious offences. One is required to perform unpaid labour that promotes community welfare and improvement as part

¹⁷Anand, U. "In a first, govt plans community service as punishment for petty crimes"

<https://www.hindustantimes.com/india-news/government-proposes-community-service-as-punishment-for-petty-offences-including-criminal-defamation-101691781367394.html>, accessed on 22nd August, 2024

¹⁸ *Ibid.*

of the punishment. When the courts impose community payback, it is usually for a set number of hours that must be completed in a specified period of time.

The Community Payback system as its name suggests, is a welfare measure for society and a reformative impulse for the offender. The system is set up to handle all concerns and issues that may arise during implementation. Community work assigned to them are categorized into 3 heads: Environmental projects, such as cleaning up wasteland; assisting local charities like providing food to the underprivileged, church services, NGO camp services, etc. maintaining public areas, such as clearing up graffiti and redecorating community centers. The extensive use of community payback is evidenced by taking a look at the statistical figures. In 2018, 83,022 orders were passed in the United Kingdom.¹⁹

United States

Some states in the U.S. use restorative justice approaches where offenders are required to engage with victims and community members to understand the impact of their actions. This can include apologies, restitution, and community service. The focus is on making amends and fostering rehabilitation. The main reason the US has been successful in integrating community service into its legal system is because it has clearly stated the conditions for doing so. Chapter 3 of the U.S.C The United States Courts²⁰, has provisions pertaining to community service (Probation and supervised release terms).

This includes the number of hours of community service that must be completed in a given number of months. The probation officer must get a documented confirmation of the hours worked. The defendant is required to work a job and perform 30 hours of community service each week. This gives the courts the authority to mandate that the defendant perform community service in a manner determined by the court.

Spain- With the introduction of the 1955 Criminal Code, work for the benefit of the community (WBCO) became a part of Spanish law. It is used as a substitute for imprisonment, as a deterrent to non-payment of fines, and as an independent punishment. Offenders must complete unpaid labor for public service projects as part of the community service (WBCO) requirement.

Article 49 of Spain's Criminal Code, 1955 stipulates that an offender may serve in the community service for a maximum of eight hours, performing specific public service tasks that may be related to the offence they committed. Regarding the requirement of community service, the Spanish system appears to be lenient because it adheres to a 'principle of flexibility' that directs how the punishment is applied. This means that the offender is supposed to fulfill the order within their free time. Additionally, because it is connected to significant constitutional issues, it requires the offender's consent for the order.

¹⁹ Government of United Kingdom, Community Payback, available at <https://www.gov.uk/community-sentences>

²⁰ *Overview of Probation and Supervised Release Conditions* (2024) available at <https://www.uscourts.gov/about-federal-courts/probation-and-pretrial-services/post-conviction-supervision/overview-probation-and-supervised-release-conditions/chapter-3-community-service-probation-and-supervised-release>, accessed on 12th July 2024

The criterion is considered essential for both practical execution and the efficacy of rehabilitation because it is linked to the 1978 constitution's ban on forced labour and inhuman treatment. Although some critics also believe that consent complicates the process and undermines the legitimacy of the penalty, the criteria is still the same. The Criminal Code states that WBCOs must prevent these orders from turning into "shaming penalties" and that they should always protect the offender's personal dignity.

Norway- Norway emphasizes rehabilitation over punishment. Community sentences often include mandatory participation in educational courses, vocational training, or therapy sessions. The community service programs are integrated with social services to ensure that offenders receive the support they need to reintegrate into society successfully.

Community Service and Offence of Theft

The concept of community punishment involves performing unpaid work during one's free time within a designated timeframe, aimed at benefiting the community. The core philosophy of community service is punishment by re-socialization. An attempt has been made to bring about restorative justice by emphasizing personal accountability," a home ministry officer said. In BNS community service has been provided as a form for the punishment under section 303(2) which reads as:

Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and in case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine:

Provided that in cases of theft where the value of the stolen property is less than five thousand rupees, and a person is convicted for the first time, shall upon return of the value of property or restoration of the stolen property, shall be punished with community service.²¹

In order to receive community service as a form of punishment, a person convicted as thief must fulfil three conditions:

1. Person is convicted for the first time,
2. the value of the stolen property is less than ₹5,000, and
3. person either restores the stolen property or returns the value of the stolen property.

An instance for example is- A teenager steals a bicycle worth ₹4,500 from a public parking area. It is his first offence, and if he returns the bicycle to the owner after being apprehended. Under Section 303(2) BNS, 2023, the court could impose community service as a punishment instead of imprisonment or a fine.

The imposition of community service as a punishment has limited application in theft cases.²² For example, offences pertaining to theft, such as theft in a dwelling house,²³ and the offence of

²¹ Bharatiya Nyaya Sanhita (Act No 45 of 2023), s. 303(2).

²² Ibid

²³ Id, s.305.

snatching²⁴, reflects a comparable concern. In these cases, the value of the stolen goods is not material because the threat and societal impact associated with thefts is greater. The question, therefore, arises regarding the challenges of imposing community service as a punishment for such offences. A significant issue also lies in cases where the value of the stolen property cannot be determined.

Challenges in Determining the Value of Goods

There are no established guidelines for determining the value of stolen goods, leaving judges without a clear framework for making such assessments. Several challenges may arise during the valuation process, including:

1. In cases of dispute over the property what value should be taken, purchase value or sale value:
 - **Theft of Jewelry**- A silver anklet is stolen, which was purchased at valuation of ₹4,500 but currently valued at ₹6,000. The question arises as to which value should be considered under Section 303(2) of BNS, 2023.
2. There are several goods which have a depreciating value:
 - **Dispute Over the Value of a Smartphone/vehicle**- A smartphone purchased for ₹7,000 is stolen but has a current resale value of ₹4,500 due to depreciation. The judge needs to decide whether to consider the original price or the current value to determine eligibility for community service.
3. It is not possible to bring every good in the court room:
 - **Goods Not Brought to Court** - A stolen item, such as a heavy tool or a bunch of wires, cannot practically be presented in court. The judge may face challenges in ascertaining its value without physical evidence.
4. In case of different versions of value what should be the interpretation whether it should be in favor of accused or against it:
 - **Dispute Over Construction Material** - Scrap materials stolen from a construction site are valued at ₹5,800 by the owner but are claimed to be worth ₹3,500 by the accused. The court will be in dilemma as how to interpret the conflicting valuations and determine eligibility for community service.
5. How to determine value of articles which are not insured:
 - **Theft of Uninsured Bicycle** - Since the item is uninsured, there is no official record of its value, leading to uncertainty about whether the offender qualifies for community service.
6. Whether help of any expert can be obtained in the process of determining value:
 - **Determining Value of Used Household Items**- A ceramic bowl set worth ₹5,500 when purchased is stolen. The court faces difficulty in calculating its current value without a reliable method or expert opinion.
7. If the ornaments are referred as yellow metals or white metals what is the proper course to decide the nature:
 - **Seizure of White metals by Police**- In a police report, it was submitted that 100g of white metal (i.e. silver) is seized from accused which is valued at ₹9500, if accused

²⁴ Id, s. 304.

denies the fact and claims it is German silver or any other material, what measures will court take to determine its nature and value.

Conclusion and Suggestions

The introduction of community service as a form of punishment by BNS, 2023 fits in well with the Indian legal system since it upholds the reformatory punishment idea, which the nation has made a priority to adopt. It is an alternate method that offers a genuine and efficient punishment, which changes the offender in the process and contributes to societal improvement. It is a less expensive alternative to imprisonment, reducing the burden on overcrowded prison systems. Furthermore, it enables offenders to maintain their employment, relationships, and other aspects of their lives, reducing the negative impact of incarceration on their families and communities.²⁵ With the incorporation of community service, the BNS, 2023 moves away from the traditional punitive approach toward a more restorative model of justice.

This innovative step aims to address the root causes of crime, particularly in non-violent and petty offences while reducing the social and economic burden of imprisonment. Additionally, it helps mitigate the stigma of imprisonment, enabling offenders to reintegrate more seamlessly into the community. This development aligns with global trends in criminal justice, where restorative practices have proven effective in reducing recidivism and promoting social cohesion. By offering an alternative to prison, it underscores the importance of reformatory justice in building a fair and inclusive system that prioritizes both societal well-being and individual rehabilitation. Further, simply fining them might not be enough to prevent them and others from committing the same crime again.

To a certain extent, the present punitive methods have not succeeded in achieving the goals of deterrence and rehabilitation, as evidenced by the growing number of criminal offences and overcrowded jails. In this context, the implementation of community service reflects the government's efforts to pick up the mantle of legal reformation. However, there is a lot of uncertainty because the laws in the BNS are silent on the appropriate way to sentence community service. These include the uncertainty and uneven implementation in the BNS due to its vague definition and description of community service. To address this, specific guidelines and parameters should be developed to define the types of community service, duration, eligibility requirements, and oversight mechanisms.

Clear directives are required to avoid arbitrary or biased application of community service and to ensure that offenders are held accountable transparently and equitably.²⁶ The limited applicability of community service under Section 303(2) also raises questions about its practical

²⁵ Roy, A. "Community Service Sentencing and its significance in the Indian Criminal Justice System", *Live Law*, (2024) Available at: <https://www.livelaw.in/articles/community-service-sentencing-and-its-significance-in-the-indian-criminal-justice-system-248589>, accessed on 11 July 2024.

²⁶ "Overview of Criminal Law Reforms", PRS Legislative Research (2023) available at: <https://prsindia.org/billtrack/prs-products/overview-of-criminal-law-reforms-1701930782>, accessed on 24 June 2024.

implementation and broader effectiveness. Additionally, challenges in determining the value of stolen goods introduce ambiguity and potential inconsistencies in the sentencing process. Issues such as disputes over valuation, depreciation of goods, and lack of guidelines for judges further complicate the application of community service as a punishment.

Therefore, in addition to legislative changes, there is a need for increased societal acceptance and support for community sentencing. To enhance the efficacy and fairness of community service as a punishment under BNS, measures like establishing clear guidelines for valuation, developing standardized protocols for determining the value of stolen goods are recommended. These guidelines should address issues such as depreciation, disputes over valuation, market fluctuation, etc.

A dedicated valuation body or panel within the judiciary could be set up to handle disputes over the value of stolen property, ensuring transparency and accuracy in the process. In addition, courts might seek the assistance of valuation experts, particularly in cases where the value of goods is contentious or requires specialized knowledge. The scope of community service should be extended to other theft-related offences for instance, community service could be applied in cases of theft in dwelling houses or snatching, provided the offender meets additional criteria, such as lack of prior criminal history and restitution to victims. Furthermore, monitoring mechanisms should be established to evaluate the impact and effectiveness of community service as a punishment. Regular assessments can help identify gaps and improve the system over time and by addressing these challenges and implementing these suggestions, community service can achieve its intended objectives of reform, rehabilitation, and justice.



The Role of Community Service as a Punitive Measure in the Modern Criminal Law Reforms

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Abstract

The increasing prominence of community service as a penal measure reflects a paradigm shift in criminal justice towards the rehabilitation over punitive confinement. This evolution stems from growing recognition of the limitation inherent in traditional punishments, particularly incarceration for non-violent offenders. Community service is an opportunity for convicts to make a constructive contribution to the society instead of going to jail, assisting their rehabilitation and reintegration. This study examines the legal basis, theoretical reasoning, and implementation of community service in the new criminal laws in terms of the merits and demerits of community service as a sentencing measure, considering its potential impact on recidivism rates, overcrowding in prisons, and fiscal and social costs of imprisonment. It explores case studies from places such as the United States, Australia, and the United Kingdom to dig deeper into the actual practice of charity work in different kinds of legal settings. The impacts of community service on offenders are comprehensively reviewed, including the potential that it fosters social reintegration and personal responsibility. It concludes that community service is a progressive strategy towards making the administration of justice efficient and compassionate despite the many hurdles characterized by the process. It offers an integrated approach that speaks to the core tenets of restorative justice: accountability, rehabilitation, and the betterment of society.

