



The New Sanhitas: A Comprehensive Analysis of India's Criminal Law Overhaul

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Part I: The Jurisprudential and Legislative Context

Section 1: From Macaulay to Modi: The Historical and Philosophical Trajectory of Indian Criminal Law

The implementation of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA) on July 1, 2024, represents a watershed moment in the legal history of the Republic of India. This legislative overhaul replaces a triumvirate of codes that have formed the bedrock of the nation's criminal justice system for over a century: the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC), and the Indian Evidence Act, 1872 (IEA). To comprehend the magnitude of this transformation, it is imperative to first understand the historical and philosophical foundations of the legal architecture being dismantled. The outgoing codes were not merely statutes; they were foundational texts of a colonial legal order, designed with specific objectives that extended beyond the mere codification of criminal law.

The genesis of the Indian Penal Code lies in the early 19th-century efforts of the British East India Company to consolidate its administrative and judicial control over the subcontinent. The Charter Act of 1833 established the first Law Commission of India in 1834, with the explicit mandate to draft a uniform penal code. Chaired by the influential historian, politician, and jurist Thomas Babington Macaulay, this commission embarked on a monumental task. The draft, submitted to the Governor-General's Council in 1835, was a product of its time, drawing heavily from the English common law, but also incorporating elements from the Napoleonic Code and Edward Livingston's Louisiana Civil Code of 1825. The objective was to create a comprehensive, rational, and universally applicable code that would supplant the complex and often contradictory tapestry of Hindu and Mohammedan criminal laws then in force.

The drafting and revision process was protracted, spanning over two decades. The final draft was presented to the Legislative Council in 1856, but its enactment was

catalysed by the Indian Rebellion of 1857. The uprising underscored the British Crown's need for a robust legal framework to enforce its authority and maintain order. After careful revision by legal luminaries such as Sir Barnes Peacock, the IPC was finally passed into law on October 6, 1860, and came into force on January 1, 1862. With 511 sections organised into 23 chapters, the IPC was a comprehensive document intended to cover all substantive aspects of criminal law, establishing a framework of offences and punishments that would remain largely intact for the next 162 years.

Similarly, the procedural and evidentiary laws were products of the same colonial project. The Code of Criminal Procedure evolved over time, with its first consolidated version appearing in 1882 and being subsequently amended, most significantly in 1898. The modern CrPC, enacted in 1973 and brought into force on April 1, 1974, was a post-independence revision based on the 41st Report of the Law Commission of India. However, it retained the fundamental structure and procedural philosophy of its colonial predecessors, providing the machinery for investigation, apprehension, trial, and sentencing. The Indian Evidence Act of 1872, another cornerstone of the colonial legal system, was designed to introduce a standardized set of rules for the admissibility and evaluation of evidence in judicial proceedings, replacing diverse local customs with a uniform, British-conceived framework.

The endurance of these colonial-era codes long after India's independence in 1947 is a complex phenomenon. It was not merely a result of legislative inertia but also a testament to their comprehensive, albeit top-down, jurisprudential structure. For the newly independent nation, these codes offered a ready-made, uniform legal system that provided a semblance of continuity and stability. Over the decades, the Indian judiciary, particularly the Supreme Court, played a crucial role in adapting these statutes to the ethos of a democratic republic, interpreting their provisions in light of the fundamental rights guaranteed by the Constitution. The codes were amended numerous times to address evolving societal norms and new forms of crime. Yet, their foundational architecture, rooted in the 19th-century colonial objective of governance and control, remained unchanged.

This historical context is crucial because it frames the current reform not as a simple technical update but as a profound cultural and jurisprudential challenge. The new Sanhitas are not just replacing outdated statutes; they are attempting to fundamentally alter a legal-cultural framework that has shaped Indian society, policing, and the judiciary for over a century and a half. The government's stated aim is to shift the system's focus from 'Dand' (punishment) to 'Nyaya' (justice). This requires more than just new statutory text; it necessitates a transformation in the mindset and operational ethos of the entire criminal justice machinery, from the local police constable to the highest echelons of the judiciary. The legacy of the Macaulay-era codes is one of deeply embedded procedures and principles, and supplanting this legacy is a task of immense complexity and consequence.

