

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 7 | Issue 1

---

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Criminal Law 2023: A New Face of Criminal Jurisprudence Critical Study

---

DR D. KANNAN<sup>1</sup>

## ABSTRACT

*Law is an instrument for regulating a civil society in every corner of people's social life. The penal law is most important in forbidding social disorder and deviance behavioral of the offenders ie., offences and the offenders to be prosecuted, punished in accordance with the procedure established by law. The Criminal law is not only a penal law which also has strict liability in the socio legal arena. According to the concept of lexfori that is law of the land the criminal law has to be practiced in view of people of the native state. The law shall be changed from time to time concerning with the need of the society. The penal law also is required to be molded in par with socio technological aspects of change. Indian penal code, code of criminal procedure and Indian Evidence act are said to be old criminal law and the new criminal law called Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam are the penal law which is enacted in the Indian parliament so called Indian criminal law with specific vernacular language in title. In accordance with these laws the investigation process is to be conducted under scientific technological criminalistics procedure and certain heinous crimes are included and forensic expert is considered as first hand evidence. The new criminal law is having both positive and negative pros and cons. The three laws might have a possible roadmap to travel in Indian criminal justice administration.*

**Keywords:** *Crime, Criminal law, Criminal justice system, forensic evidence.*

## I. INTRODUCTION

Law is a set of rules and regulations in order to regulate and maintain conduct of the social behavior particularly the criminal law is to preserve public order and decency, to protect their people from whatever an act is offensive or injurious to the society. It should provide sufficient safeguard against exploitation and socio economic evils against victim of such offensive behavior.<sup>2</sup>Crime is an inevitable in any human society, even a society composed of persons with angelical qualities the violation of norms would not be free from the society the faults which

---

<sup>1</sup> Author is an Assistant Professor at School of Excellence in Law, Tamil Nadu DrAmbedkar Law University, Chennai, India.

<sup>2</sup>Wolfendon committee report in England

appear under the ordinary consciousness.<sup>3</sup>In the early part of ancient Hindu society's criminal policy was very vogue. In determining the criminal act that is what was criminal what was not was based on religious and morality. In order to eliminate the criminal behavior from the society through prisonisation, conventional method of sentencing and incarceration these means to adopt for handling criminals in the 19<sup>th</sup> century. Such method was not fruitful to eradicate criminal behavior in the society. So there is a need for clinical approach towards reformation that modern corrective measures such as probation, parole and indeterminate sentence.

Criminal acts are considered an offence which is committed against the society in general or against community at large. It is a 'rem', in which the state has responsibility to plead or prosecute against such anti-social activity before the criminal justice system. The British government intended to enact criminal law against the freedom fighters and to make their protective smooth administration in Indian territory. After our independence we have our own government under the sacred document the constitution of India. *Firstly* this paper tracing the historical development of criminal law and criminal justice system in India in which the new criminal law 2023 encompass through various socio legal development. *Secondly* this paper analyzing legal framework of new criminal law 2023 and its way forward. *Thirdly* this paper critically examines the application of new criminal law 2023 in the present criminal justice system in India. *Finally* in the concluding part this paper addressing certain suggestions. The criminal law and criminal procedure are under the ambit of List III of the Constitution of India but in the criminal justice administration the functionaries police and prison are coming under List II of Constitution. Though the subject matters are involved in both state and center or the criminal justice administration is within the ambit of state. The Union govt. that is Parliament is having more responsibility to enact law applicable to every state.

## II. HISTORICAL VIEWS

The criminal justice system should be victim centric though it should have responsibility to deliver justice and punish the accused under adversarial form. It is required to hold perpetrators under criminal liability, to reduce impunity, and thereby sustain the prevention of crime and maintain the society in a crime free society. In the ancient criminal justice administration Indian society has followed religious text called as *Manu – shruti and smruti*, Vedas and conscience. According to Manu, people are having social strata in their social life called caste or varna. The king ruled not only the country's administration but also deliver justice to their people as a Juristic superior it is traced from Hindu text Manu. The religious sentiments and offence against

---

<sup>3</sup>Emile Durkheim, 'Rules of Sociological Method', 1950, p65

God faith like harming or inflicting injury to cow, was viewed as serious offence and the King should pass stringent punishment to the offenders in accordance with the Manu the Manuneethi Chola passed death punishment to his son as per the Manu legal codes. Vishnugupta Chanakiya called Kautilya wrote a treaty called '*Arthashastra*' which means 'science of wealth' which are distributed into 15 books particularly book four devoted to the administration of justice system, so called '*Dandaniti*' which means 'the science of law enforcement' he dealt with law and justice issue in both civil and criminal matters and it is truly a comprehensive system of justice delivery method.<sup>4</sup>

According to Arthashastra the caste and gender discrimination was in existence that for some offences the degree of punishment varied depending on the caste of the criminal. There was no equal punishment for the offenders the punishment was imposed in different with caste and status of the victim and accused.<sup>5</sup> According to Manu, the administration of justice was entrusted to three varnas or caste (Bhramana, Shatriya and Vishyas) but never entrust to Sudra.<sup>6</sup> So the administration of justice system was held in the hands of oppressed class. The ancient Hindu society has followed 'varnasradharma' which provides different justice system based on social strata so There was no equal justice system in the ancient Indian society.

