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"Analysing Transformations: A Comparative Study of Criminal Code Amendments through Three Recent Bills"

ABSTRACT

“Change is the Law of life. And those who look only to the past or present will surely miss the future.” This paper highlights the introduction of three criminal law bills by Home Minister Amit Shah which seek to replace the age-old British colonial laws namely the Indian Penal Code 1860, Code of Criminal Procedure 1973, and Indian Evidence Act 1872. The author strives to throw some light on the dynamic nature of laws that allows necessary amendments to be made with time to abide by society's changing needs and wants. Further, the author quotes the aims of the three bills introduced in the Indian Parliament. Amit Shah said the Bills are based on three principles: “A person's freedom, human rights, and impartiality.” He added that the three new laws "reflect the spirit of the original Indian Code, the laws give priority to crime against women/children, impact on the human body and security of the country.”

The paper conducts a comparative study of the British colonial laws with the new bill namely Bharatiya Nyaya Sanhita Bill 2023, Bharatiya Nagarik Suraksha Sanhita Bill 2023, and Bharatiya Sakshya Bill 2023. It explains the convenience guaranteed by these bills and the menaces caused by these bills. Furthermore, the author elucidates the perspectives of the stakeholders in the field of law such as advocates, judges, students, teachers, professors, competitive aspirants, etc. Senior Advocate Rebecca John said, “To a great extent, it's old wine in a new

bottle. Essentially, they've altered the section numbers, and this adjustment could pose significant challenges for both legal practitioners and judges.” The author concludes by remarking that the underlying motif threading these Bills is the elevation of justice above punitive measures, harmonising the legal structure with the evolving requisites of society.

Keywords: criminal code amendments, criminal justice system, jurisprudential shifts, legal innovation, transformation analysis.

INTRODUCTION

“Change is the Law of life. And those who look only to the past or present will surely miss the future.”¹ The fundamental cornerstone of law propounds that it is dynamic and tends to improve and strengthen its provisions following the changing times. The law influences society through its provisions while examination of legal principles as well as important case laws concerning national interest, the law has to change to abide by the changes held in the ever-growing society. The cultural values of the society like technologies, values, conditions, etc change rapidly, likewise, the ideas of justice, equality, and liberty follow for smooth governance. The blend of flexibility and rigidity in our Indian Constitution divulges the polished amendment procedure that gives way to recognition of existing beliefs and faiths of the people living in the country.

The fluctuation of laws has also been witnessed as a contributory factor for the country's progress through contemporary judicial precedents delivered. The comprehensive globalization in India casts its impact through international

¹ John F. Kennedy, “John F. Kennedy Quotations” John F. Kennedy Presidential Library and Museum < <https://www.jfklibrary.org/learn/about-jfk/life-of-john-f-kennedy/john-f-kennedy-quotations>> accessed 20 December 2023

standards and legislation. The Hon'ble Supreme Court stipulates that the most noteworthy prudence of law is its adaptability and flexibility. Law is an instrument of positive social change, in addition, it is also a method for changing the existing social courses of action. It acts as a catalyst change agent.² Justice B.R. Gavai of the Supreme Court opined that law by its nature is not static but dynamic, adequate changes must be taken into account because the law and the Constitution are for the people.³

Union Home Minister Amit Shah introduced the three Criminal Law bills named Bharatiya Nyaya Sanhita, Bharatiya Sakshya Bill, and the Bharatiya Nagarik Suraksha Sanhita in the House of the People on December 12, 2023, accompanying the amendments recommended by the Parliamentary panel. These three bills will reconstitute the Indian Penal Code (IPC) 1860, Code of Criminal Procedure (CrPC) 1973, and Indian Evidence Act 1872 respectively. He also observed that the British-era laws were made to strengthen and protect their rule, while their purpose was to punish, not to give justice. In the process, punishment will be given where it is required to create a sense of crime prevention.⁴ The study delves into the transformative expedition of the introduced criminal law bills. It aims to explore the connotations and amendments to the legal framework and the aftermath on the criminal justice system. The Bills have a commendable aim to decolonise India's criminal justice system. It is a necessary step in reforming and modernising India's criminal justice system, particularly because the criminal laws were used to aid India's colonisation by inspiring terror in the minds of people and by suppressing dissenting voices.⁵

² Chhavi Dhawan, "Nature, Purpose and Function of Law" (2022) Black n' White Journal <<https://bnwjournals.com/2022/07/01/nature-purpose-and-function-of-law/>> accessed 20 December 2023

³ "Law is Not Static but Dynamic: SC Judge Stresses Importance of Continuous Learning" (2023) ET. LegalWorld.Com < <https://legal.economictimes.indiatimes.com/news/industry/law-is-not-static-but-dynamic-sc-judge-stresses-importance-of-continuous-learning/98075120>> accessed 20 December 2023

⁴ "Home Minister Amit Shah Tables Three New Criminal Law Bills in Lok Sabha" The Economic Times, (December 10, 2023)

