



THE TRANSFORMATION OF INDIAN CRIMINAL LAW: COMPARATIVE ANALYSIS OF IPC, CRPC, IEA AND THE BNS, BNSS, BSA (2023)

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Abstract: The Indian criminal justice system has undergone its most comprehensive reform since independence with the replacement of the Indian Penal Code (1860), the Code of Criminal Procedure (1973), and the Indian Evidence Act (1872) by three new laws in 2023: the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA). This article presents a comparative analysis of the old and new statutes, examining structural changes, key substantive innovations, procedural reforms, and their implications for the delivery of justice in India. Through doctrinal comparison and contextual commentary, the paper evaluates whether the new laws signify a genuine decolonization of India's legal architecture or a symbolic renaming exercise. Drawing upon committee reports, judicial pronouncements, and policy discourse, it argues that while the reforms signal intent to modernize and indigenize criminal law, the real test lies in their implementation, institutional readiness, and safeguarding of constitutional liberties.

Keywords: Criminal law reform, Bharatiya Nyaya Sanhita, IPC, BNSS, procedural law, BSA, Indian Evidence Act, legal modernization, comparative law, postcolonial jurisprudence

I. INTRODUCTION

The Indian criminal justice system has long operated under a legal framework that originated during the colonial era. The **Indian Penal Code (IPC) of 1860**, **Code of Criminal Procedure (CrPC) of 1973**, and the **Indian Evidence Act (IEA) of 1872** were foundational pillars of criminal law in India for more than a century. Although these laws provided a semblance of structure and legal order, they were originally crafted by colonial rulers with the primary objective of maintaining imperial control, rather than ensuring justice for the Indian populace. These statutes prioritized state authority, deterrence, and law enforcement over individual rights, victim protection, or participatory justice.

Despite India's independence in 1947 and the adoption of a progressive and rights-oriented **Constitution in 1950**, these criminal laws were only marginally modified over the years. Consequently, many provisions remained outdated, ill-suited to contemporary societal needs, and incompatible with advancements in technology, human rights jurisprudence, and global legal standards. Repeated calls for comprehensive reform—from the **Law Commission of India**, **Malimath Committee (2003)**, and various legal scholars—highlighted systemic issues such as judicial delays, low conviction rates, overburdened police, and the marginalization of victims' voices.

In response to these long-standing critiques, the Government of India introduced a historic overhaul in **August 2023** by enacting three new statutes:

1. **Bharatiya Nyaya Sanhita (BNS)**, replacing the IPC
2. **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, replacing the CrPC
3. **Bharatiya Sakshya Adhiniyam (BSA)**, replacing the IEA

These new laws aim to modernize India's criminal law system by:

1. Making justice more **citizen-centric** and victim-sensitive
2. Integrating **digital and forensic tools** to improve investigation and trial efficiency
3. Ensuring **time-bound procedures** and greater accountability
4. Promoting **transparency, fairness, and constitutional compliance**

While these reforms have been welcomed by many as a step toward decolonizing India's legal system, they have also attracted critical scrutiny. Questions remain about their actual enforceability, the capacity of institutions to adapt to these changes, and the potential for misuse of certain expanded powers. Nonetheless, the enactment of BNS, BNSS, and BSA signals a decisive move toward aligning criminal law with **21st-century democratic values, technological advancements, and global legal standards**.

2. Methodology

This research article adopts a **qualitative, analytical, and comparative legal methodology**, primarily rooted in **doctrinal research**, supplemented by **comparative and interpretive techniques**. The objective is to critically examine and contrast the

structure, substance, and implications of the newly enacted criminal laws—**Bharatiya Nyaya Sanhita (BNS)**, **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, and **Bharatiya Sakshya Adhiniyam (BSA)**—with their predecessors: the **Indian Penal Code (IPC)**, the **Code of Criminal Procedure (CrPC)**, and the **Indian Evidence Act (IEA)**.