Section 2: The Rationale for Reform: Deconstructing the Official Narrative of Decolonisation and Modernisation

The legislative exercise to replace the IPC, CrPC, and IEA is underpinned by a powerful and consistently articulated official narrative. This narrative, advanced by the Government of India through ministerial statements, official reports, and public communications, is built upon the twin pillars of "decolonisation" and "modernisation". Understanding this rationale is essential to evaluating the new laws, as it provides the benchmark against which their substance and intent must be measured.

The primary philosophical justification for the overhaul is the imperative of decolonisation. The government has repeatedly asserted that the old laws were a legacy of British colonial rule, designed not to deliver justice to the people of India but to enforce and perpetuate foreign dominion. The Union Home Minister, while introducing the bills, stated that the purpose of the British-era laws was "to punish, not to give justice," and that they were crafted to "strengthen and protect their rule". This perspective posits the old codes as instruments of subjugation, "shrouded with a strong colonial color and pre-independence mindset". Consequently, the new laws are presented as a definitive break from this past, an act of legal and symbolic sovereignty. The very nomenclature of the new acts—Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam—is a deliberate move to

"Indianize" the legal framework and signify a "denouncement of colonial laws in both word and spirit". The overarching goal, as articulated by the Ministry of Home Affairs (MHA), is to create a system grounded in an "Indian ethos" that is "citizen centric" and reflects the aspirations of a modern, democratic nation. This shift is encapsulated in the transition from a philosophy of *Dand* (deterrence/punishment) to one of *Nyaya* (justice), with an emphasis on restorative and correctional measures.

The second pillar of the official rationale is modernisation. Proponents of the reform argue that the 19th-century legal framework was ill-equipped to address the complexities of 21st-century society and crime. The new laws are designed to align the criminal justice system with contemporary needs, values, and technological advancements. This modernisation agenda manifests in several key areas:

- **Addressing Modern Crimes:** The BNS introduces specific provisions for offences that were not adequately covered by the IPC, such as organised crime, terrorism, mob lynching, and various forms of cybercrime and digital fraud.
- **Integrating Technology:** The BNSS and BSA heavily emphasize the use of technology to enhance efficiency and transparency. This includes provisions for the electronic filing of First Information Reports (e-FIRs), the use of audio-visual means for recording statements and conducting trials, and the electronic service of summons.
- **Ensuring Speedy Justice:** A major criticism of the old system was its notorious delays. The BNSS introduces stringent, mandatory timelines for various stages of the criminal process, including investigation, framing of charges, and pronouncement of judgments, in alignment with the constitutional right to a speedy trial under Article 21.
- **Victim-Centric Approach:** The new laws aim to shift the focus of the justice system towards the victim. This includes provisions for providing victims with regular updates on their cases, ensuring their right to be heard in certain proceedings, and strengthening witness protection schemes.

While compelling, the official narrative of decolonisation serves a complex dual purpose. On one hand, it provides a powerful political and nationalist justification for a monumental legal overhaul, resonating with the broader theme of shedding colonial

legacies. On the other hand, it functions as a rhetorical shield against substantive critiques of specific provisions within the new laws. By framing the entire debate as a binary choice between a subjugated colonial past and a sovereign, decolonised future, the government can strategically deflect criticism of potentially illiberal or draconian clauses.

This dynamic is evident in the discourse surrounding the replacement of the sedition law. The government has highlighted the repeal of the explicitly colonial Section 124A of the IPC as a major achievement and a definitive step towards decolonisation. However, critics argue that its replacement, Section 152 of the BNS, which penalises "acts endangering sovereignty, unity and integrity of India," is even more vaguely worded and has a wider sweep, posing a significant threat to freedom of speech and dissent. In this context, the overarching decolonisation narrative allows proponents to focus on the symbolic victory of repealing the old law, while downplaying or dismissing concerns about the substance of its replacement. Critiques of the new provision can be framed as a defense of a colonial-era status quo or as resistance to a necessary nationalistic reform. This creates a challenging environment for nuanced debate, where the powerful form of "Indianisation" is used to justify a substance that, in some critical areas, enhances state power beyond even the colonial framework it purports to replace. The official rationale, therefore, is not just a statement of objectives but also a strategic framing of the entire reform project.