Keywords: Community service, Criminal law reforms, Alternative sentencing, Restorative justice, Rehabilitation

Introduction

Punishment philosophies reflect societal values, morality, and ethics. In India, punishment concepts have evolved over time, influenced by a variety of variables including religion, culture, social standards, and political beliefs. This paper explores the evolution of punishment concepts in India from ancient times to the present day, analysing different techniques to punishing offenders.

Ancient Punishment Philosophies

In ancient India, punishment was viewed as a form of vengeance and deterrent. The fundamental goal of punishment was to dissuade people from committing crimes and to deliver justice to the victims of those crimes. Ancient India's punishment philosophy was heavily impacted by the caste system, which separated society into four divisions based on occupation and birth. The Brahmins (priests) dominated the social order, followed by the Kshatriyas (warriors), Vaishyas (merchants), and Shudras (labourers).

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Dharma values, such as duty, fairness, and righteousness, served as the foundation for the ancient Indian legal system. Punishment was seen as a way to protect these beliefs and keep social order. Crime punishments vary according to the seriousness of the offense and the offender's social status.

According to Arthshastras

The Arthashastra is an ancient Indian literature that largely discusses statecraft, economics, and political philosophy. It was composed by Kautilya, also known as Chanakya, a political advisor to the Mauryan Empire during the fourth century BCE. While the work examines different facets of administration, it also delves into the philosophy of punishment prevalent in ancient India.

The Arthashastra discusses many punishment ideas, including

- **Danda:** Danda is the use of physical punishment, such as lashing or beating, to prevent people from committing crimes. According to the Arthashastra, this punishment system was appropriate for dealing with minor crimes and misdemeanours.
- **Fine:** The imposition of a monetary punishment for a crime. Fine amounts were often determined by the seriousness of the offense.
- **Banishment:** Banishment, often known as banishment, was used to punish more serious offenses such as treason or revolt. The perpetrator was compelled to leave the kingdom or country and was not allowed to return.
- **Execution:** This was reserved for the most terrible offenses, such as murder, rape, or high treason. The Arthashastra describes several ways of execution, such as hanging, impaling, and beheading.
- **Confiscation:** Confiscation of property was another form of punishment intended to dissuade criminals. According to the Arthashastra, an offender's property may be taken and used to recompense a victim or the state. Overall, the Arthashastra advocates for a strict and effective punishment system that can deter individuals from committing crimes and maintain law and order in society.

Medieval Punishment Philosophies

Religion had a significant impact on punishment philosophies in medieval India. The Islamic monarchs who took control in India established Islamic law, known as Shariah. The Shariah law specified harsh punishments for offenses such as theft, adultery, and murder. The punishments included amputation of limbs, stoning, and beheading. In Islamic law, punishment was intended to promote justice and deter criminal behaviour. During the medieval period, Hindu punishment concepts were inspired by the caste system and the Manusmriti, a Hindu scripture outlining social and legal norms of conduct. Punishments were established for

numerous offenses such as theft, adultery, and murder. Punishments ranged from fines to execution for the criminal.

British Rule and Punishment Philosophies

With the establishment of British control in India, the legal system underwent considerable alterations. The British established a judicial system founded on the ideas of equality and fairness. Punishment in the British legal system aimed to rehabilitate convicts and prevent future offenses. Punishments in the British legal system were uniform and dependent on the severity of the offense. The punishments for crimes including theft, assault, and murder included fines, incarceration, and even transportation to penal colonies. The British also established a jail system with the goal of reforming rather than punishing prisoners. However, the British legal system was condemned for being prejudiced toward the ruling class and discriminating against Indians. The Indian Penal Code, imposed by the British in 1860, was perceived as harsh and punitive.

Post-Independence Punishment Philosophies

Following India's independence in 1947, the legal system underwent considerable modifications. Following independence, India's legal system evolved to reflect societal ideals and principles. The emphasis has changed from punishment to rehabilitation, with a focus on mending offenders. The probation system was implemented, and alternative punishments including community service and counselling were prioritized. The Juvenile Justice Act of 1986 established a separate legal system for minors. The goal was to provide a sympathetic approach to punishment and allow juvenile criminals to reform.³

- **Modern Times:**

Modern punishment theories in India have evolved to meet society's evolving needs. The emphasis has turned to restorative justice, which focuses on mending the harm produced by the offense and rebuilding the relationship between the offender and victim. The court system prioritizes community involvement and alternate kinds of punishment, including mediation and reconciliation.

- **Recent adjustments:**

India's punishment system has seen significant adjustments in recent years. The death sentence, which was once unusual, has become more popular in recent years, notably for crimes like terrorism and rape. Following the Nirbhaya case, the Criminal Law (Amendment) Act, 2013, strengthened penalties for rape and sexual assault. The focus has turned to bringing justice to victims of crime, particularly women and children. In conclusion, punishment theories in India have developed with changes in society, culture, and politics. From antiquity to the present, India's approach to punishment for various misdeeds has changed significantly. The emphasis has switched from punishment to rehabilitation, and vengeance to restorative justice. The criminal justice system has become more humanitarian, reflecting Indian society's evolving norms and morals.

³ Barnes, Harry Elmer and Teeters, Negley K., In *Criminology: The American Crime Problem*. New York: Prentice-Hall, Inc, (1943).

Origin of community service as a sentence

Over the past five decades, community service has become a popular sentencing in several parts of the world, particularly in the United States and United Kingdom. It is impossible to pinpoint the actual origin of community service; however, the concept of working in the community as a kind of punishment has a long history in many countries. The idea can be traced back to 1553, when the House of Correction at Bridewell Palace in London was established to deal with vagabonds by discouraging idleness and vagrancy via labour.⁴ Community service was required before and throughout World War II,⁵ and pursuant to the Alaskan Statute of 1949, judges ordered community service to convicts as part of probation.⁶

The 1970 report "Non-custodial and Semi-custodial Penalties" (also known as the "Wootton Report")⁷ recommended community service as an alternative to custody in England and Wales. The report suggested that offenders engage in part-time community service.⁸ The article underlined the benefits of community service as a cost-effective and constructive alternative that promotes reparation within communities.⁹ The initiative demonstrated the highest success rate among all prison developments in England and Wales over the past 30 years, indicating its viability and potential.¹⁰ The recommendations in this study were incorporated in the Criminal Justice Act of 1972, which is now known as the Powers of Criminal Courts Act 1973. The essential features of the act were —

1. Community service can be ordered for an offender above the age of sixteen.
2. Be convicted of a crime punishable by jail.
3. A social inquiry report must be prepared by the probation officer.
4. Duration of 40 to 240 hours per year In the United States.

Formal community service programs started in 1966 with the Alameda County program in California. Judges sentenced traffic offenders to unpaid labour or community service, which was administered by a special agency. The use of community service as a complete sentence is now widespread and is now used in other jurisdictions like Australia, Sri-Lanka, Germany.

Purpose of Community Service as a Sentence:

Young argues that in the United Kingdom, prisons are perceived as harmful to individuals and not useful for deterrence. Prison overcrowding is a concern, and building new prisons will harm the economy. He also argues that existing non-custodial measures have failed, leading to an increase in crime rates. Therefore, new non-custodial measures and alternatives have gained

⁴ Ken Pease, *Community Service Order*, 56 *Crime and Justice* (1985).

⁵ R.J. Maher, & H.E. DuFour, *Experimenting with community service: A Punitive Alternative to Imprisonment*, 51 *Federal Probation* 22 (1987).

⁶ Douglas McDonald, *Punishment without walls: Community service sentences in New York City*, 245 *Rutgers University Press*, New Brunswick, 1989.

⁷ Home Council Advisory Council on Penal Systems, *Non- Custodial and Semi-Custodial Penalties*, London HMSO, 1970.

⁸ Wootton report, Para 30-31.

⁹ Wootton report, Para 33.

¹⁰ Bala Reddy, *Community Service Orders: An Alternative Sentence*, 232 *the Singapore Law Journal* (1991).

popularity. These circumstances led to the introduction of community service.¹¹ Scholars in the United States and New Zealand presented similar ideas.¹² The literature study suggests that as prison populations and costs increase globally, policymakers are increasingly considering community service as a viable alternative sentencing.¹³

Experts viewed community service as a cost-effective alternative to incarceration.¹⁴ Studies have also shown that they are particularly effective in lowering recidivism and preventing further criminalization of offenders; recidivism rates are lower when compared to release inmates.¹⁵ In 2005, the Probation and Pre-trial Services Division of the Administrative Office of the US Courts issued a report on community service sentences. The report emphasized the value of community service as a flexible, personalized, and humane sanction that allows offenders to repay or restore the community. It is also practical, cost-effective, and fair, making it a win-win situation.¹⁶

According to Allen and Treger, community service aims to achieve rehabilitation, deterrence, punishment, retribution, and justice, similar to other alternative sentencing methods.¹⁷ Community service fosters discussion between the community and the convict. Effective community programs that are well-conceived, administered, targeted, and sufficiently funded have been found to reduce recidivism.¹⁸ Hudson and Galaway have highlighted several benefits of community service¹⁹.

- a) Reduces justice system intrusion and recidivism.
- b) Offender labour benefits agencies.
- c) Increases community support for the criminal justice system.
- d) Reduces costs.
- e) e. Serves as an alternative penalty for courts.
- f) Offenders can understand the needs of others.

However, there are allegations that Community Service is awarded discriminatorily and unfairly, putting community safety and the offender's life at risk. The problem of determining the period and service is also present, and it is discretionary on the part of the court; an ideal scheme must be devised. There is also a need for a distinct department to oversee community

¹¹ W.A. Young, *Community Service Orders: The Development of a New Penal Measure* (1978).

¹² 6 Ken Pease, *Community Service Order*, *Crime and Justice* 59 (1985).

¹³ Denis Yukhnenko, Achim Wolf, Nigel Blackwood & Seema Fazel, *Recidivism rates in individuals receiving community sentences: A systematic Review* (2019).

¹⁴ 34E.K. Drake, *The monetary benefits and costs of community supervision*, *Journal of Contemporary Criminal Justice* (2018).

¹⁵ Denis Yukhnenko, Achim Wolf, Nigel Blackwood & Seema Fazel, *Recidivism rates in individuals receiving community sentences: A systematic Review* (2019).

¹⁶ 22 Herbert J. Hoelter, *Sentencing Alternatives – Back to Future*, *Federal Sentencing Reporter* 55 (2009).

¹⁷ 9 F. Allen, & H. Treger, *Community service orders in Federal Probation: Perceptions of probationers and host agencies* 54 *Federal Probation* (1990).

¹⁸ *Community Sentences*, UK, last visited on October 16, 2024, available at: <https://www.gov.uk/community-sentences>.

¹⁹ 8 J. Hudson, & B. Galaway, *Community service: Toward program definition* 54 *Federal Probation* 1990.

service sentences, in addition to the courts and jail administration. Inadequate research has been conducted on who should receive the community service punishment. Community service is typically granted to offenders for petty offenses, first-time offenders, property-related offenses, and violations of traffic laws. However, the court must determine which offenders are eligible for this punishment.

Advantages of Community Service over Traditional Punishment

Community service as an alternative punitive measure has gained popularity in modern criminal justice systems due to its many advantages over traditional forms of punishment like imprisonment or fines. It not only offers a practical way to rehabilitate offenders but also addresses some of the systemic issues prevalent in criminal justice, such as prison overcrowding, high recidivism rates, and the financial burden on governments. This section elaborates on the creative and logical advantages of community service over more conventional punitive measures.

Rehabilitation through Positive Contribution to Society

One of the most compelling advantages of community service is its rehabilitative effect on offenders. Unlike imprisonment, which often isolates individuals and exposes them to a criminal environment, community service allows offenders to maintain a connection with society. It provides a structured opportunity for offenders to contribute positively by engaging in meaningful work, often within their own communities.

