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Independence from Colonial Vestige and Overhaul of Indian Criminal Justice System through Three New Laws

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Abstract

20th December, 2023 and 21st December, 2023 was historic day in the history of Indian Parliament when three archaic and colonial laws namely Indian Penal Code, 1860, Code of Criminal Procedure, 1873 and Indian Evidence Act, 1872 were replaced and substituted with three novel Indian laws which were crafted with utmost ingenuity taking into concern the exigency and urgency of time namely; The Bhartiya Nyaya (Second) Sanhita, Bhartiya Nagarik Suraksha (Second) Sanhita and The Bhartiya Sakshya (Second) Act. The three replaced archaic laws were vestiges of colonial hangover which were ill suited in current time and age. Of late the Indian Criminal justice system had earned the ignominy for the pendency and delay in court cases and abysmally delayed justice delivery system. The current system had invited the wrath of intelligentsia for low conviction rate and overcrowded prisons. It is expected that the recently introduced three laws will bring modernization and liberalization in Indian criminal justice system. These recently revised criminal laws have overhauled the definitions of certain typical offences such as mob violence, terrorism and the offences which jeopardizes nation's sovereignty and security. However the true fruits of these rejig in Indian Criminal justice system can be realized only when there is complete reevaluation in institutional structures and practices.

Keywords

Criminal, Laws, Colonial, Justice, Bhartiya.

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1. Introduction

The criminal justice system of any society is basically referred to the branches of the government entrusted with the maintenance of law and order, adjudication of crime and bringing the criminal conduct in line with the societal norms and regulations. The criminal laws are the integral part of any criminal justice system. The effectiveness and the efficiency of any justice system is intrinsically linked to the quality of criminal laws present which should be in sync with the current paradigm of the society otherwise the society as a whole will flounder and there would be anarchy everywhere.

2. Objective of the Study

The objective of the paper is to unravel the nitty gritty of the recently passed three new acts and their relevance in the society in the current context. Various provisions of earlier laws of Indian Penal Code and Code of Criminal Procedure had become extinct rather they were proving to be a kind of baggage in our already antiquated criminal justice system. So these three set of new laws were the need of hour and the sooner they were brought the better it would have been for our society.

3. Main Text

Recently the Indian Parliament passed three laws namely The Bhartiya Nyaya (Second) Sanhita, Bhartiya Nagarik Suraksha (Second) Sanhita and The Bhartiya Sakshya (Second) Act. These acts replaced the Indian Penal Code, 1860, Code of Criminal Procedure, 1873 and Indian Evidence Act, 1872 which were vestiges of colonial hangover and symbolic of dilapidated remnants of British legal framework. The overhaul in the Indian criminal justice system was a long overdue as the new changes brought satisfies to the fullest the motto and objectives of the criminal justice mechanism in the society

which are : to not only prevent the crime from happening but also punish the transgressors and perpetrators of crime in as little time as possible because it is said that if there is procrastination in bringing the perpetrators to justice then it is equivalent to justice denied. The newly introduced criminal justice laws also seek to rehabilitate the perpetrators of the crime and should also compensate the victims as far as possible. Law and order maintenance is the most basic fountain head of any criminal justice system and the laws should be such that they should be deterrent to future offenders. Now the question arises, why there was any need for reforms in the form of these three bills.

First of all to shed the skin of colonial legacy was very much the need of hour. The Indian criminal justice system in both the substantive and the procedural way was very much the replica of the English colonial jurisprudence which were framed in order to rule the colony, that's why the significance of the 19th century laws in 21st century were always perceived to be wanting and ill updated. Also the basic edifice of any justice system is to protect the innocents and bring the transgressors to justice but of late these laws had become tools in the hands of police and those at the helm to harass the innocent people. Earlier laws were found to be ineffective in dealing with the cases in swift and judicious way as was evident from the data of Economic Survey of 2018-19 which stated that mammoth number of cases to the tune of approximately 3.5 crore were pending in district and subordinate courts in India which made the maxim substantiated the adage that "justice delayed is justice denied". Also Indian prisons have world's largest number of under trials which irrefutably substantiates the inefficacy of existing laws. According to the data of National Crime Records Bureau (NCRB), 67.2% of total prisoners in Indian prisons in Indian Prisons is categorized as under trial. The recently introduced laws also recognizes the importance of police in maintenance of law and order and in the administration of justice and also touches upon the issues which plague the Indian Police system especially the huge workload and the accountability issue. It aims to bring into picture the diversion from retributive to restorative justice. It was very much in all these aspects, the recently introduced laws were a dire need and necessity for the country.