Section 3: The Legislative Pathway: An Examination of Parliamentary Scrutiny and Stakeholder Consultation

The process by which the three new criminal laws were enacted has been as contentious as their content, raising significant questions about parliamentary procedure, stakeholder consultation, and the principles of deliberative democracy. While the government maintains that the laws are the product of extensive consultations, critics and opposition parties have alleged that the legislative process was rushed, opaque, and lacked meaningful debate.

The formal process began with a comprehensive review of the existing criminal

laws undertaken by the Ministry of Home Affairs (MHA). According to the government, this review was initiated in response to long-standing recommendations from various Law Commissions and parliamentary committees, including the Department-related Parliamentary Standing Committee on Home Affairs, which had repeatedly called for reform. The MHA states that it sought suggestions from a wide range of stakeholders, including all State Governors, Chief Ministers, the Chief Justice of India, Chief Justices of all High Courts, Bar Councils, Law Universities, and Members of Parliament. In May 2020, a committee was constituted under the chairmanship of the Vice-Chancellor of National Law University, Delhi, to examine and suggest reforms. This committee reportedly submitted its report in February 2022 after extensive consultations.

Based on these inputs, the three initial bills—the Bharatiya Nyaya Sanhita Bill, 2023; the Bharatiya Nagarik Suraksha Sanhita Bill, 2023; and the Bharatiya Sakshya Bill, 2023—were introduced in the Lok Sabha on August 11, 2023. Following parliamentary procedure, the bills were referred to the Department-related Parliamentary Standing Committee on Home Affairs for examination and report within three months. The Committee, chaired by BJP member Brij Lal, held 12 meetings, heard from domain experts, and conducted a clause-by-clause consideration of the bills. It adopted its three reports (246th on BNS, 247th on BNSS, and 248th on BSA) on November 6, 2023, and submitted them on November 10, 2023. Several opposition members reportedly submitted dissent notes to these reports.

Subsequently, the government withdrew the initial bills and, on December 12, 2023, introduced revised versions incorporating some of the Committee's recommendations. It is the passage of these revised bills that has drawn the most severe criticism. The final debate and voting in the Lok Sabha took place in December 2023, at a time when an unprecedented 146 opposition Members of Parliament had been suspended from the House. Critics argue that this allowed the government to pass these transformative laws "without opposition or even a semblance of an informed critique of its provisions". The bills were then passed by the Rajya Sabha and received Presidential assent on December 25, 2023.

This legislative pathway has created what can be termed a "legitimacy deficit,"

fueling ongoing legal challenges and civil society opposition. The critique is multi-pronged. Firstly, there is a significant lack of transparency regarding the stakeholder consultations. Despite the government's claims of a wide-ranging process, Right to Information (RTI) requests filed by media organisations seeking details of the consultations, including the report of the NLU Delhi committee, have been obstructed or denied. This refusal to make the foundational documents and feedback public undermines the assertion of an inclusive and consultative process, leading to accusations that the reform was driven by a "rule by diktat" rather than "government by consent".

Secondly, the quality of parliamentary debate is a major point of contention. The introduction of the initial bills in August 2023 was done "without adequate notice," denying the opposition an opportunity to object. More critically, the passage of the final, revised bills in the near-total absence of an opposition has been condemned as a subversion of the democratic process. A legislative overhaul of this magnitude, which fundamentally alters the relationship between the citizen and the state, arguably requires the most rigorous scrutiny and debate. The circumstances of its passage have instead created a perception that the government prioritized speed and control over deliberation and consensus.

This procedural controversy is not merely a political footnote; it has direct legal and social consequences. It has provided grounds for public interest litigations challenging the validity of the laws, with petitioners arguing that the lack of debate violates constitutional principles. It also strengthens the narrative of civil society groups and human rights organizations that the laws are an imposition of state power rather than a democratic reform. The process of law-making has thus become as contentious as the content of the laws themselves, impacting their public acceptance and legal resilience from the very outset. The government's push for a rapid, decisive transformation has come at the cost of the deliberative, inclusive democratic principles that are essential for the legitimacy of such far-reaching legislation.

