



Criminal justice system and governance in India: An analysis under the new criminal laws and current conditions

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Abstract

This paper examines the architecture, functioning and governance of the criminal justice system in India in the light of the legislative overhaul carried out by the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA). In this study, the changes are placed within the framework of modern difficulties, which include growing crime rates, technology advancements, institutional bottlenecks (such as delayed trials and an expanding number of individuals awaiting trial), and concerns over procedural fairness. Additionally, it incorporates doctrinal analysis of the new legislative architecture, as well as current case law and national crime data, in order to evaluate the early effect of the changes and the implications they have for governance. The purpose of this study is to identify successes, lacunae, and proposals for policy and institutional change by using doctrinal techniques that are backed by secondary empirical data (NCRB reports and official legislative texts) and judicial declarations.

Keywords: Criminal Justice, Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, Bharatiya Sakshya Adhiniyam, NCRB, judicial governance, procedural reforms, evidence law.

Introduction

During the years 2023 and 2024, there was a significant legislative movement in Indian criminal law. In order to facilitate this transition, the Indian Penal Code (IPC) was replaced and merged with the Bharatiya Nyaya Sanhita, 2023.^[1] Additionally, the criminal procedure code was merged with the Bharatiya Nagarik Suraksha Sanhita, 2023.^[2] Finally, the Indian Evidence Act, 1872 was merged with the Bharatiya Sakshya Adhiniyam, 2023.^[3] After the Indian Penal Code (IPC) was first put into effect, several amendments took place throughout the course of one hundred and sixty years thereafter. The purpose of these amendments, which were conceived of as a unified modernisation program, was to make criminal law relevant to current problems like as terrorism, organised crime, cyber-enabled offences, and evidentiary hurdles connected to electronic records. Changes were made with the intention of streamlining institutions in order to improve the effectiveness of judicial delivery. Civil rights, prosecutorial authority, investigative standards, protections for the accused, and the shifting role of the court were all topics that were discussed extensively in academic circles as a result of the changes. The purpose of this article is to evaluate the governance implications of the new legislation in the immediate post-enactment age. It does so by relying on national crime numbers and recent rulings that show both the strengths and weaknesses of the system. Specifically, it does this by analysing the form of the law, the difficulties that arise when putting it into effect, and the patterns that emerge in judicial interpretation.^[4]

Part I: The Legislative Overhaul: Key Features and Governance Intent

The Substantive Design of the Bharatiya Nyaya Sanhita, 2023 (BNS), which is a unified code of substantive offences designed to take the role of the Indian Penal Code, maintains a significant portion of the traditional criminal

taxonomy, including offences such as murder, assault, and theft, but it simultaneously introduces a number of structural and conceptual modifications through a process of re-definition and reclassification^[5]. This reclassification involves reorganising offences into contemporary categories, in addition to recognising organised crime and terrorism with separate provisions, and it eliminates some formulations that were enacted during the colonial period, most notably the original sedition clause, while also creating crimes that address sovereignty and national security in language that is more modern. Furthermore, regarding alternate sentencing options and terms, the BNS places a strong emphasis on graduated punishment and makes provisions for contemporary sentencing constructions, including more transparent frameworks for corporate accountability, white-collar offences, and calibrated consequences for cyber-enabled wrongdoing, with the goal of aligning punishment with behaviour in a way that is consistent with contemporary penal theory^[6]. Specifically, the introduction of specific crimes for organised crime, activities that harm national integrity, and certain new technologies reflects the legislative prioritisation of public order and national security, yet concerns pertaining to governance persist, as the extended roster of state-protective offences raises problems about possible administrative overreach and the need for robust judicial checks in investigation procedures, even though the substantive recasting is fundamentally an attempt to bring the legislation into alignment with modern dangers and the demands of the prosecutor's office.^[7]

Part II: Bharatiya Nagarik Suraksha Sanhita, 2023 (Bnss): Procedure & Institutional Roles

By reorganising the machinery of the criminal procedure, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) takes the place of the Criminal Procedure Code, fundamentally restructuring key phases of the criminal process beginning

with arrest, bail, and remand, where the BNSS defines the processes for arresting individuals, develops rules with the goal of avoiding arbitrary detention, and makes an effort to harmonise the rights of accused individuals with the requirements of the investigation, incorporating time-bound documentation and more transparent remand processes to limit the amount of procedural uncertainty. The legislation further overhauls the supervision of investigations and investigations themselves through provisions that provide for the protection of witnesses, the involvement of victims, and guidelines for the preservation of prison conditions, with the purpose of the Act being to increase evidential preparation by better regulating investigation methods, such as recording statements and forensic standards, which will ultimately lead to a stronger evidence base for trials.^[8]

