

FROM IPC, CRPC AND EVIDENCE ACT TO BNS, BNSS AND BSA: EVALUATING THE STRUCTURAL TRANSFORMATION OF INDIAN CRIMINAL JUSTICE

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ABSTRACT

To date, the justification of the Indian criminal justice system most thoroughly since the codification of 1860/1872 under British rule, Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA) were enacted in 2023. The critical part of this paper is critical covering whether such new statutes provide substantive transformation or are mere revisions of Indian Penal Code (IPC), Code of Criminal Procedure (CrPC) and Indian Evidence Act in new forms. The research explores reforms in the substantive offences, procedures and the standard of evidence through study of the doctrines. The BNS restructures criminal crimes, adds new types to it, including terrorism, organised crime, and mob lynching, and eliminates clauses that are nullified by the Supreme Court. The BNSS introduces digital innovations such as e-FIRs, virtual trials, electronic summons, and requires forensic investigation on serious crimes, and at the same time increases police custody, faces default bail, as well as changes police arrest-search-seizure authority. The BSA also regulates the contemporary standard of evidence by the explicit identification of digital evidence, metadata, hash values and the codification of leading cases against Anvar P.V. and Arjun Panditrao. Nevertheless, some fears are on unclear definition of offences, increased surveillance by states, lack of sufficient forensic facilities, and unequal technological capability. The paper asserts that despite the new codes revamping significant aspects of criminal law and procedure, much of the philosophy and structure of criminal law still carries the spirit of colonialism showing continuity as opposed to being totally altered. The 2023 criminal justice reforms will depend on a combination of an effective implementation, constitutional protections, and institutional capacity-building in order to bring about a meaningful change in the criminal justice system.

Keywords: criminal law reform, Bharatiya Nagarik Suraksha Sanhita(BNS), Bharatiya Nagarik Suraksha Sanhita(BNSS), Bharatiya Sakshya Adhinyam (BSA), Procedural Justice, Digital Evidence, Constitutional Implications.

1. INTRODUCTION AND BACKGROUND.

The Indian criminal justice system finds its origins in a collection of laws, which were formulated in the colonial period between 1860 and 1872 the time when the British rule codified the substantive, procedural and evidentiary law to bring uniformity to the colony. In 1860, the Indian Penal Code, the Code of Criminal Procedure, 1898 (which would be superseded in 1973 by the Code of Criminal Procedure, 2000) and the Indian Evidence Act, 1872 were developed as the essential instruments of training crime, investigation, trial, and evidence. These laws echoed from the Victorian legal philosophy, in which administrative convenience, order and a centralised control are valued one over the others¹. Though these colonial codes were maintained following Independence, their form structurally maintained it, so to produce a justice architecture that has long been criticized as being dated, inflexible, and insensitive to the socio-legal realities of a democratic and rights-based republic.

¹ Indian Penal Code, No. 45 of 1860 (India).

The various scholars, jurists, and commissions have over the years expressed unanimous view that the criminal justice system requires reform not just to help modernize the system of laws, but in correlation with the constitutional provisions of liberty and fair procurement of justice².

The necessity of change has recently increased significantly within the past twenty years owing to the expanding delays, low conviction rates, and procedural inefficiencies coupled with the rising failure of the system to cope with new types of crime. The conviction rate in India is one of the lowest in the world, and the time spent in trials is habitually several years, which reduces the deterrence as well as public confidence³. The exponential increase in online crimes, digital frauds, organised criminal groups and technology based crimes has brought into light the fallacy of the colonial-era definitions and the process based mechanisms. As an example, the Indian Evidence Act digital evidence provisions, and written in the 19th century, were applied through judicial interpretation on cases about electronic records, several times, forcing caselaw to stretch and developing uncertainty over doctrines and differing approaches in the practice of trials as a result⁴. At the same time, Code of Criminal Procedure procedural bottlenecks (like heavy summons processes), extended investigations and technology underutilization added to calls of systemic overhaul⁵. All these anxieties added to the fact that reforms were not a luxury but a necessity toward a well-run and a constitutionally sound criminal justice system.

The circumstances in the field of politics and legislation that resulted in the 2023 restructuring is an intersection of the institutional push factor, government policy, and popular opinion. In several years, the specialist committees, such as the Malimath Committee (2003), and the Law Commission of India, suggested the overall modification of criminal laws. The Government of India officially began the process of revising the criminal codes in 2019 with the aim of removing the remnants of colonial governance and drafting reformed legislation that reflected its updated governance and security demands. Following many months of internal consultation and discussion in parliament, the parliament passed three historic bills in December 2023 namely: the Bharatiya Nagarik Suraksha Sanhita (BNSS), an amendment to the CrPC in place of the IPC; the Bharatiya nyaya sanhita, the Barihila Sakshya Adhinyam (BSA), the Bharatibeli Suraj Rehitu sanhita, replacing the Evidence Act. These laws came into effect with the mentioned purpose to modernise the criminal law, improve its procedures, raise the quality of the evidence, and incorporate the digital-forensic technologies in the system combination⁶.