Part II: A Forensic Comparison of the Old and New Codes

Section 4: Substantive Justice Reimagined: Bharatiya Nyaya Sanhita (BNS) vs. Indian Penal Code (IPC)

The Bharatiya Nyaya Sanhita (BNS), 2023, which replaces the Indian Penal Code (IPC), 1860, represents the most significant overhaul of India's substantive criminal law in over 160 years. The changes are both structural and substantive, reflecting an attempt to modernise, streamline, and reorient the penal code. Structurally, the BNS is a more compact statute, reducing the total number of sections from 511 in the IPC to 358. This has been achieved by repealing 22 sections, amending 175, adding 8 new ones, and consolidating various provisions. For instance, definitions that were previously scattered across numerous sections in the IPC are now consolidated under Section 2 of the BNS. However, the substantive changes reveal a complex and at times paradoxical jurisprudential shift.

Offences Against the State: The Sedition Debate Reconfigured

One of the most celebrated and simultaneously criticised aspects of the BNS is its treatment of offences against the state. The BNS formally repeals Section 124A of the IPC, the colonial-era law on sedition. This move was lauded as a step towards decolonisation, especially in light of the Supreme Court's 2022 order effectively freezing the application of Section 124A due to its widespread misuse against dissenters, journalists, and activists.

However, the BNS introduces Section 152, titled "Acts endangering sovereignty, unity and integrity of India." This new provision criminalises anyone who "purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India". Critics argue that this is not a repeal but a rebranding of sedition in a more potent and ambiguous form. The terms "subversive activities," "feelings of separatist activities," and acts that "endanger sovereignty" are not defined in the Sanhita, granting wide discretionary powers to law enforcement agencies. Civil

liberties groups fear that this vagueness could be weaponised to suppress any form of criticism against the government, thereby creating a significant chilling effect on free speech and expression guaranteed under Article 19 of the Constitution. While the old law was tempered by decades of judicial interpretation that narrowed its scope, Section 152 is a new provision to which this established jurisprudence will not automatically apply, potentially leading to a fresh wave of litigation and misuse.

Codification of New and Contemporary Offences

A significant merit of the BNS is its codification of several offences that reflect contemporary criminal realities, which the IPC either did not address or addressed inadequately.

- **Terrorism (Section 113):** The BNS, for the first time, includes a definition of a "terrorist act" in the general penal code. Section 113 defines terrorism as an act intended to threaten India's unity, integrity, and security, intimidate the public, or disturb public order. This provision largely mirrors the definition found in the special legislation, the Unlawful Activities (Prevention) Act (UAPA). However, its inclusion in the BNS has raised concerns. Critics point out that it creates a duplication of laws and gives police the discretion to choose between the BNS and the UAPA, potentially allowing them to bypass some of the procedural safeguards, however limited, present in the special law. Furthermore, the placement of this offence in the chapter on "Offences Affecting the Human Body" rather than "Offences against the State" has been interpreted as a legislative manoeuvre to circumvent the requirement of prior government sanction for prosecution, which is mandated for offences against the state.
- **Organised Crime (Section 111):** Drawing inspiration from state-level statutes like the Maharashtra Control of Organised Crime Act (MCOCA), the BNS introduces "organised crime" as a distinct offence. It covers a wide range of unlawful activities committed by criminal syndicates, including kidnapping, extortion, contract killing, land grabbing, financial scams, and cybercrime. A separate provision also addresses "petty organised crime". While the codification is a welcome step towards tackling syndicated crime, the definitions have been criticised for their vagueness, which could lead to interpretational challenges and

potential misuse.

- **Mob Lynching (Section 103(2)):** In a landmark move responding to a directive from the Supreme Court, the BNS specifically criminalises murder committed by a group of five or more persons on grounds of race, caste, sex, language, or personal belief. This offence carries a severe penalty, ranging from life imprisonment to the death penalty. The explicit recognition of mob lynching as a distinct hate crime is a significant victim-centric reform.
- **Snatching (Section 309):** The BNS defines "snatching" as a separate crime, distinct from theft or robbery, addressing a common form of street crime that was often inadequately prosecuted under the IPC.