⁵ Neha Singhal, Naveed Mehmood Ahmad, et.al. (eds.), "Comments on the Bharatiya

THE BHARATIYA NYAYA SANHITA BILL, 2023

The Bharatiya Nyaya Sanhita Bill (hereinafter referred to as ‘BNS’) 2023 has been introduced in the Lower House of the Indian Parliament. It comprises 356 Sections divided into XIX Chapters. As the Preamble of the Bill enumerates the bill has been introduced to “consolidate and amend the provisions relating to offences and for matters connected” with it or incidental to it.⁶ This bill will displace the Indian Penal Code (IPC) 1860 which was drafted by the first Law Commission, chaired by Thomas Babington Macaulay in 1834; that came into force in January 1860. Though IPC contains 511 Sections, the BNS contains only 356 Sections.

Notwithstanding that BNS retains most of the offences as mentioned in IPC, it adds community service as a form of punishment. It eliminates sedition as an offence while adding a new offence for acts jeopardizing the sovereignty, unity, and integrity of India. In addition to it, it introduces terrorism as an offence, defined as an act that intends to threaten the unity, integrity, and security of the country, intimidate the general public, or disturb the public order. Organised crime has also been added as an offence, including kidnapping, extortion, and cybercrime committed on behalf of a crime syndicate. The BNS correspondingly adds petty organised crime as an offence now.⁷

While IPC protects unsound-minded persons from being prosecuted, BNS changes this person to mental illness. The definition of mental illness excludes mental retardation but includes abuse of alcohol and drugs. Individuals suffering

Nyaya Sanhita Bill, 2023, the Bharatiya Nagarik Suraksha Sanhita Bill, 2023 & the Bharatiya Sakshya Bill, 2023” (2023) < <https://vidhilegalpolicy.in/wp-content/uploads/2023/11/20231110-Comments-on-the-Bharatiya-Nyaya-Sanhita-Bill-2023-The-Bharatiya-Nagrik-Suraksha-Bill-2023-the-Bharatiya-Sakshya-Bill-2023-2.pdf> > accessed 20 December 2023

⁶ Bharatiya Nyaya Sanhita Bill, 2023

⁷ “The Bharatiya Nyaya Sanhita, 2023” (2023) PRS Legislative Research < <https://prsindia.org/billtrack/the-bharatiya-nyaya-sanhita-2023>> accessed 20 December 2023

from mental retardation may be prosecuted, and those who are voluntarily intoxicated may be vindicated. Furthermore, it adds a new offence specifying where murder by a group of five or more persons on grounds of certain identity markers such as caste, language, or personal belief, is penalized with seven years of life imprisonment or death. It further adds grievous hurt by a group on certain grounds. The BNS increases the threshold for the victim to be classified as a major, in the case of gang rape, from 16 to 18 years of age. It criminalizes sexual intercourse with a woman by deceitful means or making false promises.⁸

The BNS will thoroughly strengthen the rights of women especially by counting minors as victims within the age bracket of 16 to 18 years and criminalizing sexual intercourse induced by deceitful means or false promises. India has been continuously witnessing such cases that worked as a contributory factor to the increased crimes against women in society. Furthermore, it considers the sexual exploitation of women on the pretext of marriage, job, promotions, or by concealing identity as a crime bestows in the improvement of women's position in society. The amalgamation and simplification of certain provisions make the Bill compressed and propose changes in terms of increased punishments, particularly for certain serious offences that can be viewed as a deterrent.⁹ The Bill presented a distinguished opportunity to decriminalise consensual abortions in India, acknowledging women's rights over their bodies and giving certainty to doctors on how to lawfully terminate pregnancies.¹⁰

Even though the bill contains some provisions that are beneficial for society, it inhibits some repercussions as well. The Bill intensifies police powers and discretion in some areas to be used for prosecuting these blurred crimes. Violating

⁸ Supra note 7

⁹ Cyril Amarchand Mangaldas, "The Bharatiya Nyaya Sanhita, 2023: Analysing the Proposed Replacement to the Indian Penal Code, 1860 (1/3)" (2023) Lexology < <https://www.lexology.com/library/detail.aspx?g=e57efe9a-16c3-4bdd-8135-ce16a0e483e7>> accessed 20 December 2023

¹⁰ Alok Prasanna Kumar, "Bharatiya Nyaya Sanhita, Still Stuck in Colonial Era, Fails Women on Abortion" (2023) Deccan Herald < <https://www.deccanherald.com/opinion/bharatiya-nyaya-sanhita-still-stuck-in-colonial-era-fails-women-on-abortion-2703789>> accessed 20 December 2023

the well-established judicial standards, the Bills dilute the legal obligation of the police to file FIRs and register cases by providing police the option to conduct a preliminary inquiry before registering an FIR in certain cases. It empowers police officers to choose the law from the Unlawful Activities (Prevention) Act, 1967 (UAPA) or BNS under which a person should be prosecuted for alleged terrorist acts. It criminalizes the refusal to obey orders of the police and increases the scope of police custody from a maximum of 15 days to 90 days. The Bills weaponize the police and the criminal justice system to give the political leadership at central, state, and local levels, an opportunity to abuse the criminal justice system for political gain through selective, targeted, and politically biased prosecution against ideological and political rivals.¹¹