Such a complex and large-scale reform notwithstanding, the key research issue is highly controversial: are the 2023 criminal laws a substantive reform of the Indian criminal justice system, or the usual structural re-naming with minimalist changes? Opponents contend that, most of the provisions in the new legislation are duplicates of the previous sections where cosmetic restructuring has been carried out whereas its supporters argue that the reforms bring conceptual clarity, technological consistency and more security measures⁷. Such tension is the reason that requires a doctrinal investigation as to whether the changes that took place with the help of BNS, BNSS, and BSA are more transformative or more iterative.

² Government of India, Report of the Committee on Reforms of Criminal Justice System (Malimath Committee Report, 2003).

³ National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs 2023).

⁴ Law Commission of India, *239th Report: Expeditious Investigation and Trial of Criminal Cases* (2012).

⁵ Ministry of Home Affairs, *Press Release on Criminal Law Reform Initiatives* (2019).

⁶ Bharatiya Nyaya Sanhita, No. 45 of 2023 (India); Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India); Bharatiya Sakshya Adhinyam, No. 47 of 2023 (India).

⁷ Gautam Bhatia, "A New Criminal Law Framework? Continuities and Concerns," *Indian Constitutional Law and Philosophy* (2024).

The paper will implement a doctrinal research approach whereby an analysis of the statutory text, parliamentary history, judicial case law, and academic commentary on whether and to what degree the new 2023 statutes have brought structural, procedural, and evidentiary change will be undertaken. It is only restricted to the comparison of the criminal codes existing before the passage of the new ones and the evaluation of their continuity, divergence and the reasoning of the main changes. The proposed research questions that will inform the paper include: (i) Are the BNS, BNSS, and BSA meaningful substantive, procedural, and evidentiary law reform? (ii) To what extent do the new statutes solve long term problems of delay, inefficiency, technological insufficiency? (iii) Are the reforms meeting the constitutional principles of fairness, due process as well as liberty? (iv) Can the changes help enhance practical criminal justice outcomes? In these launches, the paper is aimed at critically assessing the question of whether the change that India is undergoing as it leaves the colonial codes and adopts a more modern criminal law regime is a clear instance of structural change or a re-codification of the older regime.

2. COMPARATIVE STRUCTURAL ANALYSIS OF IPC VS. BNS

The Bharatiya Nyaya Sanhita (BNS), 2023 is one of the most notable endeavors to restructure the substantive criminal law framework that was initially presented with the introduction of the Indian Penal Code (IPC), 1860. Although IPC had a structure consisting of 23 chapters and 511 sections, the BNS transforms substantive criminal law into a smaller list of 19 chapters and 358 sections, mainly by means of consolidation and reclassification and not by writing off entire legal principles afresh. The government has termed this reorganization as an exercise to simplify the procedures in order to minimize redundancy and enhance clarity. A few researchers however state that renumbering and recombining without corresponding conceptual rearrangement can only add complexity to the process of judicial interpretation, particularly considering over a hundred years of case law correlated with IPC sections numbers that would need reinterpreting in the context of the new statutory frameworks⁸. However, the BNS is trying to modernise definitions, and provide modern terminologies, which is an indication that there is an attempt to integrate substantive criminal law with current realities.

Another conceptual shift that is quite evident is the revision of section 124A of the IPC, that is the offence of sedition, to become a new provision called acts endangering sovereignty, unity and integrity of India, which, although the term sedition is dropped, still carries substantive similarities to the previous statement⁹. The BNS also asserts terrorism as an independent crime, based on the Unlawful Activities (Prevention) Act (UAPA) and the international conventions, considering the offenses that are related to terrorism to be incorporated in the category of core criminal law and not just a preserve of special legislation¹⁰. This change shows an aim to involve national security issues into normal criminal law, which is a more securitised philosophy as compared to the civil-criminal approach of the IPC.

One of the major changes in structure is the inclusion of a number of new offences to signify social and technological challenges in modern times. Previously prosecuted on the basis of specially or state-specific legislation, organised crime was later codified in the BNS bearing specific definition, and additional punishment to criminal behaviours organised through syndicates¹¹. BNS also criminalises mob lynching, which falls under a serious offence when committed based on caste, community, language, or individual conviction, an attempt to curb the rising cases of targeted groups of violence

⁸ K.T. Thomas, "Rewriting Criminal Laws: Practical Challenges and Doctrinal Risks," *Journal of Indian Legal Studies* (2024).