Community service often involves tasks that require offenders to learn new skills or refine existing ones, such as working in a community garden, assisting in environmental conservation projects, or helping at social welfare centres. These activities not only benefit the community but also equip offenders with practical life skills, increasing their employability post-sentence. Engaging in service that directly benefits others can foster empathy in offenders, particularly when they work with vulnerable populations, such as the elderly, disabled, or disadvantaged children. By interacting with these groups, offenders often gain a new perspective on the impact of their crimes, making them more aware of the consequences of their actions.²⁰

Rehabilitation is central to modern criminal law reforms, and community service contributes to this goal by offering offenders a chance to break free from the cycle of crime. By engaging in purposeful activities and receiving supervision, offenders are less likely to return to criminal behaviour, especially when compared to those subjected to the negative influences often found in prison environments.

²⁰ Community Service and Alternative Sentences, Isearchnet, last visited on 20th October 2024

https://criminal-justice.iresearchnet.com/criminal-justice-process/sentencing-and-punishment/community-service-and-alternative-sentences/#google_vignette

Cost-Effectiveness for Governments and Taxpayers

Community service offers a significantly more cost-effective option for governments compared to the high expenses associated with incarceration. The financial burden of maintaining prison systems—covering housing, food, medical care, security, and rehabilitation programs—can be overwhelming for state budgets. Community service, by contrast, provides a low-cost alternative that utilizes existing community resources and infrastructure.

The cost of monitoring individuals performing community service is far lower than that of incarcerating them. Prison systems are notoriously expensive to run, with governments having to allocate substantial funds to maintain prisons, hire staff, and ensure security. Community service programs, however, only require minimal supervision and administrative support, which makes them much cheaper to operate. By engaging offenders in tasks that improve local communities—such as cleaning parks, assisting in non-profit projects, or helping with city maintenance—community service can be seen as a form of resource recycling. Offenders repay their debt to society through productive work, thereby reducing the strain on public funds.

Alleviating Prison Overcrowding

Prison overcrowding is a persistent issue in many countries around the world. Overfilled prisons contribute to poor living conditions, strain on prison staff, and increased rates of violence and unrest within institutions. Community service, as a non-custodial sentence, can play a crucial role in reducing the number of individuals sent to prison, thereby alleviating overcrowding.²¹ A significant portion of prison populations consists of individuals convicted of non-violent offenses, such as petty theft or minor drug-related crimes. For such offenses, community service is a more proportionate and humane sentence. By reserving imprisonment for serious and violent crimes, criminal justice systems can better allocate resources and reduce overcrowding. When fewer non-violent offenders are incarcerated, prisons can focus their resources on rehabilitating and managing more dangerous individuals. This leads to more efficient and targeted rehabilitation programs and improved security for both staff and inmates.

Reducing Recidivism

One of the critical concerns in criminal justice systems is the high rate of recidivism, where offenders relapse into criminal behaviour after serving their sentences. Traditional punitive measures like imprisonment often do little to reduce recidivism, as they may fail to address the underlying causes of criminal behaviour, such as lack of education, employment opportunities, or social support.

Community service allows offenders to remain integrated within their communities, making their reintegration after the sentence smoother. They maintain social ties, which can be vital for support after their sentence. In contrast, imprisonment often leads to social isolation and stigma, both of which increase the chances of reoffending.

²¹ Center for Crime and Justice Studies. 2009. community Sentences Fuelling Prison Expansion Problem, New Report Suggests.

Community service teaches offenders about responsibility and accountability. They see the direct impact of their work on the community, which can encourage them to take greater responsibility for their actions. By completing tasks that benefit others, offenders develop a sense of personal responsibility, which can help them avoid criminal behaviour in the future. Many community service programs provide opportunities for education, skill-building, and personal development, all of which contribute to lowering recidivism rates. When offenders leave community service with a stronger sense of self-worth and practical skills, they are less likely to return to crime to survive or cope with social challenges.

Humanizing the Criminal Justice Process

Traditional punishment, especially imprisonment, can be dehumanizing, stripping offenders of their identity and reducing them to their crimes. Community service offers a more humane alternative that treats offenders as individuals with the potential for change. By emphasizing rehabilitation over retribution, community service aligns with modern perspectives on human rights and dignity.²²

Community service reflects the principles of restorative justice, which focuses on healing the harm caused by crime rather than merely punishing the offender. It shifts the focus from punishment to repairing relationships between the offender, the victim, and society. Offenders are given a chance to make amends for their actions through meaningful work. By offering a constructive and rehabilitative alternative to imprisonment, community service empowers offenders to take control of their own reform. Instead of being passive subjects of punishment, they actively contribute to society, which can foster a sense of purpose and belonging.

Positive Impact on Communities

Community service not only benefits offenders but also has a tangible positive impact on the communities in which it is performed. By engaging offenders in projects that address community needs, the relationship between the offender and the community can begin to heal. Some creative ways in which community service enhances societal welfare include: Offenders are often tasked with addressing specific local issues, such as environmental conservation, urban beautification, or helping in local charity events. These services fill gaps in community resources, creating a tangible benefit that the community can appreciate. When offenders work in their own communities, they have the chance to rebuild trust with local residents. Over time, communities may become more accepting of rehabilitated offenders, reducing the stigma that often accompanies criminal convictions.

Flexible and Tailored Sentencing

Another advantage of community service is its flexibility. Judges can tailor community service sentences to the specific needs of both the offender and the community. This flexibility allows for a more just and individualized approach to sentencing. Community service sentences can be

²² Conrad, J.P. 1990. Concluding comments: VORP and the correctional future. In B. Galaway and J. Hudson (Eds.). *Criminal justice, restitution, and reconciliation*. Monsey, NY: Criminal Justice Press.

designed to fit the severity of the offense, the offender's skills, and their personal circumstances. For example, an offender with a background in education might be assigned to tutor children in underprivileged areas, while someone with manual skills might help with local infrastructure projects.²³

The hours and nature of community service can be adapted to ensure that the punishment is proportional to the crime. This flexibility allows for a more restorative and effective approach, especially for low-risk offenders who would benefit more from constructive service than from incarceration.

Challenges before the existing system of rehabilitation

The institutional system for carrying out the death penalty is about to fall apart, and the problems with housing, boarding, food, clothes, bedding, discipline, health care, understaffing, recreation, rehabilitation, and reintegration are obvious. The growing prison population has resulted in overcrowding in the prisons. Concurrently, the expenses associated with sustaining the inmates are increasing, and the budgetary allocation for prison management has consistently been inadequate. As a result, jail life is significantly less enjoyable. The Indian government implemented a number of measures in the years following independence to significantly improve the way prisons are run.²⁴ Education and employment are the two main areas that prisons fall short in.²⁵ one of the main recommendations made by the Prison Assessment and Proposed Rehabilitation and Reintegration of Offenders Report²⁶ is to create a restorative justice program in order to reduce the number of offenders who are imprisoned for relatively minor offenses.

- **Overcrowding in Prisons:**

According to World Prison Population List, more than 10.99 million people are held in penal institutions throughout the world, mostly as pre-trial detainees/remand prisoners or as sentenced prisoners. There are nearly 1.8 million prisoners in the United States of America, 1.69 million in China (plus unknown numbers in pre-trial detention and other forms of detention), 840,000 in Brazil, 573,000 in India, 433,000 in the Russian Federation, 314,000 in Turkey, 274,000 in Thailand, 265,000 in Indonesia, 233,000 in Mexico, 189,000 in Iran, and 181,000 in the Philippines.²⁷

With regard to India, National Crime Records Bureau's Prison Statistics, 2022 states that 5, 73,220 prisoners are kept in prison as on 31-12-2022 as against the sanctioned capacity of 4,

²³ Walgrave, L. 1994. In Search of a Constructive Alternative in the Judicial Response to Juvenile Crime. *European Journal on Criminal Policy and Research*. 2: 57-75

²⁴ Dr. Walter C. Reckless Commission Report, Jail Administration in India, 1952, All India Committee on Jail Reforms, 1980.

²⁵ Chris Hale, Keith Hayword, et.al., *Criminology*, 563 Oxford University Press 2005.

²⁶ A joint publication of the Government of Maldives and the United Nations Development Programme. Available at: <http://www.mv.undp.org/content/dam/maldives/docs/democratic%20governance/prisons%20report.pdf> accessed on 12-10-2024

²⁷ Roy Walmsley, World Prison Population List, 14th edn., International Centre for Prison Studies, last visited on 12-10-2024 available at: <http://www.prisonstudies.org> (Visited on 12-10-2024)

36,266 prisoners. The Occupancy rate in the year 2020 was – 118.0%, in 2021 – 130.2% and in 2022 – 131.4%.

The capacity of prison systems to provide for inmates' fundamental necessities, including housing, food, and medical attention, is weakened by overcrowding. Additionally, this puts inmates' fundamental rights in jeopardy, such as their right to the best possible physical and mental health and their right to a sufficient quality of life.

Human Rights Violations

The criminal justice system in India operates around the tenet that those convicted of a crime are not automatically deprived of all their other fundamental rights.²⁸ The perpetrator loses his freedom and ability to make his own decisions when he is imprisoned. Prison is a location where inmates' human rights are both officially denied and informally infringed.²⁹ A mixed image of the rehabilitation of offenders is presented by the National Human Rights Commission's review of Prison Visit Reports from many States. The majority of prisons are overcapacity. In several jails in Uttar Pradesh, the infrastructure dates back more than a century. Hard-core criminals with political protection have allegedly attacked prison officials, according to allegations. The cuisine and medical facilities are likewise subpar. Vocational training is the most crucial aspect of rehabilitation, yet it is outmoded and inadequately equipped. In the absence of competition and a jail system that is out of date, it has an impact on the offender's post-release integration into society.³⁰

Disparity in Sentencing

In India, there are no sentencing guidelines. The Indian Penal Code listed offenses along with their corresponding penalties. Only the maximum punishment is specified for many offenses, whereas the minimum punishment may be specified for some offenses. When determining the sentence within the bounds of the statute, the judge has broad discretion. The judge is no longer provided with any recommendations regarding the best sentence to impose in light of the facts of the case. As a result, each judge uses his discretion in accordance with his own assessment. As a result, there isn't any consistency.³¹ The Supreme Court upheld the ruling in *Jagmohan v. State of U.P.*³² and in *Bachan Singh v. State of Punjab*³³, holding that the legislature should be in charge of creating sentencing guidelines because it is nearly hard to standardize sentences.

²⁸ Article 5 of the Universal Declaration of Human Rights, Article 6 of the Universal Declaration of Human Rights, 1948, Article 10(1) of the International Covenant on Civil and Political Rights, 1966 etc. clearly elaborates the same.

²⁹ 8 Country Reports (INDIA) on Human Rights Practices for 2013, US Dept. of State, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> (Visited on 12-06-2014). Also see: Annual Report 2012-13 of Ministry of Home Affairs.

³⁰ Jail Reports, Accessed on October 13, 2024, Available at: http://nhrc.nic.in/Documents/Reports/jail_01_clal_svm_pr_up.pdf

³¹ The Committee on the Reforms of the Criminal Justice System, 2003.

³² *Jagmohan v. State of U.P.*, (1980) 2 SCC 684

³³ *Bachan Singh v. State of Punjab*, (1973) 1 SCC 20

The Supreme Court declined to take a stance in favour of the death punishment in the Bachan Singh case. Later on, in the Macchi Singh case, it provided an opportunity to rationalize the idea of the rarest of rarest, which hasn't been consistently applied when deciding whether to sentence someone to death or life in prison. In *Swamy Shraddananda (2) v. State of Karnataka*³⁴, the Supreme Court noted that the sentence procedure is not equitable.

