



Reforming Country's Criminal Justice System

This editorial is based on [Sedition 'repealed', death penalty for mob lynching: the new Bills to overhaul criminal laws](#) which was published in The Hindu on 11/08/2023. It talks about the need of overhauling of the country's criminal justice system.

For Prelims: [Indian Penal Code \(IPC\), 1860](#), [the Code of Criminal Procedure \(CrPC\), 1973](#) and [the Indian Evidence Act, 1872](#), **Criminal Justice System reforms India, Bharatiya Nyay Sanhita Bill 2023, Bhartiya Nagrik Suraksha Sanhita Bill 2023, Bharatiya Sakshya Bill 2023, Criminal justice reform recommendations, Vohra Committee, Malimath Committee, Madhav Menon Committee, Supreme Court directives on police reforms.**

For Mains: Issues in criminal justice system reforms, Human rights concerns in legal reforms, Lack of transparency in bill drafting, Inconsistencies in proposed legal changes.

Recently the Union Home Minister introduced three new Bills in the Lok Sabha that propose a complete overhaul of the country's criminal justice system. The three Bills are:

- The Bharatiya Nyay Sanhita Bill, 2023, which will replace the [IPC, 1860](#)
- The Bhartiya Nagrik Suraksha Sanhita Bill, 2023, which will replace the [CrPC, 1898](#)
- The Bharatiya Sakshya Bill, 2023, which will replace the [Evidence Act, 1872](#)

Note:

- Indian Penal Code (IPC) is the official criminal code of India drafted in 1860 in the wake of the first law commission established in 1834 under the Charter Act of 1833.
- Code of Criminal Procedure (CrPC) provides procedures for administering criminal law in India. It was enacted in 1973 and became effective on 1 April 1974.
- The Indian Evidence Act, originally passed in India by the Imperial Legislative Council in 1872, during the British Raj, contains a set of rules and allied issues governing admissibility of evidence in the Indian courts of law.

What is the Criminal Justice System?

- The criminal justice system is the set of laws, processes, and institutions that aim to prevent, detect, prosecute, and punish crimes, while ensuring the rights and safety of all people.
- It includes institutions like police forces, judicial institutions, legislative bodies, and other supportive organizations like forensic and investigation agencies.

What are the Proposed Changes in India's Criminal Justice System?

- **Proposed Changes in the Bharatiya Nyay Sanhita Bill, 2023:**
 - The bill defines **terrorism** and offenses such as **separatism**, **armed rebellion** against the government, challenging the sovereignty of the country, which were earlier mentioned under different provisions of law.
 - It **repeals the offense of sedition**, which was widely criticized as a colonial relic that curbed free speech and dissent.
 - It prescribes **capital punishment** as the maximum sentence for mob lynching, which has been a menace in recent years.
 - It proposes **10 years imprisonment for sexual intercourse with women on false promise of marriage**, which is a common form of deception and exploitation.
 - The bill introduces **community service as a form of punishment for specific crimes**, which can help in reforming offenders and reducing overcrowding in prisons.
 - The bill fixes a **maximum limit of 180 days to file a charge sheet**, which can speed up the trial process and prevent indefinite delays.
- **Proposed Changes in the Bhartiya Nagrik Suraksha Sanhita Bill, 2023:**
 - It promotes the **use of technology for trials, appeals, and recording depositions**, allowing video-conferencing for proceedings.
 - The bill makes **video-recording of statement of survivors of sexual violence compulsory**, which can help in preserving evidence and preventing coercion or manipulation.
 - The bill mandates that **police must inform about the status of a complaint in 90 days**, which can enhance accountability and transparency.
 - **Section 41A of the CrPC will be renumbered as Section 35**. This change includes an added safeguard, stipulating that **no arrest can be made without prior approval from an officer at least at the rank of Deputy Superintendent of Police (DSP)**, especially for offenses punishable by less than **3 years or for individuals above 60 years**.
 - The bill requires that **police consult the victim before withdrawing a case punishable by seven years or more**, which can ensure that justice is not compromised or denied.
 - It allows absconding criminals to be **tried in-absentia by court** and sentenced too, which can deter fugitives from escaping justice.
 - It empowers magistrates to take **cognizance of offenses based on electronic records such as emails, SMSs, WhatsApp messages etc.**, which can facilitate evidence collection and verification.
 - Mercy petitions in death sentence cases to be filed **within 30 days to the Governor and within 60 days to the President**.
 - No appeal shall lie against the President's decision in any court.