Violating the perennial judicial standards, the Bill surges handcuffing not only during arrest but also during production in court. The Bill creates a shield for the Sangh family by authorizing the carrying of weapons including lathis in mass drills and processions, avoiding explicit mention of religious hatred as a ground for the crime of lynching under clause 103(2) of BNS or for grievous hurt inflicted by a group under clause 117(4) of BNS. The Bill does not endeavour to enhance police accountability to the people. During such a period where the judiciary sometimes fails to protect the citizens from erroneous, malicious, and finical prosecution and prolonged detention, even without proper charges, this Bill serves as a recipe for enhancing the repression in our country.¹²

THE BHARATIYA NAGARIK SURAKSHA SANHITA BILL, 2023

¹¹ G. Mohan Gopal, "Second Avatar of the Criminal Law Bills: The Key Changes" (2023) The Wire <<https://thewire.in/government/second-avatar-criminal-law-bills-has-anything-changed>> accessed 21 December 2023

¹² Supra Note 10

The Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as 'BNSS') 2023 Bill has been introduced in the House of the People of the Indian Parliament. It consists of 533 Sections categorised into 38 Chapters and 2 Schedules. The Preamble being the introduction to any statute, the Preamble of the Bill enumerates it has been introduced to "consolidate and amend the law relating to criminal procedure."¹³ The BNSS has been tabled to replace the Code of Criminal Procedure (CrPC), 1973 which was enacted for the 1st time in 1861 as a part of a series of criminal law reforms undertaken by the British Raj in the wake of the 1857 mutiny. Lord Thomas Babington Macaulay is said to be the chief architect of codifications of criminal laws in India, thus it was introduced under his assistance. Though BNSS contains 533 Sections, CrPC contains only 484 Sections. The introduction and adoption of electronic communication or audio-visual means for judicial processes serves as a welcome step that will surely improve the functioning of the criminal justice system and will align with the requirements of the 21st Century. The BNSS falls in line with the government's Digital India initiative and will boost it up, if and when implemented.¹⁴

The BNSS elevates immunity provided to armed forces personnel as no case can be registered against them for acts performed in the line of duty without the sanction of the Central or the State government. As per the report published by the Parliamentary Standing Committee on Home Affairs, the Union Home Secretary Ajay Kumar Bhalla briefed the committee that the new law protects the armed forces personnel by expressing that, "the Sanhita introduces safeguards to prevent the registration of cases against armed forces personnel for acts performed in the line of duty without prior consent from the Central or State Government." While CrPC provides only protection to the members of armed

¹³ Bharatiya Nagarik Suraksha Sanhita Bill, 2023

¹⁴ Ashima Obhan, Aparna Amnerkar, et.al. (eds.), "Introduction of the Bharatiya Nagarik Suraksha Sanhita, 2023: A Step Towards Digital India" (2023) Obhan & Associates <<https://www.obhanandassociates.com/blog/introduction-of-the-bharatiya-nagarik-suraksha-sanhita-2023-a-step-towards-digital-india/>> accessed 21 December 2023

forces from arrest but lays no condition regarding registration of a criminal case, it propounds that “no member of the armed forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government”. The word ‘Armed Forces’ inculcates the Army, Navy, and Air Force of the country. Further, it stipulates that the statements of rape victims should be recorded by female Judicial Magistrates or, in their absence, by male Judicial Magistrates in the presence of women.¹⁵

The proposed provision in BNSS will be in addition to the Armed Forces Special Powers Act (AFSPA) that gives unbridled power to the armed forces deployed in “disturbed areas” to arrest or kill anyone acting in contravention of law and search any premises without a warrant, and protection from prosecution and legal suits without Central government’s sanction. Presently, AFSPA is applicable in parts of Assam, Arunachal Pradesh, Nagaland, Manipur, and the whole of Jammu and Kashmir. In December 2021, the Ministry of Defence denied sanction to prosecute 30 Army personnel including a Major who was accused of killing six coal miners in Nagaland’s Mon district owing to ‘mistaken identity’. The Nagaland Police had registered a case and filed a chargesheet against the accused, but the prosecution's sanction was denied afterward. The BNSS modernises the court structure by simplifying the court system through the elimination of British-era designations namely ‘Metropolitan Magistrate’ and ‘Metropolitan Area’. It also authorizes the Central government to appoint Public Prosecutors for trial, appeal, and other proceedings in the National Capital Territory of Delhi in consultation with the High Court. The BNSS allows the service of summons on any adult family member, including women, in the absence of the person to be summoned, to promote gender parity.¹⁶