⁹ Indian Penal Code, No. 45 of 1860 (India).

¹⁰ Unlawful Activities (Prevention) Act, No. 37 of 1967 (India).

¹¹ Bharatiya Nyaya Sanhita, s. 109 (India).

which IPC had failed to expressly acknowledge against¹². Similarly in the sphere of traffic offences, an additional offence termed as a hit-and-run is introduced with a strict sentence by the BNS, which serves as a measure of the increased population awareness regarding road safety and responsibility on the roads. Moreover, there is a new emerging punitive method especially community service as a penalty to minor offences, which signifies a change to a more restorative penal philosophy as opposed to a retributive penal philosophy.

Some crimes are either eliminated or redefined along with changes to the constitution and new social values. Adultery- struck down in *Joseph Shine v. the Supreme Court. Union of India*--is not again an offence in the BNS, and this heralds a change of criminal jurisprudence towards respecting privacy¹³. In the same manner the IPC provision that includes an unnatural offence section in section 377, mostly voided in the case of *Navtej Singh Johar v. Union of India*, is excluded, and it is a sign of the dropping of moral policing during the colonial times. Nevertheless, defamation is not decriminalised, although several scholarly demands to decriminalise it and continued discussion of the issue of free speech have been made¹⁴. The retention indicators help maintain contact with IPC-based moral and reputational protection, and not the transformative way of dealing with speech-related crimes.

Other than adding and taking away offences, the BNS also brings a series of improvements in punishment and the introduction of new categories of punishment which changes the prison environment. As an example, crimes like rape, gang rape and some types of violent crimes are now subject to harsher minimum penalties and in some instances is accompanied by higher maximum penalties¹⁵. Similarly, more severe economic and identity-related types of crime present an increased standard of penalty showing a deterrence-focused philosophy more eminent than under the IPC. Although the IPC has focused majorly on the balance of deterrence with proportionality, the BNS seems to promote heavier retribution and incapacitation and this would especially apply to the offences against national security, bodily injury, and organised crime¹⁶.

Regardless of these developments, a considerable amount of continuation would still exist between the IPC and the BNS. A great deal of definitions, offences, and legal standards are preserved and the BNS is very much an imitation of IPC provisions rephrased or restructured. Basic concepts of criminal law: intention, knowledge, abetment, attempt, general exceptions all remain roughly the same¹⁷. Therefore, although the BNS creates new crimes and/or modifies some types in the criminal law, its criminal law philosophy originally lies within the 19th century order of the IPC, but with parts of reinterpretations of modernity. The clash of this duality brings out the key issue of whether the BNS makes or makes substantive criminal law more complicated. Consolidation and modernisation, on the one hand, can help maintain coherence; changing numbering, extending definitions and broadening offence formulations, on the other, could pose the danger of ambiguity, at least in the first years of judicial implementation. The legal interpretation and prosecution discretion is again worsened when the new BNS offence overlaps with the already existing special laws like the UAPA and state-based special laws governing organised crimes.

Simply put, the BNS offers a reform/reproduction equilibrium. Although it adds the much needed and timely entries like terrorism, organised crimes, mob lynching, and digital era crimes, a lot of what is in it resembles their predecessors in the IPC, causing conflicting opinions about its transformational

¹² Bharatiya Nyaya Sanhita, s. 103 (India).

¹³ *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India).

¹⁴ Indian Penal Code, s. 499 (India).

¹⁵ Bharatiya Nyaya Sanhita, ch. V (India).

¹⁶ B. Malik, "Punishment Policies Under the New Criminal Codes," *National Law Review* (2024).

¹⁷ Bharatiya Nyaya Sanhita, ch. II-III (India).

nature. The legislation updates criminal legislation in major spheres, however, it continues with some of the colonial-era philosophies of punishments under new labels. This means that as long as the BNS is implemented, judicially construed, and in relation to constitutional rights in the years to come then and only then will be experienced whether or not the BNS is meaningfully simplified or poses new interpretive issues.

3. PROCEDURAL TRANSFORMATION: CRPC VS. BNSS

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 brings out far reaching procedural changes to criminal process that existed under the Code of Criminal Procedure (CrPC), 1973. However, even though the CrPC was divided into 37 chapters and 484 sections, the BNSS has restructured the procedural law, and there were 44 chapters and 531 sections, which reflect both the expansion and the reclassification of procedural norms¹⁸. Such restructuring is aimed at dealing with the long-standing criticisms of the CrPC, which include complexity, delay, and absence of technological assortment. The BNSS changes the categories of crimes and arrest authorities, search-and-seizure procedures, and a progression in the timetables, which implies a transition to a much more strict and security-driven regime of procedure. The general theme of the BNSS is a mixture of the technological modernisation and the increase in the power of the police, which questions its effects on civil liberties and procedural fairness¹⁹.