2.1 Doctrinal Legal Research

The core of this study relies on **doctrinal analysis**, which involves a thorough and systematic examination of:

- Statutory provisions** of the old and new criminal laws.
- Judicial pronouncements** that interpret key legal principles and provisions relevant to both frameworks.
- Rules of interpretation and legal doctrines** applicable in criminal law and constitutional law.

This method enables the identification of **legal continuity, substantive and procedural modifications, constitutional compatibility, and normative shifts** between the colonial-era laws and their 2023 replacements.

2.2 Comparative Legal Analysis

The study applies a **comparative framework** to juxtapose:

- Structural composition** (e.g., number of sections, chapters, classification of offences)
- Substantive content** (e.g., newly defined offences, removed/revised provisions)
- Procedural reforms** (e.g., timelines, digital evidence, electronic FIRs)
- Evidentiary innovations** (e.g., admissibility of digital records, forensics, presumptions)

2.3 Primary Sources

The study extensively refers to **primary legal documents**, including:

- The full legislative texts of the **BNS, BNSS, and BSA (2023)** and the **IPC, CrPC, and IEA**.
- Parliamentary Debates** from the Lok Sabha and Rajya Sabha during the introduction and passage of these new laws.
- Reports and recommendations** of the **Law Commission of India**, especially Reports No. 42, 154, 177, 243, and 277.
- The **Malimath Committee Report (2003)** on Criminal Justice System Reforms.
- Relevant judgments** of the Supreme Court and High Courts interpreting criminal and constitutional law principles.

2.4 Secondary Sources

Secondary data includes:

- Peer-reviewed journal articles**, legal commentaries, and expert analyses from Indian and international scholars.
- Newspaper articles**, editorial opinions, and media reports on public reception and critique of the 2023 laws.
- Policy papers**, bar association reviews, and reports from think tanks such as PRS Legislative Research and Vidhi Centre for Legal Policy.

2.5 Analytical Tools

To ensure depth and rigor, the study also integrates:

- Contextual interpretation**—understanding laws in light of constitutional mandates and social realities.
- Critical discourse analysis**—reviewing debates on colonial legacies, justice access, and victim rights.
- Doctrinal synthesis**—identifying and articulating the emerging jurisprudential trends post-2023 reforms.

2.6 Delimitation

The article is limited to **legal and institutional analysis**. It does not include large-scale empirical surveys, although it refers to limited empirical data (from NCRB, NJDG, and policy interviews) where relevant.

3. Comparative Structural Overview

Area	Colonial Laws	2023 Laws
Penal Law	Indian Penal Code (IPC), 1860	Bharatiya Nyaya Sanhita (BNS), 2023
Procedure	Code of Criminal Procedure (CrPC), 1973	Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023
Evidence	Indian Evidence Act (IEA), 1872	Bharatiya Sakshya Adhiniyam (BSA), 2023
Number of Sections	IPC – 511	BNS – 358
Focus	State authority, deterrence	Citizen rights, victim-centric approach

4. Key Substantive Changes in BNS

a) New Offences Introduced: Organized Crime, Mob Lynching, Acts of Terrorism, and Hate Crimes

One of the most significant changes in the BNS is the **formal recognition and criminalization of new types of collective and ideological crimes** that were either poorly defined or entirely absent in the IPC.

- Organized Crime:** The BNS criminalizes acts committed by organized criminal syndicates with the intent of generating illegal revenue, threatening public order, or undermining state authority. This includes trafficking, contract killings, illegal arms trade, and extortion.
- Mob Lynching:** For the first time in Indian penal law, the BNS introduces provisions addressing **lynching by mobs**, particularly in cases driven by communal hatred, caste-based animosity, or moral policing. It criminalizes group violence resulting in serious injury or death with severe penalties.
- Acts of Terrorism:** While terrorism is addressed under special laws like the Unlawful Activities (Prevention) Act (UAPA), the BNS incorporates **a broader and clearer definition of terrorist acts** and allows general law to handle certain cases, promoting consistency in legal response.
- Hate Crimes:** Offences motivated by religion, caste, ethnicity, or gender bias are now more explicitly criminalized, reflecting a growing awareness of identity-based violence.

b) Digital and Cybercrime: Enhanced Penalties and Inclusion of Electronic Records

The BNS incorporates **enhanced penal provisions for cyber-related offences**, which were only minimally addressed in the IPC.