¹⁵ Vijaitha Singh, “Proposed Criminal Code Gives More Immunity to Defence Personnel” *The Hindu*, (November 15, 2023)

¹⁶ *Supra* Note 15

Although the BNSS inculcates various beneficial provisions, it does not simplify the procedures prescribed under the present law, in other words, the prescribed procedure is complex. While it emphasizes the use of electronic modes for recording statements of the accused and simultaneously calls for their signatures on the statement that is recorded which might not serve the purpose of permitting electronic recording. It authorizes a DSP-level officer to conduct a preliminary inquiry before proceeding with the actual investigation, which might cause a delay in finding crucial pieces of evidence. While allowing investigating agencies to investigate during the trial, will lead to further delays in the disposal of the case. Allowing police officers to use handcuffs against persons accused of offences of a less gravity diversely affects the basic fundamental rights of the country's people. Furthermore, it is ambiguous in suggesting the factors that the court should consider while granting bail in non-bailable offences. Section 484 of the BNSS mentions, "bail may be granted if the court deems fit," which might be arbitrary in its process. While the remand issue is clarified, transit bail is still not defined in the Bill.¹⁷

THE BHARATIYA SAKSHYA BILL 2023

The Bharatiya Sakshya Bill 2023 has been introduced in the House of the People of the Indian Parliament. It comprises 170 Sections categorised into XI Chapters and 1 Schedule. The Preamble of the bill expresses that the bill has been introduced, "to consolidate and to provide for general rules and principles of evidence for fair trial."¹⁸ The Bill has been tabled to replace the Indian Evidence Act (IEA), 1872 which was passed by the British Parliament to set forth the rules of evidence admissible in the Indian courts, and that has far-reaching

¹⁷ "Bharatiya Nagarik Suraksha Sanhita Bill, 2023" (2023) IAS Parliament <<https://www.iasparliament.com/current-affairs/bharatiya-nagarik-suraksha-sanhita-bill-2023>> accessed 21 December 2023

¹⁸ The Bharatiya Sakshya Bill, 2023

consequences for the traditional systems of caste government in India. This Bill encompasses 170 Sections while IEA contains 167 Sections. While citing the reason for bringing this bill, the government said that the existing IEA has not kept up with the technological advancements and societal changes of the past decades. It further opined that the new bill aims to align the laws with the contemporary needs and aspirations of the people. It repeals five existing provisions of the IEA, modifies 23 provisions, and adds one new provision. Further, the bill proposes amendments to 23 Sections.¹⁹

The IEA provides two kinds of evidence - documentary and oral. Documentary evidence includes primary i.e., original documents, and secondary which proves the contents of the original. Though IEA classifies electronic records as secondary evidence, this bill classifies electronic records as primary evidence, unless disputed. The Bharatiya Sakshya bill expands such records to include information stored in semiconductor memory or any communication devices such as smartphones, laptops, etc. It expands secondary evidence to include oral and written admissions, as well as the testimony of a person who has examined the document and is skilled in the examination of documents.²⁰ The government introduced this bill as a part of a set of reforms of general criminal laws. It has been presented as an exercise to indigenise the legal landscape of the country from one that was created during colonial rule. The IEA is the principal statute governing proof and adjudication across criminal and civil laws in the country. It applies to all judicial proceedings except for contempt of court and public interest litigation. Over the years of its operation, courts have developed a large body of

¹⁹ “Bharatiya Sakshya Bill to Replace Indian Evidence Act, Here's What May Change” (2023) Live Mint <<https://www.livemint.com/news/india/bharatiya-sakshya-bill-to-replace-indian-evidence-act-heres-what-may-change-11691776626038.html>> accessed 21 December 2023

²⁰ “The Bharatiya Sakshya (Second) Bill, 2023” (2023) PRS Legislative Research <<https://prsindia.org/billtrack/the-bharatiya-sakshya-second-bill-2023>> accessed 21 December 2023

judicial interpretations of its provisions and there is now an intuitive understanding of its working.²¹

The Bharatiya Sakshya Bill prescribes explicit, meticulous, and uniform rules for dealing with the evidence during the trial of the cases. This bill promotes equitable treatment by shifting towards acknowledging electronic records as evidence that aligns with the technological landscape and ensures equitable treatment of all forms of evidence. It further enhances efficiency through the introduction of a matching hash value for original records that adds a layer of authenticity to secondary evidence, which eventually enhances its credibility. It reinforces the principles of justice and fairness by amending and refining sections that had become obsolete or inadequate. Furthermore, it ensures fairness as a uniform rule certifies that the evidence is handled consistently and fairly across various proceedings.²² In this ever-evolving landscape of legal proceedings, the Bhartiya Sakshya Bill emerges as a testament to India's commitment to upholding justice and equity. By meticulously addressing the multifaceted realm of evidence, this bill charts toward more structured, inclusive, and technologically aligned legal proceedings. The chapters within the bill provide a comprehensive framework, that ranges from the determination of relevancy to the admissibility of electronic records. The bill not only aims to facilitate the admittance of evidence but also takes into account the procedural intricacies surrounding the examination of witnesses and the exclusion of oral evidence in favour of documentary proof. As the bill navigates through areas like estoppel, burden of proof, and improper admission of evidence, it emphasizes its commitment to ensuring fair trials, protecting rights, and minimizing ambiguities within the legal process. With its potential to refine the evidentiary landscape, this bill holds the

