

Decolonising Legal System of India: A Contemporary Study

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According to K. Hanumanthaiah, a member from Mysore in a prominent debate of the Assembly, said “*We wanted the music of Veena or Sitar, but here we have the music of an English band*”

There’s no denying that India’s Criminal Justice System needed to be completely revamped. Since they were first passed in the 19th century, the statutes that make up the composite criminal code have not seen significant change. The centre introduced three Bills in Lok Sabha to replace the *Indian Penal Code (IPC), 1860*, the *Code of Criminal Procedure (CrPC) 1973* (originally enacted in 1898), and the *Indian Evidence Act, 1872*. These colonial era laws set to be replaced by the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya (BS) Bill, respectively. According to Union Home Minister Amit Shah “*The objective will not be to punish anyone but to give justice and in this process punishment will be given where it is required to create a sense of prevention of crime.*”

The Indian criminal justice system has been influenced by British colonial rule, which left a lasting impact on its structure and processes. During colonial times, the system was established to serve the interests of the ruling power rather than the local population. Laws, procedures, and institutions were designed to maintain control and suppress dissent. This influence has persisted in various aspects of the legal system, from laws and procedures to the hierarchical setup.

In the present day, remnants of colonial influence can still be observed in the legal framework. Some laws, like the Indian Penal Code, were formulated during British rule and have not undergone significant revision. The adversarial nature of the legal system, heavy caseloads, and delays in trials are some challenges faced by the system today. Additionally, marginalized communities often bear the brunt of these inefficiencies, leading to issues of access to justice and unequal treatment.

Efforts to decolonize the Indian criminal justice system involve reimagining and reconfiguring it to better serve the needs of the people. This could include revisiting outdated laws, adopting a more restorative justice approach, empowering local communities, and acknowledging the traditional legal practices that existed before colonial rule. These efforts aim to prioritize justice, fairness, and inclusivity.

From the mid-18th century to the mid-20th century, the British Empire colonized India, first indirectly and then directly. The Indian Penal Code 1860 (IPC) contained most of the substantive law of criminal proceedings, while the Code of Criminal Procedure 1898 and the Indian Evidence Act 1872 contained the rules of procedure and evidence used in criminal proceedings. This was when the foundation of Indian criminal law as it is largely practiced today was laid. The Code of Criminal Procedure was updated in 1973, but the other two laws remain valid despite several changes. Criminal justice institutions such as police and prisons were also developed during this time.

In terms of institutions and practices, as part of their imperial "enforcement network", the British used Indian criminal law and prison systems as a weapon to control conquered populations and territories. After a long struggle for independence, India finally became free from the British. The ruling dates back 76 years to August 15, 1947. After that the British withdrew and the Indians took care of their own affairs. Thus India became free from colonial rule. Today, India suffers from caste-based oppression, indigenous people, gender and poverty, political and religious divisions. Scholars and activists argue that institutions and criminal justice are used to maintain these oppressive and hegemonic regimes.

In July 2020, the Ministry of Home Affairs of the Government of India established a commission to reform criminal justice in India. The purpose of the commission was to propose changes in the Indian criminal justice system. Its actions have been heavily criticized. Last time, the government had taken a similar criminal law reform initiative to bring criminal justice in line with the need of the hour and the wishes of the people of India. Even before this, several commissions had made recommendations to reform the criminal justice system in India.

1993's Vohra Committee addressed the growing issue of the criminalization of politics and the connections between officials, criminals, and antisocial elements. It was advised that a structure be put

in place to efficiently address this threat by gathering information from multiple sources and taking necessary action against such individuals.

In 2003 Malimath Committee offered advice on different issues of reforming the criminal justice system. Some of the most important suggestions were, the creation of a new classification of crimes dubbed “social welfare offences” for small transgressions that can be resolved through the imposition of fines or community service. Eschewing the adversarial system in favour of a “mixed system” that includes some aspects of the inquisitorial one, such as enabling judges to actively participate in gathering evidence and questioning witnesses. Lowering the threshold for conviction from “beyond a reasonable doubt” to “clear and convincing evidence.” Allowing confessions made in front of an experienced police officer to be used as evidence.

The Madhav Menon Committee was established in 2007 with the goal of creating a national criminal justice policy. It offered a number of guidelines and tactics for the reformation process, ensuring that human rights and dignity are respected at all stages of the criminal justice system. Encouraging restorative justice, which emphasises reparation over punishment for the harm inflicted by crime. And enhancing communication and collaboration between the various criminal justice institutions, including the police, the courts, the prosecution, etc.

The Supreme Court had given several suggestions for police reform in 2006, in which functional autonomy and professionalism were prominent.