Proposed Changes in Bharatiya Sakshya Bill, 2023:

- The bill defines **electronic evidence as any information generated or transmitted by any device or system that is capable of being stored or retrieved** by any means.
- It lays down specific criteria for **admissibility of electronic evidence such as authenticity, integrity, reliability etc.**, which can prevent misuse or tampering of digital data.
- It provides for special provisions for **admissibility of DNA evidence such as consent, chain of custody etc.**, which can enhance accuracy and reliability of biological evidence.
- It recognises **expert opinion as a form of evidence such as medical opinion, handwriting analysis etc.**, which can assist in establishing facts or circumstances relevant to a case.
- It introduces the **presumption of innocence as a fundamental principle of the criminal justice system**, which means that every person accused of an offense is presumed to be innocent until proven guilty beyond reasonable doubt.

What are the Issues in the Current Criminal Justice System of India?

- **Pendency of Cases:** According to the National Judicial Data Grid, there are over 4.7 crore cases pending in Indian courts across different levels of the judiciary. This leads to delays in justice

delivery, violation of the right to speedy trial, and loss of public trust in the system.

- **Lack of Resources and Infrastructure:** The criminal justice system suffers from inadequate funding, manpower, and facilities. There is a shortage of judges, prosecutors, police personnel, forensic experts, and legal aid lawyers.
 - For a country of 135 million, there are only 21 judges per million population (as of February 2023).
 - There are almost **400 vacancies in the high courts**. And around **35% of the posts are lying vacant in the lower judiciary**.
- **Poor Quality of Investigation and Prosecution:** The investigation and prosecution agencies often fail to conduct thorough, impartial, and professional investigations. They face interference from political and other influences, corruption, and lack of accountability.
- **Human Rights Violations:** The criminal justice system is often accused of violating the human rights of the accused, victims, witnesses, and other stakeholders. There are instances of custodial torture, extrajudicial killings, false arrests, illegal detentions, coerced confessions, unfair trials, and harsh punishments.
- **Outdated Laws and Procedures:** The criminal justice system is based on laws and procedures that were enacted by the British in 1860. These laws are archaic and not in tune with contemporary times. They do not address new forms of crimes such as cybercrime, terrorism, organised crime, mob lynching, etc.
- **Public Perception:** The **Second ARC** has noted that police-public relations are unsatisfactory in India because people view the police as corrupt, inefficient, and unresponsive, and often hesitate to contact them.

What are Committees' and Their Recommendations to Reform the Criminal Justice System of India?

- **Vohra Committee, 1993:** To deal with the increasing problem of criminalisation of politics and nexus between politicians, bureaucrats, criminals, and anti-social elements.
 - It recommended that an institution be set up to effectively deal with this menace by collecting intelligence from various sources and taking appropriate action against such elements.
- **Malimath Committee, 2003:** To revamp the criminal justice system, it made recommendations covering various aspects. Some of the key recommendations were:
 - Introducing a new category of offences called '**social welfare offences**' for minor violations that can be dealt with by imposing fines or community service.
 - Replacing the adversarial system with a 'mixed system' that incorporates some elements of the inquisitorial system such as allowing judges to play an active role in collecting evidence and examining witnesses.
 - Reducing the standard of proof required for conviction from 'beyond reasonable doubt' to 'clear and convincing evidence'.
 - Making confessions made before a senior police officer admissible as evidence.
- **Madhav Menon Committee, 2007:** This committee was set up to draft a national policy on criminal justice. It suggested various principles and strategies to guide the reform process such as:
 - Ensuring respect for human dignity and human rights in every stage of criminal justice.
 - Promoting restorative justice that focuses on healing the harm caused by crime rather than inflicting punishment.
 - Improving coordination and cooperation among various agencies involved in criminal justice such as police, judiciary, prosecution etc.
- **Supreme Court Directives on Police Reforms, 2006:** In response to a public interest litigation filed by two former police officers Prakash Singh and N.K. Singh, seeking police reforms in India, the Supreme Court issued seven directives to ensure functional autonomy, accountability, and professionalism of the police force. Some of the directives were:
 - Setting up a State Security Commission to lay down policies for police functioning, evaluate performance, and ensure that state governments do not exercise unwarranted influence or pressure on the police.
 - Ensuring a fixed tenure for the Director General of Police, who should be selected from a panel based on objective criteria and not at the whims of the political executive.
 - Separating the investigation and law and order functions of the police to ensure speedier investigation, better expertise, and improved rapport with the people.

- Establishing a Police Complaints Authority at the state and district levels to inquire into allegations of serious misconduct and abuse of power by police personnel.

What is the Significance of the Proposed Reform?