In an effort to address systemic delays, the BNSS modernises the routes for plea bargaining and offers alternatives for small infractions in order to minimise the backlog of cases, though the scope of the program is strictly restricted in order to ensure that justice is maintained for significant incidents. Regarding governance concerns, the goal of the BNSS is to increase accountability across the investigative–prosecutorial chain and eliminate pre-trial delay by defining duties, yet whether or whether these measures are successful is contingent upon administrative capability, improvements to the police force, and investments in forensics.^[9]

Complementing this procedural shift, the Bharatiya Sakshya Adhiniyam, 2023 (BSA) replaces the Indian Evidence Act of 1872 to enact an evidentiary modernization with the following specific amendments: The BSA recognises the digitalisation of evidence by explicitly treating electronic records as main evidence, simplifying the admission of digital data, and prescribing methods for verification, thereby acknowledging the inclusion of digital evidence as a core component of contemporary trials; regarding confessions and witnesses, the BSA refines reliability standards, offers more strong procedures for corroboration, and instructs courts to examine forensic paradigms, accomplishing this while maintaining the core norms that govern confessions and the burden of evidence; and for forensics and expert witnesses, the Act increases provisions for expert evidence, establishes requirements for chain-of-custody, and demands court scrutiny that favours scientific dependability, with both of these provisions included in the Act to bolster the scientific foundation of judicial findings.

^[10] The governance concerns for the BSA are that while it is designed to directly address previous evidentiary bottlenecks, such as mismanaged electronic evidence and inadequate forensic standards, and has the potential to greatly increase conviction accuracy and reduce the number of unnecessary convictions if it were to be adopted, the efficacy of the statute is contingent on their being sufficient forensic capability and judicial training to implement its sophisticated new standards effectively.^[11]

Crime Trends and Systemic Indicators

To acquire a comprehensive understanding of the governance implications of the new criminal laws, it is necessary to place them in the context of contemporary crime patterns and indices of the criminal justice system's functioning, as revealed by the "Crime in India, 2023" report published by the National Crime Records Bureau

(NCRB), which found a significant increase in the overall number of crimes committed in India, reporting over 6.24 million instances that represent a 7.2% increase compared to 2022, alongside rises in the crime rates per population, a continuation of a tendency that brings to light ongoing difficulties in public safety, the burden of enforcement, and the processing of court cases.^[12] An overview of the most important lessons from the NCRB 2023 report includes a marked increase in the overall number of recorded cognisable offences and frauds that are facilitated by cyberspace, the ongoing issue of a huge population of individuals awaiting trial and sluggish disposal rates that may be seen in many courts, and significant variation across states, where although some have seen gains in their conviction rates, others have yet to catch up, with the governance implications being that this increasing number of crimes brings about a greater sense of urgency for the implementation of the procedural reforms found in the BNSS and the evidentiary modernisation of the BSA in order to guarantee proper investigation standards and efficient administration of cases.

Furthermore, the critical issue of undertrial populations and prison overcrowding, highlighted by statistics from the NCRB showing a disproportionate ratio of undertrials in prisons as a direct result of pre-trial detention, represents a significant failing in governance that is expressly targeted by the legislative measures within the BNSS. These measures include provisions for expedited remand processes, clarified bail protections, and the creation of alternative paths for resolving small offences, all designed to alleviate the systemic pressure on the carceral system; however, the empirical effect and ultimate success of these provisions in mitigating this deep-rooted problem will be contingent entirely on the consistent, effective, and uniform execution of these policies at the state level by police and judiciary actors, demonstrating that the legislative intent must be matched by operational capacity and will to achieve tangible governance outcomes.^[13]

Part III: Recent Judicial Responses: Case Law (2023–2025)