²¹ Kunal Ambasta, "The Bharatiya Sakshya Bill, 2023: A New and Unimproved Evidence Act" (2023) The India Forum <<https://www.theindiaforum.in/law/bharatiya-sakshya-bill-2023-new-and-unimproved-evidence-act>> accessed 22 December 2023

²² "Bharatiya Sakshya Bill, 2023" (2023) IAS Parliament <<https://www.iasparliament.com/current-affairs/prelim-bits-5/bharatiya-sakshya-bill-2023>> accessed 22 December 2023

promise of rendering the legal system more efficient, transparent, and equitable for all those who seek justice in the Indian courts.²³

“The Sakshya bill fails to make any important improvement on Evidence Act, and has been drafted in ostensible ignorance of the development of the law.” This bill appears to be a rehashing of most of the provisions already existent within the statute and impliedly encourages the tampering of evidence. This bill could have resolved this source of confusion to bring the law in line with the common law construction. It is not clear whether the committee even considered the controversy in the area of criminal conspiracy, as the proposed Section 8 reproduces the current provision verbatim. The bill’s provisions would imply the possibility that if a seized device is tampered with by the investigative agencies to plant incriminating material, it will still qualify as a form of primary evidence.²⁴ Moreover, the Bill is plenary with drafting errors and misplaced provisos, which can confuse substantive law in some instances.²⁵ The Parliamentary Standing Committee on Home Affairs authorised to examine the proposed legislation has cautioned against the tampering of evidence and recommended “safeguarding the authenticity and integrity of electronic and digital records acquired during the investigation.”²⁶ The Bill “bars the courts from inquiring into any privileged communication between Ministers and the President of India”. G.S Bajpai, the Vice-Chancellor of National Law University Delhi, was a part of the government-appointed Committee for Reforms in Criminal Law that laid the framework for the three criminal codes. He observed that it will be open

²³ “Bharatiya Sakshya Bill, 2023” (2023) Law Docs <<https://prsindia.org/billtrack/the-bharatiya-sakshya-bill-2023>> accessed 22 December 2023

²⁴ Supra Note 21

²⁵ Pranav Verma, Anupama Sharma, “Bharatiya Sakshya Bill: Implications of Proposed Changes to the Indian Evidence Act, 1872” (2023) NLSIU Blog <<https://www.nls.ac.in/blog/bharatiya-sakshya-bill-implications-of-proposed-changes-to-the-indian-evidence-act-1872/>> accessed 22 December 2023

²⁶ Sravasti Dasgupta, “What Parliament Panel Said on Bharatiya Sakshya Bill, Which Seeks to Replace Indian Evidence Act” (2023) The Wire <<https://thewire.in/government/what-parl-panel-said-on-bharatiya-sakshya-bill-which-seeks-to-replace-the-indian-evidence-act>> accessed 22 December 2023

for interpretation by the courts as the government has not defined what is privileged communication.²⁷

STAKEHOLDERS PERSPECTIVES

The three criminal law bills passed in the House of the People and the Council of States i.e. the Bharatiya Nyaya Sanhita bill, Bharatiya Nagrik Suraksha Sanhita bill, and the Bharatiya Sakshya bill denote that the bill will soon receive President's assent and become law in place of Indian Penal Code 1860, Code of Criminal Procedure 1973 and Indian Evidence Act 1872. This substantial change in the field of law will allow the replacement of British Colonial laws with the Indian Parliamentary Laws. This crucial change will pose a great threat to those who are preparing for judiciary exams or other law-related exams, studied these laws in their law schools, and the practicing advocates and the judges who have been delivering judgments based on these British laws. They will suffer as they have to study these new laws again and perform their respective duty in the field of law whether in the form of judiciary aspirants, law students, practicing advocates, or presiding judges. Furthermore, it will create problems for the coaching institutions and the educational institutions that are involved in the education of law because now, the teachers and professors have to first study the new laws to teach their students further.