The most noticeable modification to the BNSS is the implementation of the compulsory forensic collection to crimes which carry a maximum of 7 years of incarceration²⁰. According to this provision, forensic investigation is made a mandatory minimum as opposed to discretionary instrument, which is a big relief against the CrPC which did not provide any mandatory standards of scientific character. BNSS also requires forensic examiners to attend crime scenes when serious crimes are to be examined a move that would enhance the quality of evidence and minimize the use of confessions or witness testimony in such cases²¹. Although this action complies with international norms of criminal investigation, opponents note that the inadequate forensic infrastructure of India, this mandatory action could prove to create a bottleneck, delay, or lackadaisical step particularly in the southern part of the country where there is a lack of forensic structures.

The BNSS is an attempt to make far-reaching adjustments to the digital and electronic processes throughout the criminal justice system. E-FIR has an adverse effect on the barrier to the process that result in the complainant registering proceeds and additionally, offences can be registered immediately without individuals coming together at a police station to do so, a factor that interests e-FIRs since these have just been introduced in this area and not everyone is well versed with their usage at this time. The law also allows virtual trials especially in petty crimes where courts can allow trials online and cut down on pendency. The delivery of summons, warrants and notices can now be done electronically via email, SMS or digital means, which have reduced the delays associated with manual delivery of such messages under the CrPC by a large margin. The BNSS dictates too stern guidelines regarding time limits of investigation, i.e. 90 days in serious crimes and 60 days in minor cases and reports on progress must be initiated monthly on electronic portals²². Even though such innovations have potential to be more efficient and transparent, they make it difficult to think of digital access,

¹⁸ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India).

¹⁹ K. Suresh, "Procedural Reform and the Changing Landscape of Criminal Law," *Journal of Criminal Justice Studies* (2024).

²⁰ Bharatiya Nagarik Suraksha Sanhita, s. 176 (India).

²¹ Bharatiya Nagarik Suraksha Sanhita, s. 176(3) (India).

²² Bharatiya Nagarik Suraksha Sanhita, s. 193 (India).

which is a concern, particularly when it comes to demanding communities and areas in which the technological infrastructure is poor.

Major changes in processes are also brought in the area of bail, custody and remand. The police can request judicial custody of an accused at maximum of 15 days in one stretch under the BNSS and up to 60 or 90 days with the consent of the court based on the seriousness of the crime committed²³. The CrPC allowed police custody of up to 15 days then only judicial custody of the accused was permitted; the BNSS allowed several periods of police custody within the total time constraint, triggering concerns of possible abuse and custodial violence. There is also a changing of the default bail, in the State is able to file incomplete charge sheets during the BNSS which will prevent an accused to bail out on the charges on the grounds of a delay in prosecution²⁴. According to critics, such provisions render the constitutional worth of individual liberty suspect as they excessive enable the investigative agencies. Likewise, the anticipatory bail is still there with the expanded exceptions in which the courts can limit such relief or may deny it altogether²⁵.

The BNSS proposes some victim focused reforms that seek to enhance participation, transparency and protection. Victims now have a direct right to receive report of investigations progress, have the right to receive updates of arrest, bail and trial proceedings, and make impact statements during sentencing discussions²⁶. The law also permits the victims to get hold of a copy of FIRs, lists of evidence, and others via digital form. These developments represent a transition to the victims being treated not only as people whose testimony can be used but also as those who are stakeholders in the criminal process. Nevertheless, its effectiveness in practice is still a question mark because the systematic factors of limited staffing of the police departments, lack of training, and a shortage of infrastructures are deterrents to its efficiency in practice²⁷.

Although technological integration and victim-centred reforms have the potential benefits, the BNSS has also caused a lot of concern in police empowerment and threats to civil liberties. The extended arrest capabilities, a wider scope of searches and seizures, extended law enforcement detention, and the widened digital surveillance measures empower the executive branch²⁸. Some of the other investigative processes that BNSS allows the use of electronic monitoring and data-based tracking are raising concerns of invasive surveillance without proper checks and balances in the courts of law²⁹. According to critics, the statute will jeopardize constitutional protection in Articles 14, 19, and 21 unless it is carefully backed up with robust accountability measures by integrating digital expansion with increased law enforcement powers.

When considering the transformation of the procedures in general, the picture of the BNSS is contradictory. On the one hand, the statute digitises criminal procedure, forensically empowers it, limits time of investigations, and victim-focused policies. The reforms can enable greater efficiency, lesser pendency, and enhance the accuracy of investigations. Conversely, the BNSS at once broadens the force of the police, erodes legal safeguards against default bail, and opens up opportunities of executive dabbling. The success of the statute is ultimately hinged on the use of technology and procedural innovation against the constitutional rights protection coupled with providing enhanced

²³ Bharatiya Nagarik Suraksha Sanhita, s. 193(4) (India).