During the Modamedian dynasty, Mohamedan criminal law was prevailing in India. Muslims King has imposed their criminal law that their religious codes based criminal law against the Hindu society. The Mohammedan criminal law is originated from their holy book 'Koran' which is believed to owe its origin to divine inspiration. However, over a period of time, this was found to be inadequate to meet the needs of society. According to muslim criminal law the rules of conduct (Sunnat) deduced from oral precepts, actions and decisions of the Prophet. .they have classified the crime into four aspects i) Kisa or retaliation which means there should a serious punishment that is life for life and limb for limb. This Kisa applied to cases of wilful killing and certain types of grave wounding or maiming of body a person. Ii) the Diya or Diyut which meanst blood money where the accused has committed an unintentional injury the diya may be awarded to the victim on a fixed scale. the victim may choose either kisa or diya whichever he would like.

The Mohammedan system of criminal justice was in force till the invasion of the East India

---

<sup>4</sup>Balbir S. Sihag, (2009), '*Kautilya on Administration of justice during the fourth century B.C*', Journal of the History of Economic thought, Vol.29, issue-3", published online by Cambridge University Press, www.cambridge.org

<sup>5</sup>KaartikayAgarwal,(2020), '*Conceptualizing a Kautilyan Criminal Justice System*', Centre for Criminal Law Studies, National Law University, Jodhpur, www.criminallawstudiesnluj.wordpress.com

<sup>6</sup>An MHRD project under its national mission on education through ICT, '*IPC Historical Development*', e-pathsala, MHRD govt. of India

Company. Though the British occupied the territory of India they enjoined to maintain status quo in the matter of civil and criminal justice that is the Mohammedan law was in force but they later realised that the Muslim criminal law was defective in many respects. The British, then, saw no other way than to gradually modify strict Islamic criminal law, by putting it on the Procrustean bed of British notions of justice and law and order.

The Charter Act of 1833 came as a significant step towards the development of criminal law. It introduced a single legislature for the whole of British India with jurisdiction to legislate for all persons and the presidency towns as well as for the mofussil. The British Parliament has set up a Commission to give India a Common Law that is to provide a general law applicable prima facie to everyone in British India. Accordingly in 1834, a Law Commission was appointed, known as the first law commission, with Macaulay, J.M. McLeod, G.W. Anderson and F. Millett as Commissioners.

The Commission was directed to take up the preparation of Penal Code for India. The suppression of the Mutiny and the transfer of the Government, from the Company to the Crown, changed the political conditions and the necessity to pass the law was greatly realized. It was finally passed by the Legislative Council of India and received the assent of the Governor General in Council on October 1860. It was scheduled to come into force on May 1, 1861. It was published in the Calcutta Gazette on October 13, 17 and 20 1860.

However, the date of its enforcement, with the view to enabling the people, the judges and administrators to know the provisions of the new Penal Code, was deferred till January 1, 1862. The Indian Penal Code 1860 has been amended only sparingly since its enactment in the post-British era. It has continued in its operation as a major substantive law of the country for more than 150 years. Some amendments, indicating new offenses, whether relating to criminal conspiracy or cruelty to married women or specific offenses against women etc. have been added over the years to keep the century-old Penal Code in tune with the contemporary social changes.

### **III. LEGAL FRAMEWORK OF NEW CRIMINAL LAW 2023**

The Union government has decided to change the criminal law consist of Indian Penal Code (IPC), Code of Criminal Procedure (Cr P C) and the Indian Evidence Act (IEA) which was called as colonial legislations the British parliament enacted these laws are required to be changed in modern era of criminal justice system in India.

The IPC is replaced into Bharatiya Nyaya Sanhita (BNS), 2023 the Act is passed and the assent was given it is notified on 25.12.2023. the following are major changes in the BNS, 2023.

