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Editorial

Rebooting Criminal Justice Systems in India

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ABSTRACT

Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhinyam 2023 are set to replace the archaic laws for criminal justice viz. Indian Penal Code 1860, the Code of Criminal Procedure 1898 as revised in 1973, and the Indian Evidence Act 1872. The new laws are reformative in terms of their unwavering victim-centricity, resolute focus on internal security and copious use of technology in investigation of crimes as well as court proceedings. These laws are likely to bring in ease, accountability and transparency in the administration justice while ensuring safeguards for all the stakeholders. The new laws are also likely to expedite investigations in time-bound manner and eliminate axiomatic delays in delivering justice by leveraging technologies in meaningful ways. However, success of the new laws for effective criminal justice warrants significant investments in translation of the new laws in regional languages, human resources both in police and judiciary, training, infrastructure, and technologies.

KEYWORDS: *Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhinyam 2023, Criminal Justice System, India*

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“Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhinyam 2023 will speed up the judicial process...The three new criminal laws which are slated to come into force from 1 July 2024, will provide justice rather than punishment, which was the mindset during the British regime”. –Draupadi Murmu, President of India, while addressing joint session of parliament on 27 June 2024 (Press Trust of India, 2024)

INTRODUCTION

Bharatiya Nagarik Suraksha Sanhita, 2023, Bharatiya Nyaya Sanhita, 2023, and Bharatiya Sakshya Adhinyam, 2023, are set to replace the Indian Penal Code 1860, the Code of Criminal Procedure 1898 as revised in 1973, and the Indian Evidence Act 1872, respectively from 1 July 2024. The new laws are aimed at eliminating the archaic criminal justice systems imposed on the country by the British Raj during colonial era. The new laws for strengthening the criminal justice systems are based on the victim-centric approach as opposed to the older ones that aimed at perpetuating the authority of the British Raj through coercion of police authority. Besides, the new laws also focus on internal security and use of technology in administering justice as opposed to the extreme emphasis of the British Raj on maintaining law and order, protecting the properties and strategic installations of the then government and curbing sedition.

Victim-centric Approach

An e-poster of the Ministry of Home Affairs, Government of India, captures the essence of victim-centric approach in the following words: “The new laws aim to enhance the efficiency, fairness, and accountability of the justice system. It recognises the victim as a stakeholder in the criminal proceedings, providing participatory rights and expanded right to information for the victim. The law has been reformed to place victims at the centre of the criminal justice system, offering unprecedented rights and opportunities”. (Ministry of Home Affairs, Government of India, n.d.)

Most characteristic feature of the victim-centric approach of the new laws for criminal justice is the voice given to the victims in terms of sharing their views and emphasising their role as stakeholder in the matters being probed by the police. Besides, the victim’s consent has been made mandatory in instances of case withdrawal as per Section 360 of the Bharatiya Nagarik

Suraksha Sanhita (BNSS) 2023. Further, the filing of first information report has been made easier with such provisions as e-FIR (online first information report mechanism), and institutionalization of Zero FIR which allows the victims to file first information report in any police station irrespective of the place of incident. The police is now obligated to provide progress report on investigation to the victims within 90 days of filing of the first information report. In addition, the victims also have the entitlement to obtain copies of first information report and statements made by witnesses.

Generally, victims of crime have to face double-edged sword –one at the hands of the criminals and unscrupulous individuals and other at inordinate delays in administration of justice. The new laws provide a great relief to the victims of crime with a promise of time-bound disposal of cases within three years of the date of the first information report. It may be challenging but can be attained by means of augmented resources and appropriate manpower in the courts at all levels. The new laws take care of the due interests of the accused as well. Hence, first time offenders in petty crimes can get an opportunity to improvise their behaviour through community service engagements without serving a term in prisons. Thus, proverbial load on Indian prisons which are flooded with under-trials will be reduced significantly. Besides, compulsory videography of search and seizure operations by police will ensure that fair-play and integrity of the law enforcing agencies are not compromised at any cost.

Focus on Internal Security

Bhartiya Nyaya Sanhita 2023 included punitive provisions vis-à-vis terrorism, organized crimes and any attack on the sovereignty and integrity of the country while sedition has been removed from the statute. In the new law, the organized crimes include kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offences, cyber-crimes, and trafficking in persons, drugs, weapons, or illicit goods or services (Singh, 2024).