So, For a very long time, there has been a sense that the Indian legal system requires reform. The criminal justice system that India inherited from the British era is about to undergo a complete transformation, even though there have been some piecemeal improvements in the post-independence period after the submission of three Bills in the Lok Sabha. The Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya (BS) Bill, were introduced by the central government.

As they were written in accordance with Indian philosophy, these Bills are hailed as the first steps towards eradicating the colonial legacy from the Indian legal system. While some portions of the previous Acts have been kept, others have undergone changes, had new ones inserted, or have been altogether abolished.

The 511 sections of the Indian Penal Code 1860 will be replaced by 356 sections in the proposed Bharatiya Nyaya Sanhita Bill. The Criminal Procedure Code will be replaced with the Bharatiya Nagarik Suraksha Sanhita Bill, which would include 533 sections as opposed to the previous 484. In contrast to the former 167 sections of the Indian Evidence Act, 1872, the Bharatiya Sakshya Bill will include 170 sections. The three new laws' primary goals and objectives are ,to uphold the constitutional rights granted to Indian citizens, and administer justice rather than punishment. Also, to give citizens priority over government by promoting quick justice.

Some of the Bills' greatest achievements include:

For the first time, "terrorism" was defined as any act prejudicial to the unity, integrity and security of India and any act intended to frighten the population or disturb the peace by using various deadly weapons and other substances threatening people. The government repealed the controversial Sedition Act and replaced it with a section containing provisions on secession, armed rebellion, subversion, separatist activities or harming the sovereignty, unity or integrity of India.

Spreading false information having the potential to endanger national security and sovereignty is now a crime punishable by up to three years in jail.

A new punitive section pertaining to organised crime has been added. This provision criminalises any illegal activity carried out by a member of a criminal organisation or on their behalf that involves the use of force, threats, or any other legal methods to obtain immediate or future material or monetary benefits. Additionally, a clause for attaching the property of known offenders has been introduced.

In addition to these, the Bills include provisions for community service as a punishment for minor offences like stealing a woman's phone or a chain. Election-related bribery will be a criminal offence.

Zero FIR order was introduced for the first time after independence. Residents can now file complaints with their local police station. E-FIR facility has also been included for the first time. The process of going to court will move faster as a result of these adjustments. The police must inform the relatives of the arrested person both in person and via the internet.

Trial in the absence of accused, this newly added clause is historical. If the defendant is intentionally absent from court hearings and has been marked as wanted by the trial court, the trial and sentencing will take place without him.

Under the new criminal law, engaging in sexual activity under the guise of a false marriage, employment, promotion or false identity is now illegal. All gang rapes are punishable by 20 years or life imprisonment. The possibility of receiving the death penalty for rape of a minor was introduced. According to the bill, the police will now have to inform the complainant about the status of the complaint in sexual harassment situations after 90 days and every 15 days thereafter.

The provisions of death penalty, life sentence and seven years imprisonment for mob lynching are maintained. The only purpose of bill is to increase the conviction. Only when criminals are dealt with will the rule of law prevail. The police could not stop the endless progress of the investigation. The charge sheet must be filed within 90 days and the 180 days allotted for the investigation process must be completed. After closing arguments, the court must issue a decision within 30 days, which must be available online within seven days. In addition, the jurisdiction of summary proceedings for small matters was extended. Felonies punishable by up to three years in prison will be heard in a summary trial when the proposed laws take effect. If the defendants are government employees, the government has 120 days to decide whether to authorize a trial. Failure to do so will be construed as consent to legal process.

A forensic team and a crime scene visit are now required. In addition, registration of search and seizure has been made mandatory and will be used on occasion. No charge sheet is considered legal without a document provided by the police. Three Mobile Forensic Science Laboratories (FSLs) should be established in each district and 33,000 forensic scientists and professionals should be trained annually.

The word "document" has been expanded to include electronic or digital records, emails, server logs, computers, smartphones, laptops, text messages, websites, location information, emails and messages on devices. In addition, many crimes have either increased or added fines as part of their punishment.

The purpose of the proposed reform is therefore to modernize and simplify outdated and complex criminal laws. The changes would reflect the evolving nature of crime, society and technology and bring the laws closer to the spirit and ethos of India. The reform repeals the severe sedition law under Section 124A of the IPC, which has drawn heavy criticism for abuses of political opponents and dissidents.

In addition, the reform will add new crimes such as terrorism, corruption, mob lynching and organized crime, which are not adequately dealt with by current laws. The changes gender-neutralize some gender-

based crimes, placing men and transgender people alongside women as victims and perpetrators. The reform will further increase the use of electronic evidence and forensics in investigations, cases and prosecutions, as well as appeals. The reform gives more power to the people by allowing residents to report to the police at any police station, regardless of where the incident occurred. The amendment also ensures that citizen's constitutional rights such as the right to life, liberty and other rights such as privacy and due process are effectively protected..