As per the opinion of the Senior Advocate Rebecca John, the changes may cause more harm than good. She said, "To a great extent, it's old wine in a new bottle. Essentially, they've altered the section numbers, and this adjustment could pose significant challenges for both legal practitioners and judges." She elaborated on the difficulties the new laws could pose for lawyers by saying, "Over the past

²⁷ Vijaita Singh, "In New Evidence Law, Courts Barred from Inquiring into Privileged Communication Between Ministers and President of India" The Hindu, (November 26, 2023)

several decades, we've become accustomed to a particular structure, and this shift might create difficulties in interpretation and application. If you retain much of the substance but change the section placements, then it is not a creative exercise. Now you suddenly say 302 is not 302 but it's 101. It'll take me a while to remember that!" She added that the new provisions are mostly incomprehensible. "If you were to look at the explanation of Section 150, which is the modified version of Sedition, it's an incomplete section. You can't make head or tail of it." While referring to mob lynching being made punishable under the new law, she said, "Lynching has been included as murder. It is punishable with death or imprisonment for life or imprisonment to seven years. How is it justifiable when murder is punishable with death or life imprisonment? It gives the impression that the drafting committee was not serious in punishing crimes of this nature."²⁸

Senior Advocate Sidharth Luthra added that although there are intriguing modifications, the core of the Code remains largely unchanged; ideally, a distinct structure should have been framed, merging procedural, evidentiary, and substantive statutes into separate comprehensive codes. This would have simplified the legal process for practitioners, judges, and investigators, eliminating the need for investigators to navigate numerous matters and issues each time an investigation commences. He further opined that the most significant one was the introduction of community service, "The Code of Criminal Procedure (CrPC) permits electronic trials and introduces modifications like the inclusion of electronic FIRs, the utilization of 3D signatures as data and provisions for trials via media conferencing. Additionally, the Indian Penal Code (IPC) has undergone restructuring, and grouping of similar provisions together for enhanced comprehensibility in court." Senior Advocate Sanjay Hegde said that criminal law demands certainty and the continuity of interpretation is a great

²⁸ Ratna Singh, "Old Wine in A New Bottle? Legal Experts Weigh in On the Proposed Changes to India's Criminal Laws" (2023) Bar and Bench < <https://www.barandbench.com/columns/aap-chronology-samjhe-introduction-of-new-criminal-law-bills-government-lawyers-concerns> > accessed 22 December 2023

virtue. He emphasized, "We had built an edifice of understanding and interpretation based upon what Macaulay and Stephen formulated in the 19th century. These concepts should have remained intact with suitable amendments where necessary. Criminal procedure, however, can and should be modernised as we had done in 1973." He further remarked, "To use a culinary metaphor, it seems to me that they set out to cook a new omelette, but have ended up with a mashed-up scrambled egg, which they have still served on the table."²⁹

The Retired Supreme Court judge Justice BN Srikrishna said, "I do not know if the new Acts have the same terseness in definitions which is the hallmark of good legislation. As for their functionality and impact on court proceedings, the future only can tell." Former Rajya Sabha Member of Parliament and Senior Advocate Majeed Memon added, "You can't in one stroke, lock, stock and barrel, change all these laws. Naturally, now it has been sent to a select committee." Former Madras High Court judge K Chandru opined, "Even thana police will know by heart IPC's provisions...CrPC was newly enacted only in 1973 and what is the need for its sudden change? Millions of copies of the various forms made under it will have to be discarded now by courts and law enforcement agencies. Why are these changing provisions upside down like shuffling them as a pack of cards? Even if you give 420 any other section number, it will still be called "char sau bees" only." He further added, "Let us not waste our time like Tughlaq who frequently changed his capitals and whose memory you had desperately wanted to erase in Delhi. No more Tughlaq Adhinyams. Enough is enough." Former Kerala High Court judge V Chitambaresh opined, "The provisions have been chiseled to plug the loopholes existing in the current law. Various inputs have gone into the exercise, which is commendable. The Bar and Bench will overcome the hiccups and get attuned to the dispensation of justice. After all, a lawyer is always a student of law and the courts have to rise to the occasion. The new law

²⁹ Supra Note 28

can only be prospective in operation and cannot affect the existing litigation." Advocate Abhinav Sekhri said, "The proposal itself will create difficulties for implementation as has been seen in the recent past with the Companies Act and the Insolvency and Bankruptcy Code." Advocate Manoj Taneja remarked, "Being a criminal lawyer all through my life, my only serious question is to how the Union government has introduced three serious bills in the Lok Sabha without any of the respective drafts even being put to the people of this country."³⁰

Advocate Colin Gonsalves raised strong objections to the three bills passed in Parliament by saying, "If the British laws were colonial and draconian, I want to show you very quickly how the laws enacted by this government are 10 times more draconian. During the British period, you could keep a person in police custody for a maximum of 15 days. Extending 15 days to 90 days and more, is a shocking provision enabling police torture." He further said, "Gay sex, which is voluntary, non-coercive, is not a crime. And now again, they sneak in the same old section on gay sex because they can't get over the fact that the Supreme Court declared that section unconstitutional." He concluded, "They're just bluffing the country, fooling the country with their words and their rhetoric and their speeches. But the law remains much more draconian than the British. This is worse than the British." Former ASG Aman Lekhi said there are some "positive" changes brought about in the bills, he opined, "Particularly in the aspect of the punishment and dealing with those private offences is concerned, there are certain changes which are positive."³¹ Congress general secretary Randeep Surjewala said, "Other than some credit seeking and point scoring in desperation, a hidden exercise, away from the public glare or stakeholders' suggestions and wisdom, cannot serve the public purpose of reforming the criminal law structure of the country." He further added, "While the Bills have been referred to the Select Committee of