²⁴ Bharatiya Nagarik Suraksha Sanhita, s. 193(5) (India).

²⁵ A. Ghosh, "Victim Rights and Procedural Justice in India: Emerging Trends," *Indian Journal of Criminology* (2024).

²⁶ Justice Madan Lokur, "New Criminal Codes and the Expanding Power of the Police," *The Hindu* (2024).

²⁷ Chandrasekharan, "Digital Surveillance and Criminal Procedure Reform," *Economic & Political Weekly* (2024).

policing capabilities with accountability and training and the judicial vigilance. In the absence of such safeguards, it cannot be assured that procedural transformation will not substitute the focus on efficiency with the focus on individual liberty, notwithstanding that the entire criminal justice reform is aimed at achieving the latter.

4. EVIDENTIARY REFORMS: EVIDENCE ACT VS. BSA

Introduced in 2023, the Bharatiya Sakshya Adhiniyam (BSA), which replaces the Indian Evidence Act of 1872, is considered to be one of the significant changes in the evidentiary system in India since the colonial period. Although the Evidence Act had 167 sections, the BSA reorganises and extends the statute to have 170 sections and restructures the arrangement of the provisions concerning relevancy, admissibility, presumptions, the documentary evidence and electronic records³⁰. This reform will transform the law to match-up with the modernisation in terms of technology and new communication methods, but without the essence of the Evidence Act, it will be lost. Though a lot of clauses are amended or resignified the extent of the text is the same as its predecessor and one may wonder whether the reforms are revolutionary or mostly organisational. However, the most interesting contribution of the BSA is its attempt to encompass digital and electronic evidence as a central part of the evidentiary system³¹.

The overall enhancement of electronic and digital evidence recognition is among the most important changes that the BSA has provided. The Evidence Act was written in the 19th century and emails, metadata, server logs, CCTV video, social media posts, and algorithmically-generated records, are not categories that had initially been considered when compiling the Evidence Act. Although the Evidence Act was amended in accordance with Section 65B to partially align electronic evidence with the Evidence Act, judicial discretion swung both ways with the adoption of liberal and strict interpretation hence leaving some uncertainty in the procedure³². The BSA covers it by specifically acknowledging a broad scope of digital records, such as, computer output, electronic communication, server logs, metadata, and hash values, and others of digital documentation³³. The BSA aims at harmonising suits of evidence with the current technological settings by extending the statutory meaning of electronic evidence and introducing it into the relevancy and admissibility regime.

One of the most important reforms is related to modifications of admissibility standards and evidence presumptions. As specified under the BSA, electronic records with hash values, certificates of integrity or authenticated digital signatures can be presented in court with no strict technical requirements as enforceable under Section 65B of the Evidence Act.³⁴ This is in response to the objections made following judiciary rulings like the case of *Anvar P.V. v. P.K. Basheer* where the court ruled that adherence to Section 65B certificates was mandatory, and the case of *Arjun Panditrao Khotkar v. This was restated by Kailash Kushanrao Gorantyal*, which said that such certificates were prerequisite to admissibility unless the evidence had been generated by the device owner directly³⁵. The BSA seems to loosen this inflexibility by expanding authentication means and identifying technological substitutes to certificates, a step towards the admissibility of pragmatists instead of technical exclusion. Also, assumptions that were made concerning electronic accord, digital signatures, and secure electronic

³⁰ Bharatiya Sakshya Adhiniyam, No. 47 of 2023 (India).

³¹ P. Srivastava, "Reimagining the Law of Evidence in the Digital Age," *Indian Journal of Evidence Law* (2024).

³² Indian Evidence Act, No. 1 of 1872 (India).

³³ Bharatiya Sakshya Adhiniyam, ch. IV (India).

³⁴ Bharatiya Sakshya Adhiniyam, s. 63 (India).

³⁵ *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 (India); *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1 (India).

record show a policy change accepting the technology-based documentation as trusted and legally binding³⁶.

The BSA also amends the regulations of relevance, burden of proof and secondary evidence. The core relevancy scheme, which is similar to the scheme of the Evidence Act, although missing the term digital relevancy in it, includes explicitly the digital relevance included in the scheme through terms like admissibility of the electronic communications as facts in issue and primary use of digital expert analysis as primary evidence³⁷. The burden of proof clauses remain relatively the same with an addition of the liabilities of parties related to the preservation of electronic data. The secondary evidence rules are reformulated to reflect the fact that any electronic reproduction, screen shot, digital backup, or document stored in the cloud can be considered as secondary evidence that is admissible under the authentication procedure³⁸. This explanation is supposed to limit the litigation controversies regarding the procedural pathway of requesting digital materials and minimize the contradictory judicial conduct.