- The reform aims to **modernize** and **simplify** the criminal laws, which are outdated and complex. The reform will make the laws more in tune with the Indian spirit and ethos, and reflect the changing nature of crime, society, and technology.
- The reform will **repeal** the draconian sedition law under Section 124A of the IPC, which has been widely criticised for being misused against dissenters and critics of the government.
 - The reform will also introduce new offences such as terrorism, corruption, mob lynching, and organised crime, which are not adequately covered by the existing laws.
- The reform will make some of the sexual offences **gender neutral**, by including men and transgenders as potential victims and offenders, in addition to women.
- The reform will **increase** the use of electronic evidence and forensics during investigation, prosecution, and adjudication.
- The reform will **empower** the citizens, by allowing them to register a police complaint in any police station, regardless of the location where the crime took place. The reform will also provide for effective protection of the constitutional rights of citizens, such as right to life, liberty, dignity, privacy, and fair trial.

What are the issues in current proposed reforms to the criminal justice system?

- **Lack of Consultation and Transparency:** The bills were drafted by a [Criminal Law Reforms Committee, 2020](#).
 - The composition did not include any representatives from the judiciary, the bar, the civil society, or the marginalized communities. The committee also did not make its report or draft bills public for wider consultation and feedback.
- **Potential Violation of Human Rights:** The bills have been criticized for using vague and broad terms that could infringe on the human rights of the accused, victims, witnesses, and other stakeholders.
 - For example, the **BNS introduces a new offence of “acts endangering sovereignty, unity and integrity of India”** under Section 150, which is similar to the repealed offence of sedition under Section 124A of IPC. This could be used to suppress dissent and free speech.
 - Similarly, the **BSB allows confessions made before a police officer to be admissible as evidence** under Section 27A, which could increase the risk of custodial torture and coercion.
 - **The BNSS also gives wide powers to the police to arrest, search, seize, and detain** without any judicial oversight or safeguards.
- **Lack of Coherence and Consistency:** The bills have been accused of being inconsistent and contradictory with each other and with other existing laws. For example,
 - The **BSB also introduces a new standard of proof for conviction** from “beyond reasonable doubt” to “clear and convincing evidence”, which is not defined or explained in the bill.
 - The **BNSS also creates a new category of offences called “social welfare offences”** that can be dealt with by imposing fines or community service, **but does not specify which offences fall under this category.**

What Needs to be Done?

To address the challenges and potential shortcomings in the proposed reforms a more inclusive and comprehensive approach is needed.

- **Inclusive Consultation:** Initiate a broader consultation process involving all the stakeholders including the general public to accommodate diverse perspectives before implementing any reforms.

- **Human Rights Safeguards:** To explicitly incorporate human rights principles and safeguards clearly define and narrow down vague terms to prevent potential misuse.
- **Coherent Legal Framework:** Ensure consistency and coherence across the proposed bills and other existing laws.
- **Technology Integration:** Enhance the use of technology in the criminal justice process, including digitized evidence collection, online proceedings, and video-recorded statements for quicker trials, reduced backlog, and enhanced transparency.
- **Capacity Building:** Invest in training, recruitment, and infrastructure to bolster the capacity of law enforcement agencies, judiciary, and legal aid services. Adequate resources will lead to more efficient and fair administration of justice.
- **Restorative Justice:** Embrace restorative justice principles that focus on reconciliation, restitution, and rehabilitation to address the root causes of crime, reduce recidivism, and provide closure to victims.
- **Public Awareness:** Awareness campaigns to educate the public about their rights and responsibilities within the criminal justice system to improve police-public relations.

By pursuing these progressive steps, we as a nation can work towards a criminal justice system that upholds the rule of law, protects human rights, and effectively serves the needs of its diverse population.

Drishti Mains Question:

Discuss the proposed overhaul of India's criminal justice system as outlined in the Bharatiya Nyay Sanhita Bill, Bhartiya Nagrik Suraksha Sanhita Bill, and Bharatiya Sakshya Bill of 2023. Analyze the potential benefits and concerns associated with these proposed changes. (250 Words).

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims:

Q. For which one of the following reforms was a Commission set up under the Chairmanship of Veerappa Moily by the Government of India? (2008)

- (a) Police Reforms
- (b) Tax Reforms
- (c) Reforms in Technical Education
- (d) Administrative Reforms

Ans: (d)

Mains:

Q. We are witnessing increasing instances of sexual violence against women in the country. Despite existing legal provisions against it, the number of such incidences is on the rise. Suggest some innovative measures to tackle this menace. (2014)

Q. Mob violence is emerging as a serious law and order problem in India. By giving suitable examples, analyze the causes and consequences of such violence. (2015)