Judicial interpretation plays a significant role in shaping the practical dimensions of the newly enacted legislation, as demonstrated in the years after 2023 by a number of high-profile criminal cases and decisions from the High Court and Supreme Court that highlight how the courts deal with evidence gaps, errors in investigations, and the implementation of mandatory statutes, beginning with the emphasis that the judiciary places on evidentiary standards and reversals, where recent decisions highlight the importance of judicial focus on evidence that is beyond reasonable doubt and forensic dependability, exemplified by the Supreme Court having often emphasised that cash recovery alone cannot definitively demonstrate stolen goods unless it is accompanied by compelling corroborating evidence, leading to courts acquitting accused individuals in cases where the evidence presented by the prosecution was divided, a tendency that represents judicial scrutiny implemented with the intention of avoiding convictions based on insufficient evidence, and further illustrated by a number of appeal judgements that have resulted in acquittals in cases where the investigation procedures were determined to be flawed, including processes with weak witness evidence, pressured confessions, or faulty chain-of-custody,

which has prompted court admonitions over investigative standards and forensic criteria that are consistent with the BSA's push towards rigorous evidential examination.¹⁴ This judicial role extends to cases involving high-profile defendants and systemic criticism of the organisation, where the judgements of the highest courts, such as the acquittal of individuals who were convicted in lengthy trials for terrorism or mass-incidents, have brought to light significant shortcomings in investigation and prosecution, with a recent decision by the Bombay High Court to acquit those convicted for the 2006 Mumbai train explosions owing to a "lack of credible evidence" and concerns over unreliable testimony spurring comments on systemic failure and the need for enhanced investigatory care, thereby highlighting the human cost of investigative deficiencies that benefit both those unfairly convicted and victims denied closure. Furthermore, the judiciary actively shapes the application of new laws at the contentious junction of criminal crimes and freedom of expression, where courts have resulted in the dismissal of convictions in cases where prohibited behaviour includes political speech or online postings and where the criminal process was utilised as a means of harassing the defendant, making these rulings particularly significant in light of recent legislative amendments that modify the definition of state-protective offences and reaffirm the importance of proportionality in the criminal justice system.¹⁵ Finally, the Supreme Court continues to provide essential procedural guidance that complements the new legal framework, emphasising the presumption of innocence, placing restrictions on questioning that takes place in a detention facility, and maintaining severe requirements for reversing acquittals, a set of declarations that underscores the significant role the court plays in ensuring the newly enacted legislative machinery adheres to constitutional principles and that the reforms in the BNSS and BSA are implemented in a manner that fundamentally protects individual rights and maintains the integrity of the justice system.¹⁶

Part IV: Evaluating Governance Impact of The New Laws

In order to evaluate the governance results of the new criminal codes, this analysis considers the interplay between statutory drafting, crime trends, and judicial practice, first by examining the critical limitations on state capacity versus the clarity of the new institutional structure, where although the BNS, BNSS, and BSA provide significant conceptual clarity and modernisation, the ultimate governance capabilities are determined by the underlying capacity of the administrative system, particularly regarding the evolution of the police force, as without substantive improvements, the improved legislative frameworks for arrest and investigation are necessary but inadequate, requiring standardised forensic processes, comprehensive digital case management systems, specialized training in handling electronic evidence, and robust accountability systems to realise the BNSS's goal of institutionalising improved investigative methods, a transformation dependent on consistent financial investments and widespread capacity creation across all state police forces. This capacity gap is equally pronounced in the realm of forensics and the laboratory network, where the BSA's strong emphasis on the admissibility and reliability of digital evidence necessitates a significant expansion and modernisation of

forensic labs, rigorous chain-of-custody protocols, and a nationwide network of authorised expert witnesses, with failure in this area running the grave risk of creating a fundamental mismatch between the high statutory expectation and the deficient reality on the ground, thereby undermining the very purpose of the evidentiary reforms.

The governance evaluation must further contend with the balance between civil liberties and procedural safeguards, where the new guidelines attempt to compromise between individual rights and investigative requirements but present serious concerns, such as the expanded offences for state security including the redefinition of sedition and the creation of broad categories for activities that imperil the state, which may pose a significant risk of administrative overreach unless they are strictly controlled by judicially enforced, explicit definitions of *mens rea* and proactive judicial scrutiny. Similarly, while the BNSS's provisions on bail have the potential to minimise pre-trial detention times if read generously by the courts and implemented faithfully by the police, their practical impact may be severely hampered by long-standing institutional traditions like prosecutorial hostility to bail and deep-seated resource shortages in legal assistance ecosystems.¹⁷