Offences Against Women and Children: A Mixed Bag

The BNS consolidates offences against women and children into a single dedicated chapter, giving them chronological precedence to signal their importance. It introduces several notable changes:

- **Sexual Intercourse by Deceitful Means (Section 69):** The BNS codifies a new offence penalising sexual intercourse with a woman through "deceitful means," which includes false promises of employment, promotion, or marriage, or by concealing one's identity. This provision addresses a judicially recognised but previously uncoded form of sexual exploitation. However, it has been criticised for potentially blurring the lines of consent, especially in the context of promises of employment, raising questions about whether consent can be "purchased".
- **Gender Neutrality:** The BNS makes some progress towards gender neutrality. For instance, in offences like voyeurism (Section 77) and assault with intent to disrobe (Section 76), the perpetrator is defined as "whoever," replacing the term "any man" used in the IPC, thereby allowing for the prosecution of women perpetrators. The general definition of "gender" in Section 2(10) also includes transgender persons.

Despite these advances, the BNS has been heavily criticised for its missed opportunities in this domain. Most significantly, it retains the marital rape exception, failing to criminalise non-consensual sexual acts within marriage (for wives above 18

years of age). Furthermore, the core offence of rape (Section 63) remains gender-specific, recognising only women as victims and men as perpetrators, thereby failing to provide legal protection to male and transgender victims of sexual assault. The complete repeal of Section 377 (Unnatural Offences) of the IPC, while decriminalising consensual same-sex acts in line with the Supreme Court's *Navtej Singh Johar* judgment, has also created a legal vacuum by removing the only provision under which non-consensual penile non-vaginal sexual acts against men, transgender individuals, or animals could be prosecuted.

Repealed Offences and New Forms of Punishment

The BNS aligns the penal code with progressive judicial pronouncements by formally decriminalising certain acts. Adultery, which was struck down by the Supreme Court as unconstitutional, has been omitted. Similarly, Section 309 of the IPC, which criminalised the attempt to commit suicide, has been removed, reflecting a more compassionate and modern understanding of mental health.

A novel feature of the BNS is the introduction of "community service" as a form of punishment for certain petty offences, such as public intoxication, minor theft (value less than Rs 5000), and criminal defamation. This signals a shift towards restorative and rehabilitative justice. However, the BNS does not provide a definition or a framework for what "community service" entails, how it will be administered, or how compliance will be monitored, leaving a significant implementation gap that could render the provision ineffective.

In conclusion, the BNS embodies a significant jurisprudential paradox. On one hand, it introduces progressive, victim-centric reforms by defining modern crimes like mob lynching and snatching, decriminalising archaic offences like adultery, and introducing restorative concepts like community service. This aligns with a socially liberal, rights-based discourse. On the other hand, the most impactful new additions are broadly defined state-security offences like terrorism and the sedition-replacement in Section 152, which concentrate immense power with the executive and are widely seen as tools to curb dissent. This creates a fundamental internal conflict within the code. The BNS is not a monolithic philosophical document but a hybrid statute

reflecting two competing ideologies: one that is socially liberal and focused on individual and community justice, and another that is state-centric and security-focused. The ultimate character and impact of the BNS will be determined by which of these two competing philosophies dominates its interpretation and enforcement by the police and the judiciary in the years to come.

Section 5: Procedural Revolution or Evolution? Bharatiya Nagarik Suraksha Sanhita (BNSS) vs. Code of Criminal Procedure (CrPC)

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, replacing the Code of Criminal Procedure (CrPC), 1973, is positioned as a revolutionary step towards creating a more efficient, transparent, and victim-centric criminal process. While the BNSS retains a significant portion of the CrPC's structure—critics claim as much as 95% is a "cut, copy and paste" job—it introduces several pivotal changes aimed at modernising procedures and addressing systemic delays. Structurally, the BNSS contains 531 sections compared to the CrPC's 484, with the increase attributed to better reorganisation and clarification of provisions. However, a forensic examination of its key amendments reveals a complex picture, where laudable goals of efficiency are juxtaposed with provisions that significantly enhance police powers and potentially undermine constitutional safeguards.