1. The preliminary chapter that is jurisdiction aspects of crime committed has not been changed from the IPC.
2. Definition clause was inserted in which the words and phrases are defined where the general explanation of IPC words are placed in the BNS. Apart from the definition general explanations are also placed in the provision like joint liability etc., are there in the BNS.
3. In the punishment clause chapter II of BNS has a new provision that there shall be a community service, in which a theft is committed under sec.303 provided clause stated that the community service is imposed as a lenient punishment in theft cases, in such cases the value of the stolen property is less than five thousand rupees, and he is convicted for the first time, and the stolen property is recovered or returned then the court may consider such punishment.
4. Chapter IV of BNS, 2023 provides separate chapter for inchoate crimes<sup>7</sup> Abetment, Criminal Conspiracy and Attempt. In the IPC which was in different chapters the Law Reforms Commission also suggest that the inchoate offences are to be arranged in a single chapter. So the arrangement of inchoate offences in one line would be easy to understand the concept and also in its application.
5. The offences against women and children is in a separate chapter in which wherever the offences involved or committed against women and children has been segregated and created a chapter is a conceptual nature of understanding the provisions like dowry death was in IPC under offences against human body but in BNS, 2023 in offences against women.
6. Chapter VI of BNS, 2023 states that offences affecting human body in which attempt to commit suicide is removed and abetment of suicide is added in addition to that this chapter deals with Organised crime<sup>8</sup>, Petty organised crime and Terrorist act<sup>9</sup>.

---

<sup>7</sup>The term inchoate crimes refer to acts engaged in toward the commission of criminal act, or which amount to indirect participation in a criminal act. While such an action may not be a crime in and of itself, it is engaged in for the purpose of furthering or advancing a crime. The doctrine of inchoate crimes is applied specifically to three crimes: attempt, conspiracy and abetment.

<sup>8</sup>Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes, trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or indirect material benefit including a financial benefit, shall constitute organised crime.

<sup>9</sup>Whoever does any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or with the intent to strike terror or likely to strike terror in the people or any section of the people in India

7. The provisions contained in the IPC is interchanged in the BNS, 2023 like chapter XVI that is offences against property interchanged to offences relating to religion.

The Cr P C is replaced as Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS, 2023) the Act is passed and ascent was given on 25.12.2023. the following major changes is made

1. In the BNSS, 2023 definition clause provides the audio – video electronic<sup>10</sup> mode of evidence is inserted moreover Sec.183 (1) proviso provides that in the recording of confession “any confession or statement made under section 183 (1) may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence”. Where the police officer, there is a reason to believe that for the purpose of investigation, may conduct search such search conducted under section 185 (2) proviso, he shall record such search by electronic mode of record that is audio-video electronic means through his mobile phone.
2. In the procedure of Investigation the visit of forensic expert in the crime scene should be a legal compliance<sup>11</sup> in the cases punishable with 7 years or more offences such expert opinion either will help the trial or make a hurdle to investigation or trial.
3. According to BNSS, 2023 provides that the magistrate may authorise the detention of the arrested person who is produced before him up to 15 days of custody, which can be authorised in parts during the initial 40 or 60 days out of the 60 or 90 days’ period of judicial custody. This longer period of custody shall be deemed to be a denial of his right of bail.<sup>12</sup>
4. The arrested person who is a habitual offender or escaped from custody or who has committed an offence of organised crime or terrorist act or committed a drug related crime or illegal possession of arms and ammunition or murder or rape or acid attack or counterfeiting coins and currency notes or human trafficking or sexual offence against children or offence against state, The police officer may, keeping in view the nature and gravity of the offence, use handcuff while making the arrest of a person or while

---

<sup>10</sup>Sec.2 (1) (a) of Bharatiya Nagarik Suraksha Sanhita, 2023, provides that "audio-video electronic means" shall include use of any communication device for the purposes of video conferencing, recording of processes of identification, search and seizure or evidence, transmission of electronic communication and for such other purposes and by such other means as the State Government may, by rules provide

<sup>11</sup>Sec. 176 (3) of Bharatiya Nagarik Suraksha Sanhita, 2023, provided that On receipt of every information relating to the commission of an offence which is made punishable for seven years or more, the officer in charge of a police station shall, from such date, as may be notified within a period of five years by the State Government in this regard, cause the forensic expert to visit the crime scene to collect forensic evidence in the offence and also cause videography of the process on mobile phone or any other electronic device

<sup>12</sup>[www.prsindia.org/billtrack/thebharatiyanagariksuraksha second sanhita,2023](http://www.prsindia.org/billtrack/thebharatiyanagariksuraksha%20second%20sanhita,2023)

producing such person before the court.<sup>13</sup>

The Indian Evidence Act, 1872 is replaced as The Bharatiya Sakshya Adhiniyam (BSA), 2023 the major changes are mentioned hereunder

1. The telegraphic message of evidence is removed from the IEA because it is out-dated. Now we have digital and electronic records
2. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, such confessional statement may be taken into consideration as against not only to the maker of the statement but also applicable to such other person..