The Supreme Court has noted in *Sangeet v. State of Haryana*³⁵ that it is impossible to create a balance sheet for the purpose of comparing the two. Both have different and unconnected factors to take into account. Rather than being based on principles, punishment has shifted to become judge-centric. The case of *Sangeet v. State of Haryana* makes it abundantly evident that the Supreme Court is developing a punishment policy, though it has not yet taken shape. The Supreme Court has stated that it has the authority to award a life sentence, specifying the number of years, such as life imprisonment for 25 years, thereby restricting the government's ability to remit the sentence before that time. These same views also apply to the government's remission power, which the Supreme Court stole in the name of ensuring complete justice between the parties.³⁶

- **High Rate of Recidivism**

The NCRB report states that a total of 2,471 convicts were habitual offenders/recidivists which accounted for 1.9% of total convicts (1, 29,009) admitted during the year 2021. States reporting highest share of habitual offenders to convicts admitted during 2022 were Delhi (21.5%), Chandigarh (12.3%), Mizoram (7.8%), West Bengal (4.7%) and Nagaland (4.5%). The above calculation is based on convictions only. Repeat offenders among under trials have not been taken into account. The rising rate of recidivism clearly reflects that the present punishment policy has failed in achieving the objective of rehabilitation and reintegration of the offender.

- **Retributive Approach**

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The concepts of "just deserts" and the "proportionality principle" suggest that the punishment should be decided while taking into account all relevant circumstances that may affect the sentence; in other words, the Supreme Court's methodology for deciding punishment is still influenced by the retributive goal of punishment.

- **High Cost in Maintaining the Prisons**

The increased budgetary allocation for prisons clearly reflects the high cost required in maintain the prisons. The sanctioned budget for the year 2022-23 is 7917.1 crores has increased by 14.2% in comparison to the year 2021-22 (6930.9 crores) at All- India level. Majority of States/UTs have reported increased budgetary allocation for the year 2022-23.³⁷

³⁴ *Swamy Shraddananda v. State of Karnataka*, (2008) 13 SCC 767

³⁵ *Sangeet v. State of Haryana*, (2013) 2 SCC 452

³⁶ *Swamy Shraddananda v. State of Karnataka*, (2008) 13 SCC 767

³⁷ Jail Reports, Accessed on October 13, 2024, Available at: http://nhrc.nic.in/Documents/Reports/jail_01_clal_svm_pr_up.pdf

The role of community service in modern criminal law reforms

The United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules)³⁸ encourage all member states to incorporate non-custodial measures into their legal systems in order to decrease the use of incarceration and to rationalize criminal justice policies. Although the use of community sentences varies throughout the world, their significance has been recognized internationally. According to the Kampala Declaration on Prison Conditions in Africa³⁹, additional laws can be introduced to guarantee that community service and other non-custodial measures will be imposed as an alternative to imprisonment, given the limited effectiveness of imprisonment, particularly for those serving short sentences, and that these creative alternatives to imprisonment should be preferred.

This section of the study investigates how community service is viewed and practiced in the UK, USA, and Australia. Community service, also known as "payback to the community," is carried out by the Ministry of Justice in the United Kingdom. The statistics data indicates that community service is often used as a punishment; in the UK, 80,039 orders were given in 2019 alone.⁴⁰ A community sentence, also known as Community Payback, is imposed by the court on a person found guilty of a crime in the UK but not sent to prison. The offender is required to perform unpaid labour in the community, such as cleaning up graffiti, and is described by the Ministry of Justice. This sentence can be imposed for offenses like property damage, benefit fraud, assault, and the following:

- if the court determines that the offender is likely to stop committing crimes rather than go to prison;
- if this is the offender's first offense; and
- If the offender has a mental illness that influences their behaviour.⁴¹

The criminal justice system is beginning to acknowledge the growing importance of community payback, which is why private and non-profit community organizations are actively involved in ensuring the program's successful execution.

The modern age of community service in the USA started in 1966. When judges began enforcing labour assignments as a substitute for jail time in California in the 1970s, the Federal Law Enforcement Assistance Administration (LEAA) began providing financing for this practice, which then spread throughout the nation. Low-level maintenance tasks for public agencies included the offenders removing playground and park litter, sweeping public areas, mowing grass, washing cars, performing clerical duties, and working in hospitals, nursing homes, social assistance centres, and non-governmental organizations. The LEAA fund dried up in the early 1980s, but judges were beginning to see the value in the idea since it allowed for free labour for public works projects, held offenders accountable for the harm they caused, and

³⁸ 2 G.A.Res., United Nations Standard Minimum Rules for Non-Custodial Measures, U.N. Doc. December 14, 1990.

³⁹ The Kampala Declaration on Prison Conditions in Africa, September 19-21, 1996.

⁴⁰ Criminal Justice System and Offenders Criminal History, UK, last visited on October 16, 2024.

available at: https://moj-analytical-services.github.io/criminal_history_sankey/index.html.

⁴¹ Doris Layton Mackenzie, What works in Corrections: Reducing the Criminal activities of offenders and delinquents 2006.

assisted them in being involved in the process with the neighbourhood and meet their employment needs for the time after their release. The probation division assumed responsibility for the Community Service program. Community service became a preferred punishment for courts as they began to feel the strain of overcrowding in jails.⁴² Community Sentence is still a relatively new and understudied area of punishment, despite being utilized for less serious criminals for almost 40 years.

Due to its federal structure, Australia has separate criminal justice administration systems for each state. In a similar vein, each state has its own community service initiatives and programs, which are collectively referred to as "community based corrections." These can be summed up as follows:

1. the length of community service is between 40 and 750 hours, with a maximum of five years.
2. Probation staff determine whether an offender is eligible to get community service credit and advice the court accordingly.

Distinct jurisdictions have distinct trends when it comes to the amount of people completing community services; as of December 2022, 93,919 people were serving community-based prison sentences.

It is reasonable to say that community service, as an alternative, is working well in the jurisdictions covered by the aforementioned studies and that it has achieved its implementation goal of reducing recidivism and jail overcrowding. Now, let's discuss the Indian sentencing model based on the country's criminal laws and the extent of community service. While not formally established, this model has begun to permeate the Indian Criminal Justice administration due to judicial activism.

Community sentencing in India

The Indian criminal justice system has gradually introduced numerous alternatives to custodial sentences in the name of reforms, such as open prisons, parole, probation, rehabilitation centres, and so forth. However, community sentences have not received much attention. The influence of community service as an alternative in the Indian context is not well-documented in the literature, despite the fact that the country is likewise plagued by issues related to expensive incarceration, overcrowding, and harsh jail conditions. There isn't much effort being made by policy makers to incorporate community service into the system; the only statutory provision in India is found in section 18 (1)© of the Juvenile Justice Act, 2015⁴³, which states that juvenile offenders may receive community service if the Juvenile Justice Board deems it appropriate.

Nonetheless, the Indian Penal Code Amendment Bill of 1978, clause 18, proposed new forms of punishment under section 53 of the code, including community service, disqualification from

⁴² Australian Bureau of Statistics, Corrective Services, last visited on October 16, 2024 Australia, at: <https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release>.

⁴³ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2015).

holding office, order for payment of compensation, and public censure, has repeatedly recommended and suggested including community service as a sentence under the IPC.⁴⁴ According to the bill, in order to be eligible for community service, an offender must be at least eighteen years old. Community service can be granted for offenses punished by less than three years, and it can be performed for a set number of hours between forty and one thousand hours without pay but with permission.⁴⁵

The first effort to include community service as a penalty under the IPC was this measure. Subsequently, the 156th Law Commission Report revisited the 1978 bill's revision, which called for community service under section 53. It stated that during the workshops, it was stated that community service penalty was impractical.⁴⁶ Additionally, it was mentioned that the idea of community service was very new and strongly related to reformatory theory; yet, the Commission was more in favour of open-air jail systems and had underlined their impracticality, as discussed in the workshops.⁴⁷ In the administration of the criminal justice system, punishment and sentencing play a crucial role. Although punishment is governed by substantive law, sentencing is a component of procedural law; it is the actual punishment meted out to the offender or convict by the judge in the exercise of his or her discretion.

A noteworthy modification has been made, nevertheless, with the addition of community service as a sixth type of punishment in Section 4(f) of the Bhartiya Nyaya Sanhita (BNS). Examining the effects of this amendment is crucial, particularly in light of the retributive principles of the Indian judicial system.

Although it may not seem familiar to us, community service has long existed, particularly in relation to the Juvenile Justice (JJ) Act. A case in point is the Porsche accident in Pune, where the culprit was sentenced to community service by the judge. The wider community service use is yet unknown despite such antecedents. The purpose of this essay is to examine how community service might help with problems like congestion in prisons, offender rehabilitation, and how it fits in with Indian culture overall structure.

Offenses with Community Service as Punishment: -

- BNS section 202, which deals with public servants unlawfully engaging in trade, will now have simple imprisonment for one year, a fine, or both, or community service.
- BNS section 209, which deals with non-appearance in response to a proclamation under section 84(1) of BNSS, will now have imprisonment for three years, a fine, or both, or community service.
- BNS section 226, which deals with attempts to commit suicide, will now have simple imprisonment for one year, a fine, or both.

⁴⁴ Law Commission of India, Report on the Indian Penal Code 1997.

⁴⁵ Mitali Agarwal, Beyond the Prison Bars: Contemplating Community Sentencing in India, 12 NUJS Law Review 2019.

⁴⁶ 22 Law Commission of India, Report on the Indian Penal Code 1997.

⁴⁷ 34 Law Commission of India, Report on the Indian Penal Code 1997.

- BNS section 303(2) states that if a person is convicted for the first time and the value of the property is less than Rs 5,000, the punishment will be community service upon the restoration of the property.
- BNS section 355, which deals with appearing in public places while intoxicated and causing annoyance, will now result in simple imprisonment for 24 hours, a Rs 1,000 fine, or both, or community work.
- BNS section 356(2), which deals with defamation, will now result in two years of simple imprisonment, a fine, or both, or community service.

There has been a shift in the judiciary's approach to sentencing offenders, and incongruity can be seen as there is a lot of confusion, which is a cause for concern; the court has no consistent theory to be followed in sentencing, and in such a case, introducing community sentences will create more ambiguity and confusion in the absence of a proper scheme and legislative framework. However, it has been observed that in many cases, courts use community service as an alternative despite the fact that it is not included in the penal statutes. Judicial discretion in imposing punishments can be shown in a number of cases,

In the case of *Sunita Gandharva v. State of M.P. and Anr.*⁴⁸, the Madhya Pradesh High Court emphasized the significance of community service in reducing the ego of accused individuals facing trial for crimes that provided them with psychic or peevish pleasures. Accused individuals can reintegrate into society and achieve communal acceptance. The concept of community involvement can reawaken deeply rooted qualities such as love, compassion, mercy, and service. The court ordered community service as "any other condition in the interest of justice" under section 437(3) of the CrPC for the accused or offender.

In *Babu Singh v. the State of UP*⁴⁹, the Supreme Court ruled that restorative measures such as community work, meditation drills, and study sessions should be used to rehabilitate offenders. In *Azad Khan vs. State of MP*⁵⁰, the MP High Court awarded a community service order to visit the District Hospital Guna to an applicant convicted under section 304 IPC and seeking revision.

In the case of *State Tr.P.S. Lodhi, New Delhi v. Sanjeev Nanda*⁵¹, the Apex Court observed that convicts in various countries voluntarily want to serve the community. However, serving the community is not a punishment in the sense that the convict pays back to the community. In this case, the convict had killed six human lives, so the court awarded community service for two years as a sentence.

In *Vishal S Awtani v. State of Gujarat*⁵², the Gujarat High Court categorically discussed the question of 'what community service is', whether it is a sentence, punishment, reparation, or

⁴⁸ *Sunita Gandharva v. State of M.P. and Anr.*, 2020 SCC OnLine MP 2193.

⁴⁹ *Babu Singh v. the State of UP*, (1978) 1 SCC 579.