Use of Technology in Criminal Justice Administration

Section 173 of *Bharatiya Nagarik Suraksha Sanhita* 2023 provides for use of digital technologies for investigation of crimes, trial of the accused and documentation of court proceedings. Further, Section 57 of the *Bharatiya Sakshya Adhiniyam* 2023 underlines the

value of electronic records as primary evidence. The law also allows the electronic presentation of oral evidence. Now the witnesses can testify remotely using information and communication technology. New law recognizes electronic or digital records, emails, server logs, smartphones, computers, laptops, SMS, websites, locational evidence, and messages available on devices as documents admissible in courts of law (Ojha, 2024).

Further, the National Crime Records Bureau (NCRB) has made several functional adjustments in the Crime and Criminal Tracking and Network Systems (CCTNS) to augment the use of technology in criminal justice administration (Jain, 2024). NCRB has set up 36 support teams and a call centre to enable review and handholding of states and union territories (Jain, 2024). National Informatics Centre (NIC) has developed apps like e-Sakshya, Nyay-Shruti, and e-Summon for effective implementation of the new laws (Jain, 2024).

CRITIQUE

The three new laws have been described as a unique project of the government of India to decolonize the criminal justice systems. However, efforts of the government of India aimed at cleansing the statues of colonial baggage are imbued with ad-hocism and tokenism (Parashar and Janardhanan, 2024). Indeed, the claim of doing away with the colonial legacy appears to be hollow as 75% of the provisions of the so-called archaic laws have been retained verbatim in the new statutes (Surendranath and Vishwanath, 2024). Further, Certain new provisions that confer excessive police power using vague definitions of offences, enhance durations of police custody and permit trials in-absentia are regressive (Surendranath and Vishwanath, 2024). Critics also observe that “positive changes like timelines for different stages of the criminal process, recording of search and seizure by the police and more scientific investigations do not come with the commensurate effort to build the necessary procedural protections or institutional capacity to deliver all of this” (Surendranath and Vishwanath, 2024).

Critics like Indira Jaising believe that the new laws meant for criminal justice are likely to unleash legal and judicial mess endangering life and liberty (Thapar, 2024). Jainsing (2024) observes: “Notwithstanding the fact that section 124A of the Indian Penal Code which defines sedition is challenged and stayed by the Supreme Court of India, it has been

repackaged in a more virulent form and enacted in the new criminal law. (See: Section 152 of the Bharatiya Nyaya Sanhita Act, 2023). While the earlier law made no reference to the sovereignty and integrity of India, the new law introduces this as an offence for the first time in the revised Indian Penal Code (BNS). The result as we have seen is that an ordinary riot can be elevated to the level of an attack on the sovereignty and integrity of India”.

Reactions of the critics over the new criminal laws show their cynicism, regressive mindset and deleterious political leanings. Their reactions would have been different, had the new criminal laws been brought about by a Congress government. While a few loopholes in any piece of legislation are natural, the new statutes truly reflect the aspirations of contemporary India that values citizen-centricity, technology and indigenization.

CONCLUSION

All the three new laws under review viz., *Bhartiya Nyaya Sanhita 2023*, *Bhartiya Nagrik Suraksha Sanhita 2023* and *Bhartiya Sakshya Adhiniyam 2023* have cleansed the criminal justice systems of colonial baggage and regressive paradigm imbued with unreasonable restrictions on civil liberties. These laws are likely to bring in ease, accountability and transparency in the administration justice while ensuring safeguards for all the stakeholders. The new laws are also likely to expedite investigations in time-bound manner and eliminate axiomatic delays in delivering justice by leveraging technologies in meaningful ways. However, success of the new laws for effective criminal justice warrants significant investments in translation of the new laws in regional languages, human resources both in police and judiciary, training, infrastructure, and technologies.

Both critics and flagbearers of new statutes agree on the ensuing challenges about implementation. Bajpai (2024) has rightly observed: “The effective implementation of the new criminal laws in India requires a proactive approach towards enhancing the training needs of criminal justice officers. Two suggestions can be considered at this stage. One, the existing police officials must be trained to deal with the essential forensic work of preserving the crime scene and collecting and packing exhibits until a cadre of forensic personnel becomes available. Two, young forensic researchers and postgraduates in forensics should be trained as para forensic workers to assist the local police”. While the institutional readiness for

implementing the new laws for criminal justice is a matter of concern for all the stakeholders, the government agencies are trying their best to rollout the statutes in a seamless manner. The government has already trained 6.2 lakh police/prison officials and 40 lakh grassroots workers on the new laws before their implementation (Jain, 2024, Mint, 2024). Technological readiness for implementation of the new criminal justice system has also been augmented by timely interventions of the National Crime Records Bureau as well as the Ministry of Home Affairs, Government of India.

People of India can look forward to the implementation of new criminal justice system as panacea for their woes as manifested in inordinate delays in investigation of crimes and prolonged court proceedings.

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