Where the trial held as jointly that against more persons than one the court may try the case even a person who absconded and he fails to comply with a proclamation issued under section 84 of the Bharatiya Nagarik Suraksha Sanhita, 2023 such absconded person shall be jointly tried and convicted by the court under this provision.

The Indian Judicial system is revamped under technology based justice delivery domain in which the Supreme Court of India has constituted a e-committee for the implementation of 'National Policy and Action Plan for Information and Communication Technology (ICT) based judicial system. The e-committee proposed a system called 'Inter-operable Criminal Justice System (ICJS)' it enables seamless transfer of data and information among different pillars of the criminal justice system, like courts, prosecution, Investigation officer, prison and forensic science department are coming in single platform. Through the ICJS platform, the FIR and charge sheet has made in electronic form and it can be accessed by the trial courts and High Courts. The Investigating officer can upload the documents like FIR, case diary and charge sheet in PDF format for trial purpose. The e-Committee has contributed the issues of standardization of data and metadata for information exchange, and also lay down processes for data validation, acknowledgement of electronic documents, user identification/access, and establishment of technical infrastructure for storage and preservation of electronic records in judicial system in India. For the purpose of court and criminal case management the ICJS platform is an important phenomenon. Now the Indian citizen can view the Supreme Court live stream hearings in any corner of India. It is witnessed that the people of India may know the judicial proceedings of the country's top most court.<sup>14</sup>

---

<sup>13</sup>Sec.43 (3) of The Bharatiya Nagarik Suraksha Sanhita, 2023 notified on official gazette dated 25.12.2023

<sup>14</sup>AkshatKhetan, (2023), 'Digital Courts : Future of Indian Legal System', [https://www.livelaw.in/law\\_firm\\_articles/virtual\\_hearing\\_e-courts\\_project\\_digital\\_preservation\\_standard\\_operating\\_procedure\\_internet\\_and\\_mobile\\_association\\_of\\_india](https://www.livelaw.in/law_firm_articles/virtual_hearing_e-courts_project_digital_preservation_standard_operating_procedure_internet_and_mobile_association_of_india)



#### **IV. CRITICAL VIEWS**

The criminal law 2023 is just an attempt to revamp the criminal justice system. The science and technology may strengthen the criminal justice system so this change in the investigation, inquiry or trial is inevitable. The electronic evidence like audio video electronic method of evidences will help the prosecution to prove the case beyond reasonable doubt. In India the policing and judicial system in rural areas are not well reached the internet facilities and infrastructure. The following are the major issues and challenges wherein the new criminal law might have faced

- The scientific forensic officer visit and preparation of his report in the crime scene where the offences are punishable for 7 years or more might be improbable in all criminal cases because we do not have sufficient number of experts in attending all cases investigation process. It may be possible in urban but in rural area reaching the place of occurrence and fulfilling the legal requirement would be unattainable.
- In the punishment for community service in the case of theft wherein the property value is less than Rs.5000/- and the offender is a first offender would be a reformatory process but the property has to be recovered or restored might not be possible in all cases so this reformatory idea would not be applicable in most of the cases.
- In the form of arrest the new criminal law 2023 permits handcuffing is against the arresting guidelines of National Human Rights Commission of India and the directives of Supreme Court of India so such provision is required certain yardstick and should not be applicable in straightjacket formula in certain offences.

#### **V. CONCLUSION**

At the outset the new criminal law 2023 is named in language is not in universal in nature of unity and diversity of Indian socio political aspects. In the new law the inclusion of terrorism is a concept which relates to crime in special nature that is it may be called as super crime under criminological aspect. The UAPA is special law which provides the offence of terrorist act and its procedure of investigation has been laid down so the insertion of this offence in the general law like The Bharatiya Nyaya Sanhita, 2023 may be multiple nature of legal implication in its application before the criminal justice system in India. In India the states are called as the Union of states that are practicing first and second language like state vernacular language and English but the new criminal law named in not within these two language so it may be inconsistent with the name of the Acts. Moreover, the new criminal law may have a practical issues and

challenges in implementing it. First of all, the Indian criminal justice system to be widened in functional nature particularly the policing should be properly trained in technological aspects in rural areas. India is constructed with rural background of society so this new criminal law 2023 might be applicable to trial court in such nature it is to be disseminated to the appropriate stakeholders that is to the people, prosecution, advocates, presiding officers of the court etc., then only it can be properly enforced and access to criminal justice system can be possible. Hence it is necessary to reach at the gross root level.

\*\*\*\*\*