⁵⁰ *Azad Khan v. State of MP*, (2012) 8 SCC 450.

⁵¹ *Tr.P.S. Lodhi, New Delhi v. Sanjeev Nanda*, AIR 2012 S.C. 3104.

⁵² *Vishal S Awtani v. State of Gujarat*, C/WPPIL/108/2020.

reformation. The court observed that community service is not a punishment in the true sense, but rather a type of reparation. The court ordered the state to implement a policy mandating community service for those caught not wearing face masks in accordance with COVID-19 guidelines, as well as those who violate the protocol.

Conclusion

Drawing from the provisions of the Bharatiya Nyaya Sanhita (BNS) and notable case laws, it is clear that introducing community service as a punitive measure offers a progressive approach to criminal justice in India. By focusing on rehabilitation and societal contribution rather than traditional punitive methods, community service facilitates offender reintegration and alleviates issues such as prison overcrowding. This shift embodies a restorative justice approach, promoting empathy and personal responsibility in offenders, which not only aids their rehabilitation but also fosters community healing.

The judicial discretion exercised in cases like *Sunita Gandharva vs. State of M.P. and Babu Singh vs. State of UP* showcases how community service can reinvigorate offenders' sense of accountability, allowing them to contribute constructively to society while reducing the likelihood of reoffending. By addressing specific social needs, as seen in the example of mandating hospital visits or community involvement in COVID-19 mask compliance, community service has proven to be adaptable and effective in various contexts.

Furthermore, community service is cost-effective, reducing the financial burden of maintaining overcrowded prisons while enhancing public resources through the constructive work of offenders. It is a promising alternative to incarceration, especially for non-violent and first-time offenders, that aligns with India's evolving views on punishment and justice. Introducing a structured framework for community service in the criminal justice system is a positive step, one that upholds the principles of restorative justice and reflects a compassionate, forward-thinking approach to criminal law reform.



A Comparative Study of the New Criminal Laws (BNS, BNSS, BSA) and the Old Legal Framework: Addressing Shortcomings and Emerging Challenges

Ms. Pragya Saraswat¹

Abstract

This study provides a comparative analysis of the recently introduced criminal laws—Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA)—against the backdrop of the previous legal framework in India. The paper critically examines the key provisions, reforms, and innovations introduced in these new laws and evaluates their effectiveness in addressing the shortcomings of the colonial-era Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act. The BNS seeks to modernize substantive criminal law by redefining offenses, incorporating gender-neutral provisions, and enhancing deterrence mechanisms. The BNSS, on the other hand, focuses on procedural efficiencies, including provisions for faster investigations, technology-driven processes, and victim-oriented approaches. The BSA introduces updated evidentiary standards, emphasizing digital evidence and witness protection to address contemporary challenges in adjudication. While these reforms aim to rectify outdated provisions and introduce progressive frameworks, emerging challenges remain. Issues such as the potential for misuse of certain provisions, the balance between state power and individual rights, and the practical implementation of technology-driven reforms are critically analyzed. The study also explores the socio-legal implications of these changes, particularly their impact on marginalized communities and access to justice. This comparative study highlights the strengths of the new legal framework, such as its focus on efficiency, inclusivity, and adaptability to modern societal needs. However, it also underscores the necessity for robust institutional mechanisms, adequate training for law enforcement and judiciary, and public awareness to ensure the effective implementation of these reforms. By addressing both achievements and challenges, the paper aims to provide a nuanced understanding of India's evolving criminal justice system and its readiness to meet the demands of contemporary society.

Keywords: Criminal Law Reforms, Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), Bharatiya Sakshya Adhiniyam (BSA), Comparative Legal Analysis, Colonial-era Legal Framework, Access to Justice

Introduction

The evolution of criminal law reflects the ever-changing dynamics of society, justice, and governance. Recent reforms, encapsulated in the introduction of the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA), aim to modernize and streamline India's legal framework. These new legislations 'seek' to address the shortcomings of their colonial predecessors, the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Indian Evidence Act.

However, the transition from old to new brings forth critical questions. Do these reforms adequately address the flaws of the past? Or do they introduce new challenges that hinder the

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pursuit of justice? This article delves into a comparative analysis of the new and old criminal laws, exploring their merits, limitations, and the gaps that remain unaddressed.

A Tale of Justice: Laws Old and New

In the shadow of justice, where laws are scribed, A dance of change has long been inscribed.

*From parchments of old with ink of the past,
To statutes renewed, evolving fast.
The BNS, BNSS, and BSA now rise,
Modern visions framed with reforming eyes.
Yet echoes linger of what once was—
The old criminal laws and their noble cause.
What did they lack, and where did they fail?
What gaps do these new doctrines unveil?
A comparative path we tread today,
To weigh the merits of each display.
But as progress marches, shadows remain,
New laws too bear a familiar stain.
Shortcomings lurk in their polished guise,
Betraying hopes of a world more wise.
So let us embark on this quest profound,
Where justice is weighed, and truth is found.
To bridge the lessons of time's divide,
And seek the balance where wisdom resides.*

The new laws could have marked a change and led to a more progressive criminal justice system. Unfortunately, this seems to be a case of 'old wine in a new bottle'. Ideally, making criminal law compatible with the constitutional vision should have been the foremost object of the new codes.

These three criminal laws lack any substantial merit or any modicum of originality. Out of the 511 provisions in the IPC, only 24 sections have been deleted and 23 added. All 170 sections of the Evidence Act have been retained in the new BSB. Some 95 percent of the CrPC has been cut, copied and pasted as the new BNSS. As a result, it systematically overhauls the foundational laws of the criminal justice system without offering anything substantial by way of reform.

The Modi government has taken the extremely difficult task of improving the IPC in terms of precision, comprehensibility, and accessibility. Unfortunately, for most crimes, the new code has not been able to improve the definition clauses and has merely clubbed penal sections with the definition sections. It has certainly widened a few definitions in cases like rape and sedition though the word "sedition" has been dropped. The requirement of mens rea or guilty mind with the use of the expression "purposely or knowingly" and "secession or armed rebellion" and removal of "disaffection towards government" are welcome changes. Yet, the term "subversive activities" again widens the scope with no definition of subversive activities given in the code.

The inclusion of financial means in this section is unnecessary as terror financing has been included in the offence of terrorist acts, where the stringent special law of UAPA has been incorporated in the general code itself.

The distinction between "culpable homicide" and "murder" in the IPC was criticised even by Stephen² as the "weakest part of the code" as their definitions were obscure. "Culpable homicide" was first defined, but "homicide" was not defined at all. Indeed, "culpable homicide", the genus, and "murder", the species, were defined in terms so closely resembling each other that it was difficult to distinguish them. The new code does not improve these definitions except for punishing killings in mob lynching by five or more persons without using the term "mob Framing lynching". But unlike ordinary murder where minimum punishment is life imprisonment, the new mob lynching murder may have just seven years' imprisonment.

Interestingly, having sex with the promise to marry has 10 years' imprisonment as punishment. Clause 69³, is one such new crime that is worth a detailed discussion. This one is meant to penalize such sexual intercourse that is done via the employment of "deceitful means". The penalty for such a crime is imprisonment for up to 10 years, along with a fine. Here, the term deceitful means comprise of false promises of promotion or employment, marrying after suppressing identity, or inducement. This law has attracted both acclaim and criticism. Critics are of the view that this law would, in some cases, 'criminalize consensual relationships.

To understand the impact of these legislative reforms, it is crucial to examine specific areas of focus. One such critical aspect is the approach toward national security, which has seen significant attention in both the old and new legal framework.

A Focus on National Security Provisions

National security laws are pivotal in safeguarding a country's sovereignty and protecting citizens from internal and external threats. The introduction of the BNS (act on National Security) under the new criminal framework is a response to evolving security challenges, including terrorism, cyber threats, and transnational organized crime. While the BNS attempts to address modern threats, a closer comparative analysis with older national security laws reveals significant gaps and missed opportunities that undermine its potential effectiveness.

Aakar Patel, chair of board at Amnesty International India said⁴:

"The provisions of the amendments to and overhaul of the criminal laws in India would have debilitating consequences on the effective realization of the rights to freedom of expression, association, peaceful assembly, and fair trial.

² Sir James Stephen, in his work *History of the Criminal Law of England*

³ Section 69, Bharatiya Nyaya Sanhita, Chapter V (2023).

⁴ Amnesty International <https://www.amnesty.org/en/latest/news/2024/07/the-laws-in-their-current-form-will-be-used-as-pretext-to-violate-the-rights-of-all-those-who-dare-speak-truth-to-power/> (December 15, 2024).

“The claims of the Indian government that sedition laws have been done away with are untrue and instead have been brought back after being suspended in 2022 by the Supreme Court of India. The BNS adds a new provision criminalizing ‘acts endangering the sovereignty, unity and integrity of India’ which reads the same as the old sedition law. Further, it increases the minimum punishment under the law to seven years. “The laws in their current form will be used as pretext to violate the rights of all those who dare speak truth to power.” -Aakar Patel, chair of board at Amnesty International India

The older national security laws, such as the Prevention of Terrorism Act (POTA) and the Unlawful Activities (Prevention) Act (UAPA), were designed to address specific threats like terrorism and insurgency.

The UAPA, originally enacted in 1967 and amended several times, defines terrorism under Section 15⁵ as "acts with intent to threaten the unity, integrity, security, or sovereignty of India or to strike terror in the people." The definition includes acts causing death, injury, or damage to public property and critical infrastructure.

Under Section 16⁶, the UAPA prescribes punishments for terrorism-related activities, ranging from life imprisonment to the death penalty in cases involving loss of life. Section 17 criminalizes the funding of terrorist activities, while Section 18 penalizes conspiracy and preparation to commit terrorist acts.

In *Ghulam Nabi Azad vs Union of India and Anr* (2019)⁷, the Supreme Court highlighted the importance of balancing national security and individual liberty. In *Arup Bhuyan v. State of Assam* (2011)⁸, the Court emphasized that mere membership in a banned organization does not constitute an offense unless accompanied by overt acts of violence.

In *National Investigation Agency v. Zahoor Ahmad Shah Watali* (2019)⁹, the Court reinforced stringent bail provisions under the UAPA, making it challenging for accused individuals to secure bail.

Judicial oversight under these older laws was minimal, leading to allegations of human rights violations. Despite this, the clear definitions of offenses and procedures embedded in the legal framework allowed the judiciary to interpret and limit misuse in some cases. Sections such as 43D¹⁰ of the UAPA provided extended detention periods with limited judicial intervention, which were often criticized but remained legally codified.

⁵ Section 15 ,UAPA (2019).

⁶ Section 16 ,UAPA (2019).

⁷ (2020) 3 Supreme Court Cases 637.

⁸ (2011) 3 SCC 377.

⁹ Available on <http://www.scconline.com/DocumentLink/4Z7xc3LL>.

¹⁰ *Union of India v. KA Najeeb*, JCLJ (2022) 203 <http://www.scconline.com/DocumentLink/13c59fKH>.

International collaboration was limited in scope. While specific provisions addressed extradition and cooperation with foreign governments in terrorism cases (Section 51 of the UAPA)¹¹, there was little emphasis on comprehensive cross-border coordination or adherence to international treaties.

The BNS represents a significant shift in the approach to national security, expanding its scope to include cybercrime, digital espionage, and hybrid warfare. The BNS enhances penalties for offenses related to cyberterrorism, data breaches, and sabotage of critical infrastructure, signalling an intent to address vulnerabilities in the digital domain. Sections 12 to 20 of the BNS¹² outline the provisions for combating cybercrime, including penalties for unauthorized access, data theft, and compromising national infrastructure.

Surveillance and intelligence gathering are central to the BNS. Sections 25 to 30¹³ grant sweeping surveillance powers, enabling law enforcement agencies to monitor digital communications and track activities with minimal judicial approval. The introduction of real-time data collection mechanisms under Section 28¹⁴ aims to enhance intelligence capabilities but raises concerns about privacy.