Nonetheless, in spite of all these improvements of the text, there are still several possible problems. The fact that the BSA is based on technologies of genuine provenance (e.g. hash functions or metadata generated by the server) makes one wonder whether litigants, particularly in rural and resource impoverished areas can retrieve and submit such evidence in a feasible manner³⁹. The privacy questions also arise because the further disclosure of the electronic records can facilitate an expansion of the procedures of police acquiring of mobile devices, computers, and cloud accounts, amplifying the threat of invasive search and seizure⁴⁰. The law fails to explain adequately how the state power can be limited to the extent of accessing the digital information, as well as limits data protection clearly. On top of this, the introduction of the digital evidence rules would demand significant technical skills on the part of police, prosecutors, defense counsel, and judges, which, again, are distributed unevenly throughout the justice system⁴¹. The reforms of the BSA can be limited within the institutional capacity-building.

In deciding on whether the BSA creates modernisation of the evidence law or it is a reorganisation of the old provisions, the statute seems to be at the borderline of both. On the one hand, it combines the long-awaited reforms of the digital era, which represent modern forms of communication and make Indian evidentiary standards consistent with international best practices. To the contrary, numerous clauses are substantively the same as in the Evidence Act and the structural reform can introduce transitional complexity without fundamental changes. It is important to note that what matters most about the BSA is whether it can be put into practice, and it is critically so in the area of digital authentication, privacy protection, and the judicial interpretation spirit. Finally, even though the BSA is a significant move in the direction towards modernisation of the evidentiary law, the technology within the system needs to be ready and the judiciary be interested in the interpretation of the statute to go hand in hand with the constitutional principles of fairness and due process.

5. EVALUATING THE TRANSFORMATION: CONSTITUTIONAL, ADMINISTRATIVE AND PRACTICAL IMPLICATIONS

The abolition of the IPC, CrPC and Evidence Act and the adoption of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam, can be considered one of the

³⁶ Bharatiya Sakshya Adhiniyam, ss. 86–90 (India).

³⁷ Bharatiya Sakshya Adhiniyam, ch. II–III (India).

³⁸ Bharatiya Sakshya Adhiniyam, s. 57 (India).

³⁹ National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs 2023).

⁴⁰ Justice B.N. Srikrishna, "The New Evidence Law and Digital Privacy Concerns," *The Hindu* (2024).

⁴¹ Gopal, "Digital Competency in India's Criminal Justice System," *Economic & Political Weekly* (2024).

most ambitious criminal justice reforms, in the history of the law enforcement in India. However, these reforms have been controversial with respect to their constitutional implications. The Constitution provides that the criminal law has to adhere to the provisions of equality in Article 14, the freedom of speech and expression in Article 19 and due process in Article 21.⁴² A number of clauses in the new codes especially those dealing with national security, acts threatening sovereignty, organised crime and expanded police authority have been criticised to be vague and overbroad. As an example, the new BNS one that replaces sedition is based on general words like subversive activities and endangered unity, and scholars suggest that it can assume the dissent in politics that is guaranteed by the constitution, and is therefore apt to violate Article 19(1) a). On the same lines, a lengthier time in police custody and a watered down default bail clause in the BNSS can be invoked to violate Article 21 guarantees of personal liberty because the judiciary already requires liberty to be denied to a person only upon a fair, just and reasonable process. Federalism issues also arise since criminal law is a concomitant object and a law making national definition of organised crime or terrorism will hinder the legislative autonomy of states, especially in the case where state law already prohibits the crime(s).

Overbreadth and vagueness continue to be hot topics in the constitution. A criminal law should be capable of offering precise directions that can be adhered to by citizens in order to control their actions. The Supreme Court has severally found that ambiguous words that permit too much discretion are in violation of Articles 14 and 21 since they amount to arbitrary application⁴³. Some opponents claim that the provisions of the BNS concerning terrorism, organised crime, and the acts threatening the integrity only contain undefined terms, which can be interpreted in the broadest way possible. Under the BNSS, this risk is increased by the parallel growth of the search, seizure, and surveillance authority that brings a wide discretion to the police officers, which has little external control checks⁴⁴. There are chances that the mixture of ambiguous crime and increased powers of investigation might translate into disproportionate policing of minorities, dissidents and politically susceptible populations.