The Bhartiya Nyaya Sanhita Bill contains 356 provisions in comparison to 511 sections in the earlier Indian Penal Code. The new legislation strives to change the law of sedition which came into being in 1860. The earlier legislation was used by British as a tool to punish

the leaders who fought for independence. But this new legislation covers those offences within its ambit which jeopardizes the sovereignty, unity and integrity of the country. The grievous offence of murder is in the provision of 101 of the new Bhartiya Nyaya Sanhita Bill. However the punishment of life, term and death remains unchanged even in the new law. Another new concept being adopted in this bill is the provision of snatching under section 302. According to the new definition of snatching, even the theft is a kind of snatching if the perpetrator in order to commit the crime of theft suddenly or forcibly seizes or takes away from any person any of his immovable property. The bill proposes the punishment upto three years for this crime. For the first time the word "terrorism" has been defined in this Bhartiya Nyaya Sanhita Bill unlike the Indian Penal Code. It defines terrorism in the provision number 111. According to it "A person is said to have committed a terrorist act if he commits any act in India or in any foreign country with the intention to threaten unity, integrity and security of India, to intimidate the general public or a segment thereof, or to disturb public order by doing an act".

This bill also stipulates a simple imprisonment of two years or with fine or both for the offence related to defamation. Section 69 of the bill deals with the sexual offences against women and children. Bhartiya Nyaya Sanhita Bill proposes the capital punishment in crimes of mob lynching. There is also minimum of 20 years of punishment prescribed for the cases and offences related to gang rape. Also this new law prescribes fixed time-lines within which the trials and investigation of the crimes would be completed.

Such a legislation was of utmost necessity in current context as the criminal justice system in India continued to be run in accordance to the laws made by the British Parliament but now these laws are going to take place of the earlier laws. The purview of the definition has also been enlarged so as to include laptops, smart phones, server logs, e-mails, electronic or digital records which could be used in courts which will in turn reduce the psychological weight on officials concerned. The new law will also enable the digitization of entire process from first information report to case diary and even the charge sheet in the offence to final judgement in any case.

The Bharatiya Nyaya (Second) Sanhita, 2023 bill replaces Indian Penal Code, 1860 and brings into it significant changes. Though it has also included existing provisions on the issue of murder, assault or causing hurt, it brings into its fold new crimes like organized crimes

etc. It also stipulates community service as a type of punishment that can be meted out to the offender. It defines terrorism as “threatening the nation’s integrity and causing terror among the general populace”. The punishment for such type of crimes shall range from death to imprisonment to imprisonment with fines.

Various types of organized crimes are included in this law such as financial scams, organized cyber crimes and even the syndicates involved in kidnapping and extortion. One of the most modifications in this bill is that it has raised the threshold age for gang rape victims from 16 to 18 years. Also it brings into its arena the sexual encounters on the pretext of false or fake promises and criminalizes it. In the *Bharatiya Nyaya (Second) Sanhita, 2023* there has been significant changes incorporated into the meaning and definition of sedition law. It has been replaced sedition with the meaning of “deshdroh” to present meaning of “rajdroh”. This law enhances the punishment for causing death by negligence from present two years to five years. Though it has complied with the directive of Supreme court by taking the adultery out from the purview of crime, but adultery shall remain a valid ground for divorce.