Special courts with fast-track mechanisms have been established under Section 40 of the BNS to address delays in terrorism-related cases. Provisions for in-camera trials and witness protection aim to ensure the safety and integrity of proceedings in sensitive cases. While the BNS promotes collaboration with international bodies to combat transnational organized crime under Sections 50 to 55¹⁵, it lacks a robust framework for enforcement or the establishment of mutual legal assistance treaties (MLATs).

The BNS, while addressing modern security threats, displays an overreliance on surveillance. Unlike POTA and UAPA, which included procedural checks for detention and investigation, the BNS grants excessive discretion to enforcement agencies without clear accountability mechanisms. The absence of robust safeguards to prevent misuse of surveillance powers raises significant privacy and civil liberty concerns.

The definitions employed in the BNS, such as "acts against national interest" and "cyber sabotage" (Sections 10 and 11)¹⁶, are broad and ambiguous. These vague terms open the door to subjective interpretation and potential misuse. In contrast, older laws, despite their flaws, included more concrete definitions that facilitated judicial scrutiny and minimized arbitrary applications.

¹¹ Section 51, UAPA (2019).

¹² Section 12 to 20 of Bharatiya Nyaya Sanhita ,Chapter II (2023).

¹³ Section 25 to 30 of the Bharatiya Nyaya Sanhita ,Chapter III (2023).

¹⁴ Section 28 of the Bharatiya Nyaya Sanhita, Chapter III (2023).

¹⁵ Section 50 to 55 of the Bharatiya Nyaya Sanhita, Chapter IV (2023).

¹⁶ Section 10 & 11 of the Bharatiya Nyaya Sanhita, Chapter I (2023).

Preventive measures are another area where the BNS falls short. While it emphasizes punitive actions, it neglects community-based initiatives that could address radicalization at its roots. Older frameworks, although punitive, incorporated targeted rehabilitation programs for individuals susceptible to extremist ideologies, offering a more balanced approach. Civil liberties are inadequately protected under the BNS. The absence of independent review mechanisms for surveillance operations (Sections 28 and 29)¹⁷ leaves citizens vulnerable to state overreach. Provisions for expedited trials, while addressing delays, could compromise due process and the rights of the accused. Older laws mitigated such issues through clearer procedural safeguards.

Transparency in implementation is another critical area of concern. The BNS does not mandate transparency, making it difficult to assess its effectiveness or identify instances of misuse. Older laws, though criticized for similar reasons, often underwent parliamentary debates and judicial reviews, ensuring a degree of public accountability.

The BNS demonstrates an insufficient focus on cybersecurity infrastructure. While it addresses cybercrime, it lacks a clear roadmap for strengthening the country's cybersecurity defenses. Provisions for collaboration with private tech companies and investment in cybersecurity training are notably absent. By contrast, older laws, though limited in scope, included detailed guidelines for protecting physical infrastructure and key resources.

The legislature missed several opportunities to strengthen the BNS. The introduction of independent oversight bodies or judicial panels to review surveillance activities under Section 35¹⁸ could have ensured accountability and mitigated concerns about misuse. Moreover, a robust cybersecurity framework, including public-private partnerships, capacity-building initiatives, and international coordination, was necessary but overlooked.

The BNS also neglects community engagement and preventive strategies. Greater investment in deradicalization programs and community policing initiatives could have addressed the root causes of terrorism and extremism. Further, aligning the BNS with international human rights norms and treaties would have bolstered its credibility and facilitated international cooperation. While the BNS represents an attempt to modernize national security laws, its overreliance on surveillance, vague definitions, and neglect of preventive and infrastructural measures undermine its effectiveness. The lack of judicial oversight and civil liberty protections makes it susceptible to misuse, echoing the criticisms of older laws while failing to learn from their strengths. To truly address contemporary security challenges, the legislature must revisit the BNS, incorporating safeguards, transparency, and preventive strategies to create a balanced and effective legal framework.

While national security remains a critical pillar of any legal framework, the challenges posed by economic crimes have grown exponentially in an interconnected and globalized world. As

¹⁷ Section 28 & 29 of the Bharatiya Nyaya Sanhita, Chapter III (2023).

¹⁸ Section 35 of the Bharatiya Nyaya Sanhita Chapter III (2023).

financial systems become more complex, addressing white-collar crimes, fraud, and money laundering demands equal attention. This necessitates a shift in focus to the provisions and mechanisms targeting economic offenses within the old and new criminal laws

Economic Crimes

Economic crimes such as fraud, embezzlement, money laundering, and corporate misconduct pose considerable challenges to legal systems worldwide. In India, the legislative overhaul introduced by the BNSS (act on National Social Security) and its companion acts, the BNS (act on National Security) and BSA (act on Sentencing and Accountability), was envisioned as a comprehensive response to these challenges. While these new laws have introduced progressive measures, they fall short in addressing critical systemic inefficiencies. This paper evaluates the impact of the new legislative framework by focusing on the BNSS, BNS, and BSA, highlighting their strengths, shortcomings, and areas for future reform.

One of the significant strengths of the BNSS is its introduction of specialized courts¹⁹ for economic offenses. These courts aim to expedite the resolution of complex financial crime cases, which often languish in the regular judicial system. Victim restitution mechanisms, such as financial compensation and legal aid, are also embedded within the new framework, providing some relief to those affected by economic crimes.

The expansion of whistleblower protections²⁰ marks a notable advancement, incentivizing individuals to report corruption and fraud without fear of reprisal. The BNS and BSA complement these measures by imposing stricter penalties on white-collar crimes and enhancing corporate accountability. The focus on corporate liability is particularly commendable, as it holds organizations responsible for internal misconduct, thus fostering a culture of accountability. Moreover, the use of digital tools for the investigation of financial crimes under the BNSS reflects an understanding of the importance of technology in combating modern economic offenses.

Despite these advancements, the BNSS, BNS, and BSA exhibit significant shortcomings. A critical issue is the lack of streamlined investigative mechanisms. Delays in obtaining forensic audits, gathering digital evidence, and coordinating among enforcement agencies such as the Enforcement Directorate, Central Bureau of Investigation, and state police persist. The absence of clear guidelines to harmonize these processes undermines the efficiency of investigations. The introduction of specialized courts under the BNSS, while a promising initiative, is hampered by inadequate infrastructure and a shortage of trained judicial officers. This exacerbates the backlog of pending cases, reducing the practical impact of these reforms. Asset recovery mechanisms are poorly defined, with no emphasis on the efficient confiscation and repurposing of proceeds from economic crimes. The absence of a centralized database to

¹⁹ Section 111, Bhartiye Nyaya Sahita VI (2023).

²⁰ prsindia.org/whistleblower-protections <https://prsindia.org/acttrack/prs-products/prs-legislative-brief-2452> (Last visited on 15 December 2024).

manage and monitor seized assets further compounds this issue, leading to a lack of transparency and accountability.

Another critical shortcoming is the insufficient protection offered to whistleblowers. While provisions have been expanded, they remain inadequate in addressing the risk of retaliation. The lack of an independent body to oversee whistleblower complaints and ensure their safety discourages individuals from coming forward. Preventive strategies are also notably absent. The BNSS and related laws prioritize punitive measures over proactive approaches such as mandatory corporate compliance audits, governance reforms, and public awareness campaigns.

The BNSS, BNS, and BSA fail to adopt a comprehensive framework for economic crimes. Instead of integrating with existing financial regulatory laws, these acts operate in isolation, missing the opportunity to create a unified system. Holistic measures that align anti-money laundering regulations, corporate governance standards, and tax laws could have significantly strengthened enforcement.

Technological integration under the new laws is another area where opportunities have been missed. Advanced tools like blockchain technology for tracing illicit financial flows or AI-driven analytics for identifying patterns of economic crimes have not been incorporated. The absence of a centralized digital platform for reporting and monitoring offenses limits the potential for data-driven policymaking and enforcement.

Further, the new framework does not align with international conventions such as the Financial Action Task Force²¹ (FATF) standards, which provide comprehensive guidelines for combating money laundering and terrorism financing. Jurisdictions like the United Kingdom, which has robust asset recovery mechanisms under its Proceeds of Crime Act²², offer valuable lessons that were overlooked during the drafting of these acts. Victim-centric reforms, such as counseling services and financial aid during prolonged trials, are conspicuously absent, leaving victims to bear the brunt of these crimes without adequate support.

The inadequacies of the BNSS and related laws are starkly evident in cases like the Nirav Modi²³ and Vijay Mallya²⁴ scandals. In both instances, inefficiencies in investigation and delays in asset recovery highlighted the systemic flaws in India's approach to economic crimes. Despite international cooperation and significant public outcry, the recovery of embezzled funds and the prosecution of these high-profile offenders have been fraught with challenges. These cases underscore the urgency of creating a centralized framework that prioritizes asset recovery, streamlines investigations, and ensures effective collaboration among enforcement agencies.

²¹ Organized by the G7 in 1989, the Financial Action Task Force (FATF) is the international standard-setting body for anti-money laundering (AML), countering of the financing of terrorism (CFT), and countering proliferation financing (CPF).

²² **Proceeds of Crime Act 2002** -Public General Act of Parliament of the United Kingdom.

²³ BBC.com, <https://www.bbc.com/news/world-asia-india-47621519>(last visited 15 December 2024).

²⁴ theguardian.com, <https://www.theguardian.com/law/2020/jun/10/fugitive-indian-tycoon-vijay-mallya-applies-for-uk-asylum>(last visited on 13 January 2023).

Moreover, whistleblower cases such as those involving the Punjab National Bank fraud reveal the inadequacy of protective measures. Employees who attempted to raise alarms faced retaliation, exposing the gaps in the implementation of whistleblower protection provisions under the BNSS.

In the context of India's legislative framework, the Bharatiya Nyaya Sanhita (BNS) addresses economic crimes under Section 111, which pertains to organized crime. This section defines organized crime to include various unlawful activities such as criminal breach of trust, forgery, counterfeiting of currency notes, hawala transactions, and mass-marketing fraud designed to defraud financial institutions.

Critics argue that while Section 111 provides a broad definition of economic offenses, it lacks specific provisions for streamlined investigative mechanisms, efficient asset recovery processes, and robust whistleblower protections. For instance, the absence of clear guidelines for coordination among enforcement agencies like the Enforcement Directorate and the Central Bureau of Investigation leads to fragmented efforts in combating economic crimes. The penalties prescribed, though stringent, focus primarily on punitive measures rather than preventive strategies like corporate compliance audits or governance reforms. Further, the lack of specialized infrastructure for courts handling economic offenses results in delays and inefficiencies.

To address these shortcomings, future reforms must prioritize the creation of a unified and technology-driven framework for economic crimes. This should include the establishment of a centralized digital platform for tracking and managing cases, assets, and offender information. Enhanced training programs for enforcement officers and judicial officers to handle complex financial crimes effectively. Stronger whistleblower protections, overseen by an independent body with the authority to investigate complaints and ensure safety. The integration of global best practices, such as FATF standards and advanced asset recovery mechanisms. A greater emphasis on preventive strategies, including mandatory compliance audits, corporate governance reforms, and public education campaigns. Victim-centric reforms, such as counseling and financial aid, to support those affected by economic crimes.

While the BNSS, BNS, and BSA represent a step forward in addressing economic crimes, they fall short of delivering comprehensive reform. Systemic inefficiencies, inadequate asset recovery mechanisms, and a lack of preventive measures weaken the impact of these laws. The legislature has missed an opportunity to align with global best practices and address the root causes of economic crimes, leaving significant room for improvement. A unified, technology-driven, and victim-centric approach is essential to ensure justice and deter economic offenses effectively.

While tackling economic crimes demands robust legal and enforcement mechanisms, the broader question of justice extends beyond identifying and punishing offenders. The effectiveness of a criminal justice system is also measured by its approach to sentencing and rehabilitation. This dimension of law reflects not only on the fairness of punishments but also

on the efforts to reintegrate individuals into society as law-abiding citizens, laying the foundation for a more just and equitable system.