The criminal justice system's reformation should not be put off for too long; this could be unjust. As a result, the Bharatiya Nyaya Sanhita's inclusion of community work as a form of punishment is both creative and compassionate. It acts as a substitute for incarceration by focusing on rehabilitation and society integration while focusing on minor offences.

It also distinguish the legal ambiguity as, there is uncertainty due to the inconsistent nature of the Indian criminal justice system. For example the Mental Healthcare Act 2017, which assumes that a suicide attempt is the result of extreme stress and calls for care rather than punishment, Section 309 of the Indian Penal Code, for instance, criminalises the act. It leaves opportunity for interpretation and generates legal ambiguity. This is covered by the Bharatiya Nyaya Sanhita.

The Criminal judicial system has undergone tremendous modernization since 1872 , and the introduction of Bharatiya Sakshya Bill reflects these developments. It establishes rules for electronic appearance and permits the admissibility of digital records, acknowledging the critical role that electronic information plays in society. This broadens the definition of secondary evidence to encompass different types of mechanical and electronic copies and establishes more specific and consistent procedure for admissibility. These changes bring the legislation into line with modern practices in an era where information is becoming more digitised.

Although, the addition of new offences that were not included in the IPC, such as acts endangering sovereignty, organised crime, terrorism offences, mob lynching, and sexual activity with a false promise of marriage, is a significant development.

The broad criminal code provisions that increase the danger of arbitrary arrests are still a problem because of the way the offences are written. Additionally, some of these charges extensively borrow from the Unlawful Activities (Prevention) Act (UAPA) and existing legislation on organised crime without explicitly stating why or with what implications.

The proposals have come under fire for adopting ambiguous and wide language that may violate the rights of those who have been accused, victims, witnesses, and other parties involved.

The bills have been criticised for lacking coherence and consistency with one another as well as with other current laws. The Bharatiya Sakshya Bill, for instance, changes the standard of proof for conviction from “beyond a reasonable doubt” to “clear and convincing evidence,” which is neither defined nor explained in the bill.

The Bharatiya Nagarik Suraksha Sanhita also adds a new classification of infractions known as “*social welfare offences*,” which can be punished with fines or community service but does not list the specific offences that fall under this classification.

The most severe provision in these Bills may not be the absence of sedition per se, but the addition of “acts endangering sovereignty” as an offence. The provision is not just ambiguous; it also inevitably gives the police unrestricted arrest power because of the way it criminalises specific behaviours.

A more inclusive and thorough approach is required to address these issues. Before putting any reforms into effect, start a larger consultation process engaging all the stakeholders, including the general public. Explicitly including human rights safeguards and principles, and precisely defining and limiting ambiguous phrases to avoid misunderstandings. And make sure that the proposed legislation and current existing laws are all consistent and coherent.

Adopt restorative justice practises that emphasise rapprochement, restitution, and rehabilitation in order to address the underlying causes of crime, lower recidivism, and provide victims closure. Building capacity entails making investments in education, hiring, and infrastructure to increase the capability of the legal aid system, court, and law enforcement. The administration of justice will be more effective and impartial if there are enough resources. Public Awareness is also necessary .To strengthen police-public relations, efforts are being run to inform the public of their rights and obligations within the criminal justice system.

The case for a contemporary nation to reject the colonial tradition of treating the citizen as a subject is strong, but the colonial power cannot be held exclusively responsible for the misuse of laws. Due process and individual liberties are fundamentally unalienable human rights, yet they are at jeopardy due to judicial precedents, frozen institutional realities, and systemic injustices. The criminal justice system

becomes more punitive than just as a result. Consequently, institutional reforms are required in addition to law-based reform.

Conclusively, reforming these laws is not just necessary legally but also philosophically. It is a path leading to self realisation. As John Locke would put it, *there is a social contract between the government and the governed*. A step towards completing that promise is replacing obsolete and unfair restrictions with legislation that reflects the character, needs, and ambitions of modern India. In the *M.C. Mehta case, 1986*, Justice P.N. Bhagwati (*Former Chief Justice of India*) has said that “*the judicial thinking cannot be allowed to be constricted by reference to the law as it prevails in England.*” He stressed on the need to build up our own jurisprudence. Also retired Justice Abdul Nazeer, the Supreme Court of India said “*The great weakness of the Indian legal system today is that due to its divorcing from Indian legal heritage, it lacks theoretical nourishment. The impact of theories of jurists, including ancient Indian scholars, on the legal system of a country is profound, even though it may seem unseen and unconscious*”.

So we as a country , may work towards a criminal justice system that maintains the rule of law, defends human rights, and successfully meets the needs of its varied people by taking these progressive initiatives. Now India’s judicial system won’t bend to the whims of the colonial era any longer. By implementing the Bharatiya Nyaya Sanhita and associated reforms, India is recovering its identity rather than just changing the statistics.

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