³⁰ Supra Note 28

³¹ Poorva Joshi, "What's Good, What's Not in New Criminal Code Bills? Experts Weigh In" India Today, (December 21, 2023)

Parliament, the Bills, and their provisions must be thrown open for a larger public debate by judges, lawyers, jurists, criminologists, reformers, stakeholders and the general public to stay away from the trap of bulldozing the entire criminal law structure without discussion that is so ingrained in the DNA of the BJP government."³²

P Chidambaram, Member of Parliament and Senior Advocate opined that the three criminal law bills introduced in the Parliament are "largely a copy and paste of existing laws."³³ Our Home Minister Amit Shah said, "If there will be a maximum contribution of technology in any system, it will be in the Indian system...The aim of the three bills is not to provide punishment but to give justice."³⁴ BJP MP Dinesh Sharma said, "I believe this was a historic moment in which not only were major changes made to laws that were 150-200 years old, but also to ensure speedy justice and good governance." Prime Minister Narendra Modi said, "The passage of Bharatiya Nagarik Suraksha Sanhita, 2023, Bharatiya Nyaya Sanhita, 2023, and Bharatiya Sakshya Adhinyam, 2023 is a watershed moment in our history. These Bills mark the end of colonial-era laws. A new era begins with laws centered on public service and welfare."³⁵

CONCLUSION

A sudden overhaul in the criminal law bills with the new bills aims to diminish the rule of old colonial laws and deliver justice in a fast-paced manner. Home Minister Amit Shah opined that the purpose of the new bills is to provide timely

³² "Congress Calls for Wider Consultations On 3 Bills to Replace India's Criminal Laws" The Economic Times, (August 14, 2023)

³³ "Bharatiya Nyaya Sanhita A 'Copy-Paste' Of Indian Penal Code, 'Wasteful Exercise': P Chidambaram" (2023) Live Law <<https://www.livelaw.in/top-stories/new-criminal-law-bills-copy-paste-of-existing-laws-wasteful-exercise-p-chidambaram-242207>> accessed 23 December 2023

³⁴ "After Lok Sabha, Rajya Sabha Passes Three Criminal Law Bills to Replace IPC, CrPC, Evidence Act" The Times of India, (December 21, 2023)

³⁵ "Parliament Winter Session Highlights: Three Criminal Bills Passed in Rajya Sabha Unanimously in Absence of Oppn MPs" Hindustan Times, (December 21, 2023)

justice and abolish the system of 'tareekh pe tareekh,' he recognizes finance as the biggest drawback in seeking justice which will now be removed through the introduction of these three bills as the new laws have made the things clear and now the people will not be required to linger here and there. He further threw light upon the new provision where the inquiry report will have to be submitted to the Magistrate within 24 hours and the chargesheet shall have to be filed within 180 days. Earlier, there was no time limit on plea bargaining, but now if one accepts his crime within 30 days; his punishment will be less. Likewise, earlier there was no provision regarding the presentation of documents during trial, but now the presentation of documents within 30 days is made compulsory.³⁶ These bills seek to move towards a reformatory justice system by providing community service instead of imprisonment. The BNSS imbibes procedures for investigation and trial as well as the provisions on maintaining law and order. The BNS adds provisions from other special laws such as terrorism and organised crime. The Bills have failed to codify several directions given by Courts such as those related to anticipatory bail and arrest procedure. The Bills have also not incorporated several recommendations made by various high-level committees related to arrest, confessions, bail, and the death penalty. The bills do not address the challenges such as police vacancies and poor forensic capacity, which act as the bottlenecks in speedy justice delivery. The bills also do not address certain gaps concerning offences, contain several drafting errors, and use obsolete illustrations to explain the relevant provisions of the respected legislation.³⁷

Amit Shah said the Bills are based on three principles: "A person's freedom, human rights, and impartiality". He added that the three new laws "reflect the spirit of the original Indian Code of Justice, the laws give priority to crime against

³⁶ "Three New Criminal Bills Will Free People from Colonial Mindset, Focus Will Be on Justice Delivery: Amit Shah in Lok Sabha" The Times of India, (December 20, 2023)

³⁷ "Overview of the Criminal Law Reforms" (2023) PRS Legislative Research <

women/children, impact on the human body and security of the country.”³⁸ The former Union Law Secretary, PK Malhotra said that the three bills replacing IPC, Evidence Act, and CrPC, “are a much-awaited and desired reform of the criminal justice system. Despite reforms made so far and several reports including Law Commission reports and Justice Malimath Committee reports, justice to the common man has remained a far cry, and accused facing trial for petty crimes remain in prisons as undertrials for long period.” These bills inculcate various progressive changes such as filling of E-FIRs, accountability of police through the establishment of Police Control Rooms (PCRs), allowing some women-friendly changes, promoting speedy justice by limiting the number of adjournments that can be taken by a lawyer in a particular case, digitalizing the case documents, and many more. These bills also imbibe a bleak side which is revealed by the factors namely the expansion of police custody, inadequate provisions relating to bail specifically default and anticipatory bail, provision where trial may be held in the absence of the accused, unrestricted power to attach any property of the accused as the ‘proceeds of crime’, etc.³⁹