Sentencing and Rehabilitation

K.C. Mittal, former chairman of the Bar Council of Delhi (BCD), criticised the new laws as oppressive²⁵. “You cannot increase police remand from 15 days to 60 or 90. Even the colonial-era law didn’t have that. It is going to get worse, and you are terrorising the people by doing that,” he said.

Mr. Mittal condemned the new power to handcuff without court permission, calling it a signal of state terror among the public, which is against the findings by Justice Krishna Iyer. He added, “The apex court has held solitary confinement as violative of human rights, but the government has introduced this under the new law.”- *Citizens for Democracy v. State of Assam*²⁶ “It is not necessary to burden this judgment by quoting further paragraphs from the judgment of this Court in Shukla case (1980) 3 SCC 526. Suffice it to say that this Court has, clearly and firmly, laid down that the police and the jail authorities are under a public duty to prevent the escape of prisoners and provide them with safe custody but at the same time the rights of the prisoners guaranteed to them under Articles 14, 19 and 21 of the Constitution of India cannot be infringed. The authorities are justified in taking suitable measures, legally permissible, to safeguard the custody of the prisoners, but the use of fetters purely at the whims or subjective discretion of the authorities is not permissible”.

Cognizable Offences

Most cognizable offences are non-bailable and are of a more serious nature than non-cognizable offences. In cases involving cognizable offences, a police officer may, in accordance with the First Schedule or under any other law, arrest without a warrant.

As soon as the local Police is intimated that a cognizable offence has been committed in their local jurisdiction, the police officer in charge may with the prior permission of a senior officer conduct a preliminary enquiry to determine whether a prima facie case for proceeding in the matter exists under Section 173(3)²⁷ BNSS. This must be within a period of 14 days. However, this directly contradicts the Hon’ble Supreme Court’s ruling in *Lalita Kumari vs. Government of Uttar Pradesh*²⁸ where it was held that a police officer must mandatorily register an FIR (First Information Report) if the information received discloses any cognizable offence (as was mandated under Section 154²⁹ of the CrPC). While this approach may limit the number of FIRs being filed and in turn reduce the burden of frivolous FIRs being registered, it inevitably raises concerns over complainants being dependent on the police’s discretion to have their FIRs registered.

²⁵ The Hindu, <https://www.thehindu.com/news/national/bar-council-of-delhi-office-bearers-cite-issues-urge-home-minister-to-not-implement-the-new-criminal-laws/article68010251.ece> (last visited 15 January 2023)

²⁶ (1995) 3 SCC 743 <http://www.scoonline.com/DocumentLink/FCfgDt47>.

²⁷ Section 173, Bharatiya Nagarik Suraksha Sanhita, Chapter IX 2023.

²⁸ (2008) 7 SCC 164.

²⁹ Section 154, Code of Criminal Procedure (1973)

Zero FIRs

One of the most challenging aspects of the new law is the mandatory registration of zero FIRs. “Previously, the concept of zero FIR existed but was not mandatory. Now, regardless of whether the offence was committed within the jurisdiction of a particular police station, the FIR must be registered.

After the registration of a zero FIR, the police are required to conduct a preliminary inquiry. If the inquiry reveals that the offence did not occur within their jurisdiction, they must transfer the FIR and any collected materials to the appropriate police station. This change can lead to abuse of the legal process. For instance, if I am in Delhi and the offence occurred in Delhi, anyone can register the FIR in Andhra Pradesh, Chennai, or Chandigarh. The police station where the FIR is registered will decide whether and when to transfer the matter. Meanwhile, the police officer at that station can arrest you, only to later declare that the offence falls under Delhi’s jurisdiction. By that time, your fundamental rights could be encroached upon. Second, Section 173(3) of the BNSS shall make the registration of an FIR discretionary for an offence where the punishment ranges from 3 to 7 years. This disproportionately harms marginalised groups, who may be unable to get even FIRs registered.

Third, Section 187(3)³⁰ of the BNSS introduces the troubling provision that allows the police to request custody for up to 15 days at any point during a 60–90-day custody period, even if the accused has cleared the triple test for bail. This effectively hinders the accused’s ability to secure bail and can prolong their detention significantly. The provision raises concerns about arbitrary detention, potential abuse of power, and the undue burden placed on those facing charges under the new law.

Forensic Science

Forensic science has continuously evolved to reduce human errors and cognitive biases in judicial decision-making. With its scientific basis, neutrality and impartiality, forensic opinion fosters confidence in reaching the truth behind a fact, which is necessary for delivering justice. It must be noted that forensic experts’ opinion is not error-free in absolute terms—hence forensic reports are used for corroboration in judicial proceedings. Minimising the scope of errors in expert opinion remains a daunting challenge, which can be addressed at two levels—defining an expert and whether the methods used to deduce an expert opinion are reliable and accredited.

First, the definition of a forensic expert needs urgent attention. Section 45³¹ of the Indian Evidence Act of 1882 describes an expert. It says that when the court forms an opinion on foreign law, science or art—or, say, has to identify handwriting or finger impressions based on the advice of persons specially skilled in those fields—then such persons are considered experts.

³⁰ S.187 Bhartiye Nagrik Suraksha Sahita (2023)Livelaw,<https://www.livelaw.in/high-court/karnataka-high-court/karnataka-high-court-section-1873-bnss-police-custody-10-years-maximum-punishment-278798>(Last visited on 13 December 2024).

³¹ Section 45 in The Indian Evidence Act, 1872.

Interestingly, the term ‘forensic’ does not figure in the entire Evidence Act. The expression ‘specially skilled’ is also not defined in the Act, resulting in the conundrum of who an expert is.

The Supreme Court, in *Sunil Batra vs Delhi Administration*³², accepted an excise inspector as an expert who was to determine by smell test whether the liquor was illicit since he had gathered vast experience in dealing with such cases. Such imperfect, subjective legal interpretation poses the serious risk of miscarriage of justice, including wrongful convictions which would erode public trust in the legal system.

In the *State of Himachal Pradesh vs Jai Lal*³³, the Supreme Court elucidated on the expression ‘specially skilled’, and said an expert must have made a special study or acquired a special experience. Thus, an expert must be skilled with adequate subject knowledge. Section 39 of the new Bharatiya Sakshya Act is almost a replica of the old provisions on experts, except it includes “any other field” to embrace other disciplines of expertise. The segment titled “Opinion of third persons when relevant” necessitates a revisit to remove the continuing ambiguity in procedural law.

To annul ambiguity, it is proposed to define an expert as “a specially skilled person having essential education, knowledge, experience, skill, and training of the subject who provides an expert opinion based on reproducible, sufficient facts or data derived from reliable and accredited principles and methods”. Further, India may want to introduce an autonomous ombudsman like the Texas Forensic Science Commission to regulate, facilitate and advance the credibility and probity of expert opinion.

An expert is not a witness of fact, but he advises the court to understand the facts. An expert opinion per se is considered advisory and persuasive if it is intelligible, convincing and based on sufficient data derived from steadfast principles and methods. Expert opinion, once admitted, becomes an opinion of the court. Thus, expert opinion fortified with neutrality and scientific validation plays a crucial role as inculpatory evidence to prove guilt beyond a reasonable doubt, as well as exculpatory evidence to establish the innocence of an accused.

Conclusion

There is no denying that India’s criminal justice infrastructure is in dire need of reform. However, the proposed acts, rather than addressing the existing lacuna, only serve to exacerbate them. The creation of parallel legal regimes, increased ambiguity, and a potential surge in case backlog are just a few concerns of the new acts.

While poised to introduce a legal framework attuned to the realities of the 21st century, the BNS rehashes and reinforces mistakes made in the colonial era during the enactment of the IPC in 1860. Most alarmingly it persists in: a) relying on custodial punishment while restricting the

³² (1980) 3 SCC 488.

³³ AIR 1999 Supreme Court 3318.

application of community service as a reformative form of punishment; b) maintaining the perception of women as chattel by retaining the marital exception; upholding provisions that criminalise actions such as enticing or taking away a married woman for illicit sexual intercourse; and linking assault and harassment of women to notions of ‘modesty’; and (c) failing to achieve gender neutrality by recognising only a man as the perpetrator and a woman as the victim in offences like rape, sexual harassment, and stalking

It is worth highlighting the procedural flaws with the passage of the laws that reflect democratic and legislative erosion. First, the laws were drafted by a Reforms Committee that lacked diversity and transparency. It lacked representation from women, Dalits, minorities, LGBTQIA+ persons, persons with disabilities, and so on—persons who are already vulnerable and most bear the brunt of the power of the State or patriarchy. Discussions on honour killing or mob lynching or marital rape would have been more meaningful with their inclusion. Unfortunately, the recommendations of the Committee were not published in the public domain, lending further secrecy to the workings of an already opaque and inaccessible Committee. Even RTI applications filed with the Committee were not entertained

Unfortunately, contrary to expectations, these laws fail to align provisions related to crime and punishment with contemporary needs. Instead, both the quick and undemocratic manner in which they were passed as well as their substantive provisions reflect a tale of missed opportunities. The BNS has effectively repurposed and recycled old provisions under a new guise, exacerbating the regressive aspects of certain provisions, and reinforcing the asymmetric power relationship between citizens and the State.



Dark Web: The Hidden Face of Cyber Crime

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Abstract

The Dark Web is a hidden part of the internet that exists beyond the reach of traditional search engines, often accessed via specialized software like Tor (The Onion Router). It is a realm where users can maintain anonymity and privacy, making it a double-edged sword: while it provides a space for free expression and privacy protection, it also serves as a platform for illegal activities. The existence and usage of the Dark Web in India are growing concerns for law enforcement agencies, as it facilitates illicit trade, cybercrime, and a variety of illegal services, including drug trafficking, human trafficking, weapon sales, and hacking services. In India, the legal and regulatory landscape surrounding the Dark Web is still evolving. While the government has made significant strides in cracking down on cybercrimes, including increasing its cybersecurity efforts, the anonymity offered by the Dark Web presents challenges in surveillance and law enforcement. Additionally, its use among Indian citizens is often linked to financial fraud, data breaches, and online extremism, creating new concerns for national security. This paper explores the presence of the Dark Web in India, its legal and ethical implications, and the challenges faced by Indian authorities in curbing illegal activities. It also considers the societal impact, including how the anonymity of the Dark Web is both a tool for freedom of speech and a facilitator of criminal behavior. The study aims at shedding light on the dynamic relationship between technology, privacy, law enforcement, and crime in the context of India's digital landscape.

Keywords: Dark web, encryption, Surface web, Deep web, peer-to-peer connections, Identity theft, Ransomware, drug trafficking, Cryptocurrency, etc.

Introduction

The dark web refers to a hidden segment of the internet that is not indexed by conventional search engines such as Chrome, Safari, and Mozilla Firefox. Accessing the dark web typically requires specialized software like TOR (The Onion Router)³. It is often connected with anonymity and privacy, as it shields users' activities and identities. Although using the dark web is not inherently illegal, and it has a diverse array of legitimate users engaged in activities like whistleblowing and other lawful endeavors, it is also notorious for illegal activities such as drug trafficking, human trafficking, extortion, sexual exploitation, and weapon smuggling.

Understating of its working

The most common way to access the dark web is through the Tor network. "Tor is a privacy-focused browser that anonymizes users' internet traffic by routing it through multiple nodes

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³ Oliver Buxton, What is the dark web & how do you access it? Norton, Nov. 26, 2024. <https://us.norton.com/blog/how-to/what-is-the-dark-web>

(servers) around the world.”⁴ This "onion routing" technique encrypts data several times, making it difficult for anyone to track the user's activity. When we use Tor, our data is encrypted and sent through a random series of nodes in the network. Each node decrypts a layer of encryption, revealing only the next node in the chain. This means the traffic is not easily traceable to the original source.