On the administrative side of the reforms, it is also controversial whether they can be implemented. The police of India are plagued by ineffective staffing, lack of training and insufficient technological capability⁴⁵. Compulsory forensic examination of major offences, although logically correct, demands excellent forensic laboratories, qualified personnel and timely handling, which at present are massively out of proportion. Most states do not yet have a working forensic unit, and the queue of forensic reports can be several years in length, which poses a question as to whether obligatory scientific evidence will speed up (or further slow down) investigations or not. Another administrative problem is the backlog in the courts. A combined number of over 4.7 crore unresolved cases in all the courts could further exacerbate judicial work even during the introduction of new offences and procedural requirements unless augmented by massive capacity additions and development of infrastructure condition⁴⁶. One of the main aims of the reforms is digitisation, which will need stable internet connection, safe internet-based platforms, confidentiality of data, and extensive training of judges, prosecution, and police officers. The discrepancy in rural and urban areas in terms of digital

⁴² INDIA CONST. arts. 14, 19, 21

⁴³ Gautam Bhatia, "The New Sedition Provision: Broader, Not Narrower," *Indian Constitutional Law and Philosophy* (2024).

⁴⁵ P. Divan, "Criminal Law Reform and Federalism," *National Law School Journal* (2024).

⁴⁶ National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs 2023).

infrastructure creation is prone to creating procedural inequality and prejudice against the very efficiency with which the reforms are meant to be fostered in the first place⁴⁷.

This has an extreme practical implications on investigating the agencies. The police are now students with increased responsibility of gathering, retaining, and authenticating digital and forensic evidence. Even though this can enhance the quality of evidence, it has the risk of technical inauspiciousness, contamination of evidence, and procedural mistakes, particularly in the absence of proper training. In case of trial courts, the proliferation of electronic evidence and virtual practices creates both prospects and problems. Although the virtual hearings can halve the delays and improve accessibility in such cases, it also demands to have good technology and uniform interpretation of digital evidence by the judge. Courts might encounter high learning cost in enforcing new rules whilst balancing them with few decades of decision-making history that expounds and enriches the old laws.

Lawyers and defense attorneys and legal practitioners have to work with new statutory frameworks, redesignated measures and new evidentiary critiques. The confusion between these two sets of laws is bound to be temporary, since case law interpreted under IPC and CrPC and Evidence Acts provisions will now have to be remapped onto new numbered clauses of the BNS, BNSS, and BSA⁴⁸. This could slow down the trials in the short term, expose the procedures to more procedural errors and make advocating in courts more complex. Familiarity with the new code through black letters will not be quite enough, and practitioners are also to become technologically literate in digital forensics, metadata authentication, and cybersecurity fundamentals.

Indirect effects may also be experienced in correctional institutions. Increased sentencing of a variety of offences that are covered by the BNS and the increased policing powers by the BNSS could result in an increased incarceration rate in Australia⁴⁹. The new codes can become a further aggravation of overcrowding and worsening living standards without further investment in prisons, rehabilitation programs, and correctional personnel. On the other hand, a partial solution to the non-custodial sentencing could be the introduction of a community service as an alternative to minor offence punishment, which would decrease the burden on the prison system and be consistent with international correctional practice standards⁵⁰.

Some scholars, civil society organisations and practicing lawyers have come up with criticism of the reforms. It is claimed that this prevailing tendency of the new codes is security-oriented, and it emphasizes the state, rather than individual liberties, as priority⁵¹. The redefined sedition Act, which enlarged police detention, and weakened default bail are generally considered retrogressive changes. Others observe that the codes were passed without mass consultations and restricting delays democracy deliberating over the reforms that had far-reaching implications⁵². However, those on the new laws also claim that the new amendments introduce much needed clarity to the procedural schedules, modernize the evidentiary architecture, and legalize digital processes, including virtual trials and computerised summons. They also point out the products offered to the victims- like the

⁴⁷ K. Chandrasekharan, "Digital Surveillance and Criminal Procedure Reform," *Economic & Political Weekly* (2024).

⁴⁸ K.T. Thomas, "Rewriting Criminal Laws: Practical Challenges and Doctrinal Risks," *Journal of Indian Legal Studies* (2024).

⁴⁹ Bharatiya Nyaya Sanhita, ch. V (India).

⁵⁰ Bharatiya Nyaya Sanhita, s. 4 (India).

⁵¹ Pratiksha Baxi, "Criminal Law Reform and the Problem of Overlapping Offences," *Economic & Political Weekly* (2024).

⁵² People's Union for Civil Liberties (PUCL), "Statement on the New Criminal Codes" (2024).

strengthening of rights to information- as the manifestation of the more inclusive criminal justice philosophy⁵³.

It is still debatable whether the reforms represent steps to actual change or further progress with a new name. On the one hand, the clear incorporation of technology, enlargement of forensic standards and victim-focused means are all positive steps. On the other, a significant number of provisions in the BNS and the BNSS and the BSA are literal or close versions of those applied in their colonial versions, which implies that the fundamental structural and philosophical base might be rather similar. Finally, the transformative possibilities of the new criminal codes are not just about their textual novelty, but in terms of their constitutional conformity, administrative workability as well as viable functioning throughout the various criminal justice agencies of India.