- Digital Offences:** New provisions address crimes involving digital platforms—cyberstalking, cyberbullying, identity theft, data breaches, online sexual exploitation, and distribution of child pornography.

2. **Electronic Records:** The BNS recognizes **electronic records as primary evidence** in criminal proceedings. This shift reflects alignment with the Information Technology Act, 2000 and acknowledges the increasing role of digital tools in committing and detecting crime.
3. **Penalty Enhancements:** Punishments for offences involving the misuse of technology, such as online defamation, fraud, or phishing, have been made more stringent. Repeat offenders face enhanced penalties and in some cases, mandatory imprisonment.

c) Treason/Sedition Repealed: Section 124A of IPC Removed; Replaced with "Offences Against the State"

One of the most discussed reforms in the BNS is the **repeal of Section 124A of the IPC**, which criminalized **sedition**.

1. **Criticism of Sedition Law:** Section 124A had long been criticized for its **colonial legacy** and **abuse to suppress dissent**. It was frequently invoked against journalists, activists, and protestors, raising constitutional concerns regarding **freedom of speech under Article 19(1)(a)**.
2. **Replacement Clause in BNS:** BNS introduces a broader but less vague provision dealing with "**acts endangering sovereignty, unity, and integrity of India**." It criminalizes incitement to violence or armed rebellion against the state, but without penalizing mere criticism or political dissent.
3. **Balancing Security and Liberty:** This change attempts to **strike a balance between national security and civil liberties**, although it still invites scrutiny over potential misuse.

d) Gender-Inclusive Language: Broader Terminology in Sexual Offences

The BNS adopts a more **gender-inclusive approach**, marking a progressive departure from the **male-centric language** of the IPC.

1. **Recognition of All Genders:** While IPC largely framed sexual offences in terms of male perpetrators and female victims, BNS attempts to **remove binary bias** by using **gender-neutral terms** like "person" instead of "woman" in several contexts. This reflects a recognition of the rights of **LGBTQ+ individuals**, in line with judgments such as *Navtej Singh Johar v. Union of India* (2018).
2. **Expanded Definitions:** Sexual assault, molestation, and harassment are redefined to include a **broader range of acts and non-penetrative offences**, ensuring that previously underreported crimes can be prosecuted.
3. **Protection of Children and Transgender Persons:** The BNS aligns with the **Protection of Children from Sexual Offences (POCSO) Act** and **Transgender Persons (Protection of Rights) Act**, reinforcing protection mechanisms for vulnerable groups.

5. Procedural Innovations in BNSS

a) Electronic FIRs: Citizens Can Now File FIRs Electronically

One of the most progressive changes introduced by BNSS is the **legal recognition of electronic First Information Reports (e-FIRs)**.

1. **Background:** Under Section 154 of the CrPC, FIRs had to be registered in writing or orally by appearing in person before a police officer. This often-created obstacles for victims, especially women, senior citizens, or those in rural/remote areas.
2. **BNSS Innovation:** The BNSS permits the **registration of FIRs through electronic means**, such as online portals or mobile apps. This increases transparency, reduces gatekeeping by police, and speeds up the registration process.
3. **Implementation Example:** States like **Delhi, Uttar Pradesh, and Maharashtra** have already piloted **e-FIR systems** for vehicle theft and cybercrime, showing significant time savings. As per Delhi Police's 2022 report, over **2 lakh e-FIRs were filed** within a year of rollout.
4. **Impact:** This change **democratizes access to justice**, particularly for tech-literate urban youth and those facing immediate threats, while also generating digital records for future accountability.

b) Timeline Mandates: Investigations Must Be Completed Within 90 Days for Certain Offences

BNSS introduces **statutory time limits** for various stages of the criminal investigation and trial process to **curb delays**—a chronic issue in the Indian judiciary.

