


Colonial to citizen-centric: Revamping India's criminal justice system

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December 31, 2023



Updating the Indian legal, police, and investigative systems holds the promise of bolstering protection for the disadvantaged, while enabling more effective responses to organized crime, terrorism.

The Rajya Sabha recently passed three reformed criminal law bills: the Bharatiya Nyaya (Second) Sanhita 2023, aiming to replace the Indian Penal Code 1860; the Bharatiya Nagarik Suraksha (Second) Sanhita 2023 seeking to replace the Code of Criminal Procedure 1973; and the Bharatiya Sakshya (Second) Sanhita 2023 intending to replace the Indian Evidence Act 1872 respectively.

These Bills, previously approved by the Lok Sabha, secured passage via a voice vote following their presentation by Union Home Minister Amit Shah. Chairman Jagdeep Dhankar lauded their historical import, citing their unanimous approval as a transformative departure from colonial legal constructs deleterious to citizens, previously predisposed to favoring our erstwhile colonial rulers. Union Home Minister Amit Shah staunchly advocated for the Bills in both parliamentary chambers, delineating their deviation from colonial-era paradigms.

He accentuated the shift from punitive doctrines to a paradigm anchored in justice and rehabilitation. At a glance, the Bills' overarching goal is to position citizens at the epicenter of the criminal justice system, highlighted through provisions seemingly oriented toward digitalization and information technology. It is not unknown that the criminal justice system is a flawed legacy inherited from the British.

It is an accumulated manifestation of several years of decay. A stated aim of the newly proposed criminal law bills is the 'decolonization' of our justice system. However, can these changes, largely perceived as superficial by most critics, authentically lead to the decolonization of the Indian criminal justice system?

The commencement of any "decolonization" endeavor inherently requires the identification of enduring vestiges of British colonial and imperial legacy within the legal domain. Several scholars within the field

express disillusionment upon examining the Bills, arguing that they exhibit minimal substantive changes, essentially rearranging provisions with slight adjustments. Critics contend that the new clauses may introduce complexities into the legal process, potentially complicating adjudication despite purported efforts to streamline it.

Moreover, the existing legal framework might not sufficiently underpin the ambitious promises made by the Home Minister. With respect to criminal procedure in particular, The Code of Criminal Procedure (CrPC), formulated in 1973, was the procedural framework governing the application of the Indian Penal Code (IPC) of 1860.

Although in essence the Bharatiya Nagarik Suraksha (Second) Sanhita 2023 is the old wine in the new bottle, it is imperative to reiterate its fundamental objective – much like its predecessor, it presides over the processes encompassing investigation, arrest, prosecution, and bail concerning offenses.

Despite sincere efforts made in the past to make the CrPC as robust as possible through judicial interpretation, challenges persisted within the criminal justice system, encompassing issues of backlog, trial delays, and concerns about fairness for marginalized groups. In legislative spheres, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), intended to replace the CrPC, made its debut in the Lok Sabha on August 11, 2023.

Following examination by the Standing Committee on Home Affairs, a revised iteration, Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 (BNSS2), incorporating specific committee recommendations, emerged on December 12, 2023. The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 (hereinafter referred to as BNSS2) upholds several provisions from the CrPC while introducing key modifications.

Notable changes include adjustments regarding undertrial detention, expanding the scope of medical examinations by any police officer, mandating forensic investigation for severe offenses, and broadening the authority to collect specimens beyond signatures to include

finger impressions and voice samples.

It also sets forth stringent timelines for various legal procedures, such as the submission of medical reports within seven days and framing charges within 60 days from the first hearing. Additionally, the BNSS2 eliminates the classification of metropolitan areas and Metropolitan Magistrates as defined in the existing legal infrastructure outlined by the CrPC.

Without delving into a deep analysis regarding the issues posed by the revised procedure code, a cursory reading and understanding of the BNSS2 reveal how it introduces alterations to the existing CrPC, potentially expanding police powers and affecting the rights of the accused. These modifications include adjustments in police custody provisions, such as extending the period for police custody and permitting handcuff usage during specific arrests.

The Bill also restricts the scope of mandatory bail, limiting it in cases involving multiple charges, potentially impacting undertrial prisoners' eligibility for bail. Furthermore, the BNSS2 brings about changes in plea bargaining procedures, introduces provisions for the seizure of immovable properties in criminal cases, and extends data collection parameters for criminal identification.

Retaining certain provisions duplicates laws, prompting queries about their necessity. The blending of public order functions with trial procedures prompts inquiries about their consolidation in one law and their alignment with constitutional distinctions between state and concurrent subjects.

Despite the surrounding skepticism regarding the passage of the Bills, it's essential to recognize their potential advantages. Updating the Indian legal, police, and investigative systems holds the promise of bolstering protection for the disadvantaged while enabling more effective responses to organized crime, terrorism, and offenses that impede societal progress. These advancements, despite the prevailing negativity, offer pathways toward greater societal welfare and security.

Though the current reinterpretation may not be flawless, it is worth attempting as a step forward. In conclusion, endeavoring to enhance something carries the possibility of improvement, whereas choosing not to make improvements guarantees no progress at all.

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