Though this law is remarkable in various aspects, it has not been able to plug certain loopholes in our criminal justice system. There remains incongruence and divergence in the definition of child offences. While, *The Bharatiya Nyaya (Second) Sanhita, 2023* considers anyone below 18 years of age as child, the definition of age in certain specific instances of rape and gang rape varies thus bringing inconsistencies in the legal battleground. The new law retains the provisions Indian Penal Code on sexual harassment and rape and overlooks the recommendations of Justice Verma Committee which recommended making the offence of rape as gender neutral and also criminalize marital rape on the same lines as rape.

The Bhartiya Nagarik Suraksha (Second) Sanhita, 2023 replace the Criminal Procedure Code, 1973 and brings into its realm many novel changes. This law changes the rules and regulations for the under trials which would restrict their release on personal bond for those accused of severe offences including life imprisonment cases. This law enlarges the overall ambit of medical examinations which would allow any police officer to make a request and not just only one sub-inspector which would make the process more and more accessible. This law introduces strict time-lines i.e the medical reports of rape victims to be furnished within 7 days and the judgement within 30

days which is extendable upto 45 days and the framing of charges within 60 days from the first day of hearing. The Criminal Procedure Code earlier allowed the cities with more than a million population to have Metropolitan Magistrates but this newly introduced Bhartiya Nagarik Suraksha (Second) Sanhita, 2023 obliterates the hierarchy of Metropolitan Magistrates in Metropolitan cities.

However there are certain criticism which has been drawn by Bhartiya Nagarik Suraksha (Second) Sanhita, 2023. For instance the Code of Criminal Procedure, 1873 earlier allowed bail to the accused who had been detained for half the maximum imprisonment for the offence, the new law does not allow this privilege to the offender accused of multiple charges. This law also allows the use of handcuffs in certain specific cases which is in stark contrast to the directives issued by the honourable Supreme court. Also the Bhartiya Nagarik Suraksha (Second) Sanhita, 2023 keeps the provisions relating to maintenance of law and order and public order of Code of Criminal Procedure. In other words the newly introduced law also raises pertinent questions on the process of trial procedures and the maintenance of public order which are both to be addressed separately under the framework of the same law.

The Indian Evidence Act, 1872 is replaced by The Bhartiya Sakshya (Second) Bill, 2023. Though the newly introduced bill retains most of the provisions of the earlier bill, there has been certain tweaking on certain fronts. The Bhartiya Sakshya (Second) Bill, 2023 enlarges the definition of documents and now even the electronic records along with traditional writings and maps are included in its purview. Now there is bifurcation between traditional and secondary evidence. The concept of joint trials has been included. However there are certain issues in the bill for which it has earned the wrath of intelligentsia. For instance there are no safeguards relating to prevention and contamination of the electronic records during investigation. There are various recommendations by the law commission too which has not been included in this bill for example that the policemen in the police station shall be held accused for any injuries sustained by the person in the custody.

4. Conclusion

The three new laws namely Bhartiya Nyaya (Second) Sanhita, 2023, The Bhartiya Nagarik Suraksha (Second) Sanhita, 2023; and the Bhartiya Saksha (Second) Bill, 2023 which replaces the Indian Penal

Code (IPC), Code of Criminal Procedure Code and Indian Evidence act 1872 shall come into force from 1st of July, 2024. According to the Prime Minister these laws are formulated keeping the spirit of “citizen first, dignity first and justice first” and police now need to work with the spirit of “data” instead of “danda”. These three new laws motivate the usage of technology and emphasizes the gravity and importance of incorporation of forensic science in investigation, prosecution and judicial system. The offences like acts of armed rebellion, secession, subversive activities are included in revised form. Most importantly the law of sedition emphatically and explicitly defines the act of terrorism, a term which was not well defined in the earlier provisions of Indian Penal Code. The recently introduced legislation also gives magistrates the increased power and authority to impose fines and widens the net of charges for a offender to be declared as a proclaimed offender. These set of new laws shall go a long way in aiding our country to become a model of delivering justice in the most sophisticated manner and would also keep the spirit of protection of human rights brisk, alive and intact and so would be worthy of emulation for everyone and everybody.

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