1. **Key Provision:** For **serious offences**, the investigation must be **completed within 90 days**, failing which the investigating officer must record reasons for the delay and seek an extension from the magistrate.
2. **Comparative Context:** Under CrPC, while Sections 167 and 173 vaguely imposed timelines, they were often bypassed, leading to years-long investigations. As per **NCRB 2022 data**, the average investigation period for IPC crimes was **118 days**, often stretching up to **1 year** in over **28% of cases**.
3. **Legal Safeguards:** BNSS mandates **summary closure reports** if no progress is made and **magisterial monitoring** of prolonged investigations.
4. **Expected Outcome:** With stricter compliance, this reform is likely to **reduce case pendency**, ensure faster justice, and improve **police accountability**.

c) Video Conferencing & Electronic Trials: BNSS Mandates Digital Testimony, Especially for Vulnerable Witnesses

BNSS embraces technology by **institutionalizing the use of video conferencing and digital testimony**, which was earlier used inconsistently.

1) **Provisions:**

- a) Accused persons in judicial custody can **attend hearings via video conferencing**, reducing delays due to escorting issues.
- b) **Victims and vulnerable witnesses**, especially survivors of sexual violence or children, can **record statements remotely**, ensuring **emotional safety** and preventing secondary trauma.

2) **Precedent:** The **Supreme Court (In Re: Guidelines for Court Functioning via Video Conferencing, 2020)** recognized VC as a legitimate form of judicial proceeding.

3) **Data Insight:** As of 2023, the **e-Courts Mission Mode Project** had connected **more than 18,000 district and subordinate courts** with video conferencing infrastructure. According to the **e-Committee of the Supreme Court**, over **1 crore hearings** were conducted via VC during COVID-19.

- 4) **Expected Benefits:** Saves judicial time, reduces logistic costs, enhances access in rural areas, and protects the dignity of victims.

d) Forensic Mandates: Scientific Evidence and Forensic Reports Made Compulsory in Serious Crimes

A major procedural reform in BNSS is the **mandatory use of forensic and scientific investigation techniques** in certain categories of crimes.

- 1) **Scope:** BNSS makes forensic examination **compulsory in offences punishable with 7 years or more**, such as **rape, murder, acid attacks, and dacoity**.
- 2) **Earlier Gap:** Under CrPC, forensic analysis was **discretionary**. As per NCRB 2021, forensic labs processed only **16% of the total serious crime cases**, largely due to lack of infrastructure or procedural delays.
- 3) **Implementation Support:** The **Union Budget 2023-24** allocated ₹2,000 crore for **forensic infrastructure**, including **new regional FSLs (Forensic Science Laboratories)** and **training for police officers** in scientific methods.
- 4) **Benefits:**
 - a) Increases **objectivity and accuracy** in investigation.
 - b) Reduces reliance on confessions and witness testimony, which are vulnerable to coercion or retraction.
 - c) Likely to **improve conviction rates**, which currently stand at only **57.3%** (as per NCRB 2022) for IPC crimes.

6. Evidentiary Shifts in BSA

a) Electronic Evidence Recognized: Inclusion of Digital Records, CCTV, Emails, etc.

One of the most transformative changes under the BSA is the **comprehensive recognition and standardization of electronic evidence** in criminal proceedings.