Furthermore, regarding the quality of evidence and convictions, the BSA's objective to reduce unjust convictions through higher evidential standards is supported by recent judicial criticism that corrects for low-quality evidence, yet the persistent governance risk remains an incentive structure within prosecution and investigation that often prioritizes conviction rates over evidential quality. Finally, while statutory changes like expedited processes and plea-bargaining aim to reduce the massive case backlog and improve the process of case disposal, achieving a scalable effect requires synchronised systemic reforms, including the establishment of more fast-track courts, the growth of alternative dispute resolution forums, and the comprehensive use of computerised case management systems to rigorously monitor remand and hearing timeframes.¹⁸

Part V: Selected Recent Case Studies

For the purpose of illustrating the critical relationship between law and governance, the following case studies from the most recent times show the application of evidentiary and procedural principles by the judiciary, beginning with a judicial reversal due to insufficient evidence in a Cash Recovery Case where the Supreme Court ruled that the mere recovery of cash does not automatically establish it as stolen property unless there is distinct identification and corroboration, overturning convictions for receiving stolen property in cases where the prosecution failed to meet the standard of proof beyond reasonable doubt and emphasising that the burden of evidence cannot be improperly transferred to the accused, a decision that demonstrates the court system's reluctance to recognise convictions based entirely on circumstantial cash recovery and serves as a powerful reinforcement of the evidentiary rigour that the Bharatiya Sakshya Adhinyam (BSA) has been advocating for.¹⁹ This judicial scrutiny of evidence quality is further starkly demonstrated in Case Study B concerning Acquittals in Long-Standing Terrorism-Related Cases by the Bombay High Court, which, in a landmark decision regarding the 2006 Mumbai train explosions, freed all previously convicted individuals by citing a fatal lack of

reliable evidence, dubious witness testimony, and profound investigation mistakes, a ruling that has prompted significant national thought on the quality of investigations, the necessary protections against forced statements, and the imperative of forensic brilliance in high-stakes criminal prosecutions, thereby bringing the fundamental governance difficulty of establishing credible convictions for complex crimes into sharper focus.^[20]

The judiciary's role in mediating the state's power to prosecute is further exemplified in Case Study C, The Quashing of Proceedings for Speech-Related Offences, where criminal procedures begun over online speech, such as a WhatsApp status criticising government policy, have been overturned by high courts and the Supreme Court in situations where the criminal process was utilised in an excessive and manifestly unreasonable manner. These decisions serve as a direct judicial warning against the excessive criminalisation of dissent and reflect a deliberate effort by the courts to strike a balance between constitutional liberties and legislative restrictions, thereby actively shaping the governance landscape by checking potential administrative overreach and ensuring that the new legal frameworks, particularly the redefined state-security offences in the BNS, are applied in a manner consistent with foundational rights and the principle of proportionality.^[21]

Part VI: Findings & Analysis

Based on an integrated evaluation of both theoretical frameworks and empirical evidence, the findings indicate that while statutory contemporarization has been successfully accomplished through the enactment of the BNS, BNSS, and BSA, which represent a significant amount of legislative modernisation, the effective implementation of these new codes continues to be the primary bottleneck for governance, as legislation alone cannot rectify the deep-seated deficiencies in investigative practice, forensic infrastructure, or the massive backlog of the court system, demonstrating that to achieve effective governance, it is not enough to just amend the laws; a concomitant and substantial strengthening of institutional capacity must also be prioritized and funded. Furthermore, the oversight role of the judiciary has proven to be both robust and corrective, as evidenced by appellate decisions handed down recently that are indicative of rigorous judicial supervision, with courts prepared to acquit when the evidence is incorrect or improperly gathered, a judicial stance that serves as an essential protection against erroneous decisions in the administration of justice and actively supports the BSA's foundational focus on the quality and admissibility of relevant evidence.

The empirical context further reveals that the documented increase in the number of crimes, as per National Crime Records Bureau (NCRB) data from 'Crime in India, 2023,' which shows a rise in overall crime, has resulted in increased strain placed on the police, prosecution services, and courts, creating a situation where procedural improvements like greater bail provisions and alternative dispute settlement might not result in meaningful relief unless they are implemented alongside a significant operational scaling of the entire justice machinery. This is compounded by the persistent danger of excessive criminalisation and presidential overreach, where despite the legitimate goals of the expanded state-protective offences and the modernisation of investigative techniques, these

developments have raised real worries over potential abuse, indicating that strong judicial safeguards and continuous scrutiny are nevertheless required to maintain civil rights.^[22] Finally, while the reforms to digital evidence within the BSA hold immense promise for modernizing trials, their success is entirely conditional on compatibility with state capacity, meaning their potential to revolutionise prosecution and defence strategy will only be realized if the stringent requirements for electronic evidence are matched by parallel investments in technological capabilities, including verified logs, a sufficient number of authorised experts, and impeccable chain-of-custody systems.