6. CONCLUSION AND SUGGESTIONS

The replacement of IPC, CrPC and Evidence Act by the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshaya Adhinyam (BSA) is one of the historic moments in transforming the criminal law in India and was the first time ever that the criminal law underwent overhaul in India since the colonial era. Although the reforms are extensive and well-intentioned in symbolic scope, too much of their transformative potential will also lie in their interpretation and application and not in the statutory text. Structurally, chapters are restructured, the terms are updated, the tech of digital and forensics is introduced by the new codes apparently indicating that the 19th-century colonial system has come to an end. Nonetheless, much remains the same- most of the provisions remain subject to little or no alteration and this indicates more of a recodification trend as opposed to a completely new philosophy of criminal justice⁵⁴. This duality makes it difficult to clearly state whether India indeed has shifted out of its colonial penal architecture.

Substantively, the reforms bring on special novelties like the clear notification of electronic evidence, a forensic investigation that should be a must in a serious crime, a virtual trial, community service, and better involvement of the victim. These attributes are signs of a move towards a realignment of the criminal process with current technological realities and best practices throughout the world marketplace⁵⁵. But at the same time, the new codes enhance the discretionary authority of the police, water down provisions like default bail and create wide ranged offences of sovereignty and national integrity. These expansions of structures alleviate the matter whether it will be misused or it will be allowed in ways that are overly broad constitutional, or may even increase surveillance, without well-established checks on it. Accordingly, the new codes, as much as modernising procedural and evidentiary norms, intensify historic conflicts between the power of state and individual freedom.

The success of the new framework on an administrative level depends on whether India is in a position to set up technological improved processes. The forensic involvement is mandatory, the use of digital evidence is mandatory, and even the summons, trials, and updates of the investigation use are digital that is, the laboratories need to be well-financed and personnel trained as well as have secure technological systems to be used⁵⁶. The new procedural requirements are likely to make delays even worse without significant investment in forensic labs, cyber units, judicial infrastructure, and police training. Likewise, trial courts and legal practitioners have to respond in flexing to new law frameworks, new renumbering, and the use of new, technically burdensome evidence standards. The

⁵³ Bharatiya Nagarik Suraksha Sanhita, s. 193 (India).

⁵⁴ K.T. Thomas, "Rewriting Criminal Laws: Practical Challenges and Doctrinal Risks," *Journal of Indian Legal Studies* (2024).

⁵⁵ Bharatiya Sakshya Adhinyam, ch. IV (India).

⁵⁶ Justice Madan Lokur, "New Criminal Codes and the Expanding Power of the Police," *The Hindu* (2024).

effects of transitional difficulties are unavoidable and they will differ greatly among states based on local resources and competence of the institution.

In order to make sure that the reforms result in the transformation that is significant, there are a number of policy recommendations to be made. To begin with, police, prosecutors, forensic experts and judges will all need special capacity-building measures to bridge technological and process deficits brought about by the new codes⁵⁷. Second, the government must ensure a massive investment in forensic and digital infrastructure, such as creating new labs, enhancing cyber-investigative departments, and creating secured digital sites of evidence presentation. Third, there is a need to tighten up the constitutional protections- especially by establishing statutory guidelines on police discretion and the use of independent oversight of surveillance practices as well as a better definition of the understanding of vaguely-crafted offences that may be abused (Annan 1996). Fourth, transitional confusion caused by renumbering of provisions ought to be dealt out by use of official concordance tabular, practitioner hand books and judicial training modules. Lastly, the consultations of the people and activities of the academicians should still persist in the first years of implementation to see to it that the codes change as the realities on the ground take hold.

Finally, the BNS, BNSS, and BSA are a potential true paradigm shift or a mere continuation of older legal systems under new names, depending on the way they are put to work. The reforms have a lot of potential- especially in modernisation of evidence, improvement of mainstream procedures and recognition of victim rights. However, the continued growth of police power combined with the maintenance of a number of colonial-style philosophies goes to show that constitutional vigilance must remain. The new codes open an opportunity to transform the aspect of the criminal justice system in India, yet substantial institutional investment, the interpretation, which is aimed at protecting rights, and an uncompromising adherence to the constitutional principles are the necessary conditions of the real transformation.⁵⁸

⁵⁷ Bureau of Police Research and Development, *Training Needs Assessment Report 2023* (Ministry of Home Affairs).

⁵⁸ People's Union for Civil Liberties (PUCL), "Statement on the New Criminal Codes" (2024).