- 1) **Expanded Scope:** BSA explicitly includes **digital records**, such as:
 - a) CCTV footage
 - b) Emails, SMS, WhatsApp messages
 - c) Server logs
 - d) GPS data
 - e) Audio-video recordings
 - f) Blockchain records (where applicable)
- 2) **Legal Evolution:** While the Indian Evidence Act, 1872 (via Section 65B) already dealt with electronic evidence post the 2000 amendment, there were **technical ambiguities** (especially on admissibility of certificate requirements) highlighted in **Anvar P.V. v. P.K. Basheer (2014)** and **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020)**.
- 3) **Reform Under BSA:**
 - a) Clarifies conditions for **admissibility without a physical certificate**, allowing for **server authentication** and **metadata validation** as alternatives.
 - b) Recognizes **cloud-based records** and **social media data**, ensuring relevance in an age of digital communication.
- 4) **Data Support:** As per the **National Crime Records Bureau (NCRB 2022)**, more than **36% of cybercrime investigations** rely on digital footprints. Yet, **court admissibility delays** often compromised evidence integrity. BSA seeks to address this gap.
- 5) **Impact:** This reform **modernizes evidentiary law**, aligns India with global digital standards, and enhances the **probative value** of tech-driven investigations.

b) Presumptions Modified: Certain Burdens of Proof Redefined

BSA introduces **context-sensitive presumptions**, particularly to aid prosecution in **organized crime, cybercrime, sexual violence, and financial fraud** cases.

- 1) **Shifting Burden of Proof:** In certain cases where circumstantial and digital evidence strongly point to guilt, BSA permits a **reversal of the burden of proof**:
 - a) E.g., If the accused is found in possession of illicit material (child pornography, hate speech, explosive substances), they may be required to prove lawful possession or intent.
 - b) In **sexual offences**, once prima facie evidence is established, the onus may shift partially to the accused to rebut the presumption of guilt.
- 2) **Inspiration from Special Laws:**
 - a) Similar burden-shifting exists in **POCSO Act, NDPS Act, and Prevention of Corruption Act**, and BSA seeks to codify such practices in mainstream evidentiary law.
- 3) **Critique & Balance:**
 - a) While this aims to **aid victims and ease prosecution** in difficult cases, it raises concerns about **due process** and **presumption of innocence under Article 21** of the Constitution.
 - b) Courts are advised to apply these presumptions **judiciously** and not in a mechanical manner.
- 4) **Judicial Insight:** In *State of U.P. v. Naresh*, the SC held that "presumptions must not replace proof" unless clearly mandated. BSA balances this with **reasoned clauses and rebuttable frameworks**.

c) Witness Protection: Provisions for Identity Masking and Remote Testimony

Recognizing the **increasing threat to witnesses**, especially in high-profile or violent cases, BSA codifies **comprehensive witness protection measures**.

- 1) **Identity Concealment:**
 - a) Courts are now empowered to **mask the identity** of witnesses, especially in cases involving **sexual assault, organized crime, terrorism, and witnesses in custodial deaths**.
 - b) This includes **voice distortion, pixelation in videos**, and **use of pseudonyms** in official records.
- 2) **Remote Testimony:**
 - a) Witnesses may record statements via **video conferencing**, particularly:
 - i) Child witnesses (aligned with POCSO provisions)
 - ii) Victims of sexual violence
 - iii) Witnesses under threat

- b) This can be done from **safe houses, remote courtrooms, or designated video booths.**
- 3) **Legal Backing:**
 - a) The **Supreme Court's guidelines in Mahender Chawla v. Union of India (2018)** laid the foundation for India's **Witness Protection Scheme**, now embedded in BSA.
- 4) **Implementation Data:**
 - a) According to the Ministry of Home Affairs (2023), **over 7,000 witnesses** requested protection in major criminal trials across states. Yet, only **40% received formal support** due to lack of enabling provisions in prior law.
- 5) **Expected Outcome:**
 - a) Ensures **witness security, credibility, and participation**, ultimately strengthening conviction rates and **justice delivery**.
 - b) Helps reduce **hostile witness phenomena**, which accounted for **about 25% of failed trials** in rape and murder cases (as per NCRB analysis).