Part VII: Policy Recommendations and Reforms for Governance

Based on the comprehensive results of this evaluation, this section provides prioritized proposals to enhance the governance of the criminal justice system, beginning with the foundational need to improve the reform and professionalisation of the police force through the establishment of legally obligatory National Police Standards for the administration of digital evidence, forensic handling, and investigations, coupled with clear performance indicators and transparent reporting capabilities, alongside significant investment in specialised training modules for digital forensics, cybercrime investigation, and questioning techniques compatible with human rights, while simultaneously strengthening internal accountability and creating effective channels for independent monitoring through empowered police complaints authorities with real teeth and operational transparency. A second critical priority is to scale the accreditation and capacity for forensic investigations via a rapid, state-supported expansion of the authorised forensic laboratory network to ensure comprehensive regional coverage, the nationwide implementation of standardised, verifiable protocols for chain-of-custody, sample preservation, and expert reporting, and the establishment of dedicated, well-resourced digital evidence units in every major jurisdiction, staffed exclusively by qualified and certified professionals to meet the demands of the BSA.^[23]

The third set of recommendations focuses on essential judicial and court reforms, including the creation of more Fast-Track and Specialised Courts for case categories prone to prolonged trials, such as sexual offences, and specialised benches for complex cyber and organised crime cases, the mandatory implementation of interoperable, statewide digital case management systems that link police, prosecution, and courts to monitor remands, hearings, and evidence disclosures in real-time, and a substantial strengthening of the Legal assistance ecosystem to guarantee that all accused individuals, especially indigent undertrials, have meaningful and timely access to legal representation. Furthermore, to uphold constitutional principles, it is imperative to institute robust procedural safeguards and rights protections by ensuring clear *mens rea* formulations for state-protective offences to prevent their misuse, enacting more stringent custodial safeguards mandating the comprehensive audio-video recording of all custodial interrogations and facilitating independent monitoring of detention facilities, and adopting a framework for Data-Driven Governance and Monitoring through the frequent publication of implementation metrics by the Ministry of Home Affairs and the NCRB on BNSS/BSA

parameters like bail grant rates and forensic report turnaround times. Finally, a sustained initiative for the Education of the Public and the Judiciary must be launched, involving the establishment of mandatory, ongoing capabilities training for Judges on digital evidence and the new interpretative frameworks of the codes, alongside public awareness campaigns to educate citizens on their procedural rights regarding arrest, bail, and complaint processes to empower them and increase overall access to justice.^[24]

Conclusion

This article is based on legislative texts that have been published, aggregate data from the NCRB, and court decisions that are accessible in the public domain up to the time period that is being cited. The ability to draw definitive conclusions from certain generalisations is hindered by issues such as the fluidity of case law, the diversity of implementation at the state level, and the continuous availability of data (for example, later NCRB micro-data). In addition to the doctrinal study, further empirical research, such as field investigations of police stations, comprehensive case-flow analysis, and interviews with prosecutors and defence counsel, would be beneficial. Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhinyam are the legislative changes that will be implemented in 2023. These reforms are an effort to modernise the structure of India's criminal code. Together, they re-calibrate substantive definitions, procedural machinery, and evidential rules in order to bring them into alignment with the difficulties of the twenty-first century. The results of governance, on the other hand, are determined by institutional capabilities (police professionalism, forensic capacity, judicial administration), rigorous judicial scrutiny, and powerful protections against abuse. Statutes are important, but they are not sufficient. Recent court statements, such as acquittals that were based on insufficient evidence and verdicts that protected speech-related liberties, shed light on the system's capacity to fix itself as well as the human cost that is associated with unsuccessful investigations. Considering the increasing crime rates that are represented in NCRB 2023, the immediate policy priority is operational: make significant investments in forensic infrastructure, police training, and court modernisation while simultaneously maintaining rights-preserving safeguards that avoid overcriminalization or excessive criminalisation. Whether or whether the legal revolution of 2023 results in enhanced justice, safer communities, and stronger rule of law will be determined by whether or not this change is implemented.

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