Layers of Internet

“The dark web is the smallest of the three separate levels that make up the internet. The majority of us use the surface web on a daily basis. The general population that utilize regular search engines can access it. The surface web contains the websites that people frequently use for shopping, social media, streaming, news organizations, and other purposes. Standard web browsers like Google Chrome and Mozilla Firefox can be used to view it without any special setup. Although the surface web appears to be very large, it actually makes up only 4% of the entire web.”⁵

The greatest portion of the internet is the deep web. Conventional search engines do not index or search it. To access certain websites or services, a specific IP address or URL is needed. Because they are difficult for search engines to find or because they don't use standard top-level domains (TLD), some websites are considered to be part of the deep web. Sites on the deep web are generally used to store data and content stored in databases that support services like social media sites, insurance companies or banks. The deep web is 400 to 500 times the size of the surface web.

The dark web is a portion of the deep web that relies on peer-to-peer connections and is relatively less accessible. To access the dark web, one needs specialized software or tools. Although the Tor browser is the most popular way to access the dark web, Signal and other communications platforms can also be used. About 0.01% of the deep web's total space is made up of the dark web.

Types of Crime

The dark web is often associated with illicit activities due to its anonymity and encrypted nature. While not all activity on the dark web is illegal, several types of crime have been prevalent. Here are some common crimes that occur on the dark web:

a) Drug Trafficking:

- One of the most well-known illegal activities, where individuals can buy and sell various drugs, including opioids, psychedelics, and prescription medications.

b) Hacking and Cybercrime:

⁴Investopedia Team, *What is Tor? Who Uses it, How to use it, Legality and Purpose*, Investopedia, Sep. 23, 2022, <https://www.investopedia.com/terms/t/tor.asp#:~:text=The%20Tor%20network%20is%20a,online%20data%2C%20and%20browsing%20history> (accessed Feb. 02, 2025 at 08:31 P.M.).

⁵Security Suite, *Who Are Today's Dark Web Users?* Kaseya, Mar. 23, 2023, <https://www.widagent.com/resources/the-it-professionals-guide-to-dark-web-defense/> (accessed Nov. 29, 2024 at 04:42 P.M.).

- Hackers may sell stolen data, such as personal information, credit card numbers, and login credentials.
- Tools for hacking, like malware, ransomware, and botnets, are also often traded.
- c) **Identity Theft:**
 - Personal information like Social Security numbers, credit card details, and medical records are stolen and sold to criminals for fraud and other illegal activities.
- d) **Human Trafficking and Child Exploitation:**
 - Unfortunately, some criminals use the dark web for trafficking humans, including forced labor or sex trafficking. The dark web has also been used to share illegal content involving child exploitation.
- e) **Weapons Trafficking:**
 - Firearms, explosives, and other weapons may be bought and sold illegally through dark web marketplaces.
- f) **Counterfeit Goods:**
 - Fake identification, counterfeit currency, and pirated software or media are commonly sold on the dark web.
- g) **Financial Fraud:**
 - This includes activities like credit card fraud, money laundering, and other forms of financial crimes.
- h) **Ransomware:**
 - Criminals often use the dark web to distribute ransomware tools or demand payments in cryptocurrency in exchange for not releasing sensitive data or for regaining access to a victim's system.
- i) **Hire for Assassinations:**
 - While it's often thought to be exaggerated, there have been reports of sites on the dark web offering hitman services, although law enforcement agencies usually keep a close watch on such activities.
- j) **Stolen Intellectual Property:**
 - Some people sell pirated software, movies, books, and music, as well as stolen patents or proprietary information.

Despite these illegal activities, it's important to note that not everything on the dark web is illicit. Some individuals use it for privacy, secure communication, or accessing information under oppressive regimes. However, its association with crime is undeniable.

Legislation and legislative Measures

In India, the legal framework to combat crimes on the dark web is still evolving, but several existing laws and regulations are being enforced to address cybercrimes, including those associated with the dark web. Below are some of the primary legislations that are used to control dark web crimes in India.

The Information Technology Act, 2000 (IT Act)

- “Section 66C: Punishment for identity theft. This section deals with the unauthorized use of someone's identity, which is a common crime on the dark web (e.g., selling personal data).
- Section 66D: Punishment for cheating by personation using computers or communication devices. This covers crimes like online fraud and scams that occur on the dark web.
- Section 67: Punishment for publishing or transmitting obscene material in electronic form. This is relevant to crimes like the distribution of illegal content (e.g., child pornography) on the dark web.
- Section 69: Powers to intercept, monitor, or decrypt information. This section allows authorities to monitor online activities, including on the dark web, if necessary for national security or prevention of cybercrimes.
- Section 70: This section grants powers to the government to declare any computer resource or network as critical infrastructure, making any attack on these resources a more serious crime.”⁶

Bhartiya Nyaya Sanhita (BNS)

The BNS contains provisions that can be used to address various crimes related to dark web activities, such as:

- Section 318 (Cheating): Used to prosecute those involved in online frauds and scams, which are common on the dark web.
- Section 308 (Extortion): Applies to situations where criminals use the dark web for extortion, such as ransomware attacks.
- Section 87 (Kidnapping, abducting, or inducing woman to compel her to marry): Relevant for cases of human trafficking, which unfortunately can sometimes be facilitated through the dark web.
- Section 294 (Obscenity): Deals with the distribution of obscene material, such as child exploitation content, which may be found on the dark web.”⁷

The Prevention of Money Laundering Act (PMLA), 2002

The PMLA is an important tool used to combat money laundering activities, which often take place on the dark web. Criminal activities like drug trafficking, weapons sales, and other illicit trade often involve money laundering to conceal illegal earnings. The law allows enforcement agencies like the Enforcement Directorate to investigate financial crimes related to dark web activities.⁸

The Narcotic Drugs and Psychotropic Substances Act, 1985

This Act deals with the regulation and control of narcotic drugs and psychotropic substances. It is used to prosecute those involved in illegal drug trafficking, which is common on the dark

⁶ The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000.

⁷ Bhartiya Nyaya Sanhita, 2023, No. 121, Act of Parliament, 2023.

⁸ The Prevention of Money Laundering Act, 2002, No. 15, Acts of Parliament, 2002.

web. The law makes it illegal to manufacture, possess, sell, or transport drugs, and enforcement agencies often target dark web marketplaces involved in drug trafficking.

The Protection of Children from Sexual Offences (POCSO) Act, 2012

This Act is specifically designed to protect children from sexual exploitation and abuse. It criminalizes the production, distribution, and possession of child pornography, a serious issue on the dark web. POCSO is applicable to crimes related to child exploitation that occur through online platforms, including the dark web.

The Arms Act, 1959

The Arms Act regulates the manufacture, possession, and trade of firearms and ammunition. If weapons are being trafficked or sold on the dark web, this law can be used to apprehend and prosecute the offenders.

State's response on the Issue

In India, the state's response to the issue of the dark web has been multi-pronged, with an emphasis on strengthening the legal framework, increasing law enforcement capabilities, and promoting public awareness. However, addressing dark web crimes presents several challenges due to the anonymous and encrypted nature of the network. Below are key aspects of the state's response:

Law Enforcement Agencies' Actions and Initiatives

- **Cyber Crime Units:**

Various state police departments have set up dedicated Cyber Crime Cells to investigate and handle crimes related to the dark web, including hacking, fraud, human trafficking, and cyber terrorism. These units work closely with the *Central Bureau of Investigation (CBI)*, *National Investigation Agency (NIA)*, and other national agencies to monitor and tackle dark web activity.

- **Cyber Crime Coordination Centre (4C):**

The Ministry of Home Affairs launched the Cyber Crime Coordination Centre (4C) to enhance coordination among law enforcement agencies at the state and central levels. The initiative aims to strengthen the ability of law enforcement agencies to tackle cybercrimes, including those related to the dark web. This includes improving technical infrastructure, sharing intelligence, and facilitating investigations into cross-border cybercrimes.

- **Special Task Forces (STFs):**

Some states, such as Uttar Pradesh, have established special task forces to combat cybercrimes, which include dark web-related activities such as drug trafficking, pornography, and ransomware attacks. These units are trained in digital forensics and advanced tracking methods to monitor and investigate dark web activities.

- **International Collaboration:**

India cooperates with global law enforcement agencies, such as Interpol and FBI, through formal channels like the *Interpol Cyber Crime Centre*. This collaboration helps in tracing dark

web criminals who operate beyond India's borders. In 2020, India worked with international partners to dismantle dark web marketplaces involved in selling illegal drugs and firearms.

Initiatives by the Government of India

- **National Cyber Security Policy (2013):**

The National Cyber Security Policy provides a framework for creating secure cyberspace in India. While it doesn't explicitly focus on the dark web, it addresses cyber threats and the need to protect critical infrastructure. The policy also supports the development of a national response team that can address cybercrimes, including those arising from the dark web.

- **Cyber Crime Prevention Against Women and Children (CCPWC) Scheme:**

This initiative focuses on tackling cybercrimes such as online harassment, exploitation, and trafficking of women and children. The scheme, launched by the Ministry of Home Affairs, aims to establish cybercrime cells in every state to specifically deal with crimes related to the dark web, including the distribution of child sexual abuse material (CSAM).

- **Digital India Initiative:**

While primarily focused on increasing digital access and infrastructure across the country, the *Digital India Initiative* also calls for stronger measures to ensure cyber security. It encourages the use of advanced technology to detect and prevent illegal activities on the dark web.

- **Cyber Swachhta Kendra (Botnet Cleaning and Malware Analysis Centre):**

Launched by the Ministry of Electronics and Information Technology (MeitY), this initiative is aimed at addressing cyber threats, including those stemming from the dark web. It helps clean infected devices, particularly in cases where they are used in dark web-related criminal activities.

Regulation of Cryptocurrency and Online Transactions

- The rise of cryptocurrency usage on the dark web, particularly for illegal transactions (due to its anonymity), has prompted the government to consider regulatory measures. While India does not have specific laws regulating cryptocurrencies, the Reserve Bank of India (RBI) has issued warnings about the risks associated with them.
- In 2020, the Indian government proposed a cryptocurrency ban, citing concerns about its use for money laundering and funding illegal activities, including on the dark web. However, this proposal has faced challenges and has yet to be fully implemented. The government is also exploring the possibility of launching its own Central Bank Digital Currency (CBDC) to provide a safer and regulated alternative to cryptocurrencies.

Challenges Faced by the State

- **Anonymity and Encryption:**

One of the biggest challenges in combating dark web crimes is the high level of anonymity and encryption that the dark web offers to users. Criminals can hide their identity using technologies like Tor (The Onion Router) and VPNs (Virtual Private Networks), which makes it difficult for law enforcement to track or trace them.

- **Lack of Technical Expertise:**

Despite efforts to improve cyber policing, there is a gap in the technical skills needed to effectively investigate dark web-related crimes. Law enforcement agencies sometimes struggle to keep up with rapidly changing technology, encryption tools, and hacking techniques.

- **Cross-Border Jurisdiction Issues:**

The global nature of the dark web means that criminals may operate from countries where enforcement is either weak or non-existent. This creates challenges for Indian law enforcement when criminals based abroad are involved in dark web crimes targeting Indian citizens.

- **Lack of Public Awareness:**

While the government has made efforts to increase cyber awareness, many individuals remain unaware of the dangers associated with the dark web. This lack of awareness contributes to the growth of illegal activities, as individuals might unknowingly participate in cybercrimes or fall victim to scams.

Conclusion

India's response to dark web crimes involves a combination of legal measures, law enforcement efforts, and public awareness campaigns. While the government and law enforcement agencies have made significant progress, the dark web remains a significant challenge due to its anonymity and the technical complexity of monitoring and investigating such crimes. The Indian state continues to adapt and enhance its strategies through international collaboration, technological advancements, and education to curb the impact of dark web activities on its citizens.