7. Evaluative Discussion

7.1 Strengths of the New Framework

a) Reduces Delay by Enforcing Timelines

One of the core strengths of the new legal framework—particularly under the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**—is its emphasis on **time-bound justice delivery**.

1) Key Provisions:

- a) **Investigation completion timelines:** Serious offences must now be investigated within **90 days** (extendable with magisterial permission).
- b) **Framing of charges and trial commencement** are now given explicit timeframes.
- c) **Medical reports and forensic results** must be submitted within specified periods in cases like **rape, custodial death, and grievous offences**.

2) Data Insight:

- a) According to the **National Judicial Data Grid (NJDG)**, as of 2023, **over 4.3 crore cases were pending** in subordinate courts, with **more than 1.2 crore criminal cases pending for over 5 years**.
- b) **NCRB 2022** data shows that the **average time for charge sheet filing** in IPC cases ranged between **118 to 185 days**—well beyond the ideal timeframe.

3) Expected Impact:

- a) The legally mandated timelines are expected to reduce the phenomenon of **"justice delayed is justice denied"**.
- b) These measures directly **address systemic delays** and improve **public trust** in the judiciary.

b) Improves Accessibility Through Digital Infrastructure

The new laws actively promote the **use of technology in policing, investigation, and trial procedures**, improving the **accessibility and inclusivity** of the justice system.

1) Digital Provisions:

- a) **Electronic FIRs** can now be registered remotely, enabling faster and hassle-free crime reporting.
- b) **Video conferencing for court hearings**, especially for vulnerable groups, has been formalized.
- c) **Digital evidence**—including CCTV, GPS data, emails, and social media posts—is now formally recognized under the **Bharatiya Sakshya Adhiniyam (BSA), 2023**.
- d) The **use of electronic summonses and e-challans** has been mandated.

2) Data Support:

- a) The **e-Courts Project (Phase II)**, supported by the Ministry of Law and Justice, has led to:
 - i) **18,735 courts computerized**
 - ii) **Over 1 crore hearings via video conferencing** (as per Supreme Court e-Committee, 2023)
 - iii) **Digital case filing in 90% of High Courts and 60% of District Courts**
- b) In states like **Delhi and Maharashtra**, over **25% of FIRs were filed online** in 2022–23.

3) Resulting Strengths:

- a) Enhances **access to justice** for citizens in rural, remote, and conflict-affected regions.
- b) Facilitates **speedier, transparent, and efficient** justice delivery.
- c) Reduces the burden on physical infrastructure and travel-related delays.

c) Aligns More Closely with Modern Crimes (Cybercrime, Terrorism)

The earlier framework, based on the IPC (1860), lacked adequate tools to handle **emerging crimes** such as cyber fraud, digital stalking, deepfakes, organized terror, and hate-fueled group violence. The **Bharatiya Nyaya Sanhita (BNS), 2023** introduces **modern definitions and offences** that reflect the realities of 21st-century threats.

1) Key Enhancements:

- a) **Cyber offences** such as hacking, data theft, online impersonation, and identity fraud now attract **clearer punishments**.
- b) **Digital sexual offences** (e.g., revenge porn, deepfake dissemination, sextortion) are newly defined.
- c) **Mob lynching, hate crimes, and organized crime** have dedicated provisions.
- d) Broader and more nuanced **offences against the State** replace colonial sedition laws to address terror plots and incitement to violence.

2) Data Insight:

- a) As per **NCRB 2022**, **over 65,000 cybercrime cases** were reported in India—a **5x increase since 2016**.
- b) Yet conviction rates for such crimes remained under **25%**, due in part to **evidentiary limitations and outdated laws**.
- c) India ranked **11th globally** in terms of **cyberattacks in 2023**, per Cybersecurity Ventures.