Timelines and Technology: The Twin Engines of Efficiency

A central promise of the BNSS is to combat the chronic delays that have plagued the Indian criminal justice system. To this end, it introduces mandatory and stringent timelines for various procedural stages:

- **Investigation and Charge Sheet:** The investigation in cases punishable with more than 10 years imprisonment must be completed and the charge sheet filed within 90 days, extendable to 180 days with court permission. For other cases, the limit is 60 days. The police are also obligated to inform the victim or informant of the progress of the investigation within 90 days.
- **Cognizance and Framing of Charges:** A magistrate must take cognizance of a charge sheet within 14 days of its filing, and the court must frame charges within 60 days from the first hearing after the charge sheet is filed.

- **Judgment and Adjournments:** The verdict must be pronounced within 30-45 days of the conclusion of arguments. To prevent delays, the number of adjournments a party can seek is limited to a maximum of two.

Complementing these timelines is a heavy emphasis on technology integration. The BNSS provides statutory recognition for procedures that were previously governed by judicial pronouncements or were nascent in practice:

- **Electronic Communication:** The Sanhita allows for trials, inquiries, and proceedings to be held in electronic mode through audio-visual means. This includes the examination of the accused and witnesses.
- **Digital Records and FIRs:** The concept of an electronic FIR (e-FIR) is introduced, and the registration of a Zero FIR (an FIR lodged at any police station irrespective of jurisdiction) is now codified. Summons and warrants can also be served electronically.
- **Forensic Investigation:** For offences punishable with seven years of imprisonment or more, the BNSS mandates forensic investigation, requiring forensic experts to visit crime scenes to collect evidence, with the process being video-graphed.

Arrest, Custody, and Handcuffs: The Expansion of Police Power

While the efficiency-oriented reforms have been largely welcomed, several procedural changes related to arrest and custody have sparked significant controversy and concern among civil liberties advocates.

- **Expansion of Police Custody:** This is arguably the most contentious change. Under the CrPC, an accused could be remanded to police custody for a maximum of 15 days, which had to be availed within the first 15 days of arrest. The BNSS fundamentally alters this. While the total period of police custody remains 15 days, it can now be sought in parts at any time during the initial 40 or 60 days of the total 60 or 90-day detention period. This means police can move an accused from judicial custody back into police custody intermittently. Critics argue this provision drastically increases the risk of custodial torture and coercion, undermines the right to a fair trial, and could be used to deny bail for

the entire 40/60-day period by keeping the possibility of further police remand open. This differs significantly even from stringent special laws like the UAPA, which limits police custody to the first 30 days.

- **Statutory Sanction for Handcuffs:** Contradicting decades of Supreme Court jurisprudence that has repeatedly condemned handcuffing as "inhumane, unreasonable, and arbitrary" and permissible only in extreme, judicially-approved circumstances, the BNSS introduces a provision explicitly permitting the use of handcuffs. It allows police to use handcuffs during arrest for a range of individuals, including habitual offenders and those accused of serious crimes like rape, organised crime, and economic offences. This statutory validation of a practice curtailed by the judiciary is seen as a major regression in the protection of personal liberty and dignity under Article 21 of the Constitution.

Bail and Victim-Centric Provisions

The BNSS also modifies the provisions related to bail, with mixed implications.

- **Dilution of Statutory Bail:** Section 436A of the CrPC was a crucial safeguard for undertrials, mandating their release on a personal bond if they had served half of the maximum imprisonment period for the offence (except for death penalty cases). The corresponding provision in the BNSS, Section 479, introduces significant restrictions. It denies this facility to individuals facing charges for multiple offences or for offences punishable with life imprisonment. Since it is common practice for police to file charge sheets with multiple sections invoked, this change could render a vast majority of undertrials ineligible for this statutory relief, potentially exacerbating the problem of overcrowded prisons. On the positive side, for first-time offenders in less serious cases, the eligibility for release is relaxed to one-third of the sentence served.
- **Strengthening Victim Rights:** In line with its stated objectives, the BNSS codifies and strengthens several victim-centric procedures. The statutory mandate for police to provide regular updates on the investigation to the victim is a significant step towards transparency. Furthermore, in cases where the punishment is seven years or more, the victim must be given an opportunity to be heard before the government can withdraw the case. These provisions

empower the victim and give them a more active role in the criminal process.