Vageshwari Deswal, Professor, Faculty of Law, University of Delhi said, “Teaching the new laws would require a comparative study of the old and the new legislations. The Sections have been rearranged and renamed as clauses. This would require teachers to restructure their lessons as per the new arrangements. Some new provisions that are being proposed, are already the subject of our classroom discussions when we study criminal law.” Arpit Jain, Assistant Professor, Law Government College, Dewas, Madhya Pradesh, said, “Clearing clouds around the new syllabus under the criminal law and its impact on students,

³⁸ “Lok Sabha Passes 3 Criminal Code Bills With 97 Opposition MPs Suspended: 'Punishment Would Be Less If...' | Highlights” (2023) Live Mint <<https://www.livemint.com/news/india/lok-sabha-passes-three-criminal-laws-that-replace-ipc-crpc-and-evidence-act-11703071827309.html>> accessed 24 December 2023

³⁹ Medha Hebbbar, “Transforming Legal Landscape: Exploring the Ramifications of Replacing British-Era Laws Of IPC, CrPC, And the Indian Evidence Act” (2023) Law and Morality Blog <<https://www.lawandmorality.blog/transforming-legal-landscape-exploring-the-ramifications-of-replacing-british-era-laws-of-ipc-crpc-and-the-indian-evidence-act/>> accessed 24 December 2023

there will be no major challenge for the law college teachers. However, once the Act is introduced teachers will have to plan an innovative and systematic delivery of new curriculum.” Faizan Mustafa, Vice Chancellor of Chanakya National Law University, Patna opined that the laws have been prevalent for 160 years, Section numbers have become a part of the collective memory of the society. The current generation of teachers, lawyers, and judges would find it difficult to remember new Section numbers initially. There would be no burden on the new students who have not been familiar with the previous provisions. This may be problematic for the students who are preparing for competitive exams for years and the examiners as well. As law students are fashioned to memorise the important Sections by heart, students have to put extra effort into unlearning the old Sections and relearning the new ones. He further added that we have almost missed an opportunity to make and improve colonial laws and make them consistent with the constitutional ethos of liberty, freedom, and individualism. The rights of the accused are the established yardstick for evaluating the fairness of the criminal justice system.⁴⁰

The three Bills introduced by the government seek to make criminal justice more contemporary and easier to administer. The objective is to create a legal system that meets the contemporary needs and aspirations of the people. It fulfills a crying need to overhaul the country’s criminal justice system. It is hoped that the new Bills will be thoroughly and rigorously debated in parliament to fulfill the objective of making them citizen-centric and fulfilling the constitutional vision.⁴¹ The underlying motif threading these Bills is the elevation of justice above punitive measures, harmonising the legal structure with the evolving requisites of society. The attempt at decolonisation, rather than substantively engaging with

⁴⁰ “Law Schools to Tweak Curriculum with The Introduction of Revamped Criminal Laws” The Times of India, (September 27, 2023)

⁴¹ Vinod Rai, “Making Criminal Justice More Contemporary: India Introduces Three New Bills” (2023) Institute of South Asian Studies, National University of Singapore < <https://www.isas.nus.edu.sg/papers/making-criminal-justice-more-contemporary-india-introduces-three-new-bills/>> accessed 24 December 2023

intricate legal nuances, may potentially undermine the depth and meaningfulness of the decolonisation process. The mere juxtaposition of Sections does not necessarily reorient the principles of justice. The evident constraints and shortcomings embedded within the new legislative Bills serve as a compelling counterpoint to the sweeping transformation purportedly envisioned for the criminal justice system. The prevailing equilibrium of practicality compels us to view these Bills as prematurely introduced, necessitating extensive re-evaluation. The need for meticulous recalibration becomes evident, ensuring that the legal framework remains steadfast in its pursuit of justice and fair adjudication, free from unwarranted impediments and hindrances. The anticipated disruptions in law that could stem from the new Bills must be met with substantial and consequential reforms, rather than a mere assimilation of well-established legal principles and practices. Many of the proposed modifications within the Bills could have been adequately addressed through amendments or have indeed been definitively resolved through judicial interpretations. Given that these changes could have been implemented without the sweeping overhaul they aim to introduce, the extensive restructuring pursued by the new Bills appears unnecessary.⁴²

⁴² Shreya Bansal, "The Three New Criminal Law Bills: Missed Opportunities and Misplaced Priorities" (2023) The Leaflet < <https://theleaflet.in/the-three-new-criminal-law-bills-missed-opportunities-and-misplaced-priorities/>> accessed 24 December 2023