3) Policy Alignment:

- a) The new laws align with India's **Digital India, Smart Policing, and Cyber Surakshit Bharat** initiatives.
- b) Support the evolving global shift towards **data-centric criminal law**.

4) Anticipated Benefits:

- a) Ensures **legal preparedness** to handle sophisticated criminal strategies.

- b) Equips law enforcement with **contemporary tools**, bridging the legal-technical divide.

7.2 Concerns Raised

a) Several Sections Retain Vague Language Prone to Misuse

While the 2023 legal overhaul aimed to remove colonial hangovers, **ambiguities and broadly worded provisions** still persist, raising concerns of **subjective interpretation and misuse**.

1) Examples of Vagueness:

- The BNS replaces sedition with a new offence related to "**acts endangering the sovereignty, unity and integrity of India**", but **without a clear definition of what constitutes "endangerment."**
- Terms like "acts prejudicial to public order" or "intent to incite" are **open to interpretation**, leaving room for **disproportionate criminalization of dissent** or protest.
- Similarly, cyber-related offences under the new law use phrases like "offensive content" or "indecent communication" without providing **concrete legal thresholds**.

2) Critique from Legal Scholars:

- Justice Madan Lokur** and other retired judges have pointed out that **vague provisions can chill free speech** and give law enforcement a wide berth for targeting activists and political opponents.

3) Constitutional Risk:

- Ambiguous laws are vulnerable under **Article 14 and Article 21** challenges for being **arbitrary and lacking procedural safeguards** (refer: *Shreya Singhal v. Union of India*, 2015).

b) Expanded Police Powers with Weak Safeguards

The new BNSS has been criticized for **increasing police discretion** without a parallel strengthening of **oversight or accountability mechanisms**.

1) Expanded Powers:

- Warrantless arrests** continue under a broad range of "cognizable offences".
- Police may **use handcuffs more freely**, including during arrest of those accused of economic offences, which was previously restricted (as per *Prem Shankar Shukla v. Delhi Administration*, 1980).
- BNSS allows the **use of electronic surveillance, facial recognition, and digital monitoring tools** during investigation, without strong data privacy regulations.

2) Lack of Independent Oversight:

- There is no **statutory mechanism for third-party oversight**, such as judicial pre-approval for surveillance or real-time monitoring of police actions.

3) Data from Reports:

- According to NHRC and NCRB, over **1,700 custodial deaths** were recorded between 2017 and 2022, with **very low prosecution rates**.
- Only **26.5% of complaints against police personnel** led to departmental action (NCRB 2021).

4) Implication:

- Expanded powers without checks **may lead to misuse**, especially against vulnerable populations, minorities, and political dissidents.

c) Lack of Adequate Transitional Training for Judiciary and Police

The success of any legal reform depends on its **implementation on the ground**. A major gap observed is the **absence of structured training and awareness programme** for key actors like police officers, prosecutors, judges, and court staff.

1) Implementation Gap:

- Despite notification of the laws in December 2023, **many judicial officers and investigating officers remain unfamiliar** with the full implications of the BNS, BNSS, and BSA.
- As of April 2024, **no uniform national training module** had been rolled out by the Ministry of Home Affairs or judicial academies.

2) State-Level Disparities:

- While **Kerala, Karnataka, and Maharashtra** initiated orientation programme for police, **over 20 states and UTs** had not conducted formal workshops or certification programme by mid-2024.

3) Capacity Constraints:

- India has over **15 lakh police personnel** and **24,000 subordinate court judges**, many of whom are burdened with heavy caseloads and administrative duties—making it difficult to absorb new laws without support.

4) Impact:

- This leads to a "**dual system**" **confusion**, with officers continuing to apply old IPC/CrPC provisions alongside the new laws.
- It increases the risk of **wrongful arrests, inadmissible evidence**, and procedural errors.

8. Constitutional and Jurisprudential Analysis

The 2023 overhaul of India's criminal laws—through the **Bharatiya Nyaya Sanhita (BNS)**, **Bharatiya Nagarik Suraksha Sanhita (BNSS)**, and **Bharatiya Sakshya Adhiniyam (BSA)**—has been presented as a move to decolonize and modernize India's justice system. However, their **alignment with constitutional principles**, particularly **liberty, equality, and due process**, remains a matter of active legal and academic debate.

1. Article 21 – Right to Life and Personal Liberty

Article 21 guarantees that "no person shall be deprived of his life or personal liberty except according to procedure established by law." Judicial interpretation has expanded this to include:

- Fair trial**
- Protection against arbitrary arrest**
- Right to legal aid**
- Protection from custodial violence.**

Constitutional Benchmarks:

1. **Maneka Gandhi v. Union of India (1978)**: The court held that “procedure” must be **just, fair, and reasonable**.
2. **DK Basu v. State of West Bengal (1997)**: Laid down safeguards against **police abuse and custodial deaths**.

New Law vs. Article 21:1) **Progressive elements:**

- a) Digital FIRs and video testimonies improve **access to justice**.
- b) Forensic mandates aim to ensure **scientific and impartial trials**.

2) **Concerns:**

- a) Vague definitions (e.g., offences “against sovereignty”) risk **arbitrary detentions**.
- b) Expanded police powers (e.g., discretionary handcuffing, electronic surveillance) may **erode personal liberty** without robust oversight mechanisms.

2. Article 14 – Right to Equality Before Law

Article 14 ensures **non-arbitrary treatment** and equal protection of laws.

Concerns Under BNS/BNSS/BSA:

1. Some provisions (e.g., handcuffing for economic offences or preventive detention for “threatening” acts) could result in **selective targeting**, especially against marginalized groups or political dissenters.
2. **Uneven digital infrastructure** may create **urban-rural inequities** in access to justice (e.g., e-FIR or remote hearings more feasible in cities).

3. Article 19 – Freedom of Speech and Expression

Several provisions in the new laws could **impinge upon Article 19(1)(a)**, especially where public speech or online activity may be criminalized under **broad “public order” or “state integrity” clauses**.

Precedent: Shreya Singhal v. Union of India (2015): The Supreme Court struck down Section 66A of the IT Act due to **vague and overbroad language**.

Risk: The replacement of sedition with “acts endangering unity and sovereignty” might suffer from similar vagueness, risking **chilling effects** on dissent and free expression.

4. Article 22 – Protection Against Arbitrary Arrest

This Article provides safeguards:

- a) Right to be informed of grounds of arrest
- b) Right to consult a lawyer
- c) Production before a magistrate within 24 hours

New Law Considerations:

1. While BNSS retains these safeguards, the **broad power of arrest without warrants** in cognizable offences—without a clear hierarchy of authorization—may lead to **excessive pre-trial detention**.
2. Preventive measures, like **police surveillance**, if exercised without judicial oversight, could violate both **Articles 21 and 22**.

5. Jurisprudential Themes:

a) Procedural Due Process: The new laws must align not just with procedural formality but also **substantive fairness**. This includes:

1. Time-bound investigations (positive)
2. Lack of infrastructure for digital trials in rural India (negative)

b) Separation of Powers: Some critics argue that **over-empowering the executive** through loosely defined offences and powers may erode **judicial independence** in maintaining checks and balances.

c) Presumption of Innocence: Expanded presumptions in BSA (e.g., in organized crime or sexual offences) may challenge the foundational presumption of innocence unless carefully balanced with safeguards.

9. Conclusion: The enactment of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA) marks a historic departure from colonial-era criminal laws in India. While symbolically significant, the real test lies in effective implementation. Success depends on the preparedness of institutions, protection of constitutional rights, and mechanisms for periodic review. Genuine decolonization requires not just legislative change, but also **judicial vigilance, administrative accountability, and a citizen-centric approach to justice delivery**.

10. References

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