The BNSS's dual focus on technological efficiency and expanded state power creates a potential "procedural paradox." The laudable goals of speedy and transparent justice are not self-executing; they are entirely contingent on institutional capacity, including massive investment in digital infrastructure, forensic labs, and nationwide training for police and judicial officers. In the absence of this capacity, the new mandates could backfire. Rigid timelines may pressure police into conducting superficial investigations and courts into holding rushed trials, compromising the quality of justice. The digital divide could create a two-tiered system, disadvantaging accused individuals from rural or marginalized backgrounds. The aspirational, technology-driven system envisioned by the statute risks clashing with a resource-starved reality, and in this gap, the provisions that expand police discretion and coercive powers could become dominant, potentially leading to an erosion of due process under the guise of efficiency.

Section 6: Evidence in the Digital Age: Bharatiya Sakshya Adhiniyam (BSA) vs. Indian Evidence Act (IEA)

The Bharatiya Sakshya Adhiniyam (BSA), 2023, which supplants the 151-year-old Indian Evidence Act (IEA), 1872, is arguably the most focused of the three new laws, with its primary objective being the modernisation of evidentiary rules to align with the realities of the digital age. While it retains the core principles of the IEA concerning relevancy, confessions, and burden of proof, the BSA introduces fundamental changes to the treatment of electronic and digital records, fundamentally altering the landscape of evidence in Indian courts.

The Primacy of Electronic Evidence

The most significant jurisprudential shift in the BSA is the elevation of electronic and digital records from a special category of secondary evidence to a form of primary evidence. The IEA, amended in 2000 to recognise electronic records, treated them as documentary evidence but established a specific, and often cumbersome, procedure under Section 65B for their admissibility as secondary evidence. The BSA overhauls this framework in several ways:

- **Expanded Definitions:** The BSA expands the very definition of "document" in Section 2(d) to explicitly and broadly include electronic and digital records. This covers a wide array of modern data forms, such as emails, server logs, content on laptops and smartphones, websites, locational evidence, and voice mail messages. Similarly, the definition of "evidence" in Section 2(e) now includes statements given electronically as a form of oral evidence and classifies electronic/digital records as documentary evidence.
- **Electronic Records as Primary Evidence:** The BSA moves beyond the IEA's framework by treating many forms of electronic records as primary evidence. Section 57 of the BSA introduces several new explanations that broaden the scope of primary evidence. For instance, it clarifies that when an electronic record is stored simultaneously or sequentially in multiple files, each file is considered primary evidence. Crucially, it also states that an electronic or digital record produced from "proper custody" is primary evidence unless its genuineness is disputed. This includes video recordings stored simultaneously in electronic form and even automated storage in a computer's temporary files. This change acknowledges the nature of digital data, which is often replicated and stored in multiple locations, and seeks to simplify the process of its admission in court.

Admissibility and Certification: The New Regime of Section 63

The BSA replaces the much-litigated Section 65B of the IEA with a new, more detailed provision in Section 63 for the admissibility of electronic records. While primary electronic evidence may be admissible per se, secondary electronic evidence continues to require certification, but under a more stringent and specific regime.

The new Section 63 mandates a two-part certificate to authenticate electronic records, with specific formats provided in a schedule to the Act.

1. **Certificate by the Person in Charge:** The person occupying a responsible position in relation to the operation of the relevant device must provide a certificate detailing the device's specifications.
2. **Certificate by an Expert:** An expert must provide a separate certificate offering

technical authentication of the digital record.

A critical new requirement is the mandatory inclusion of the **hash value** (such as MD5 or SHA256) of the electronic record in the certificate. The hash value acts as a unique digital fingerprint, allowing for the verification of the integrity of the data and ensuring that it has not been tampered with since the hash was generated. This procedural requirement aims to enhance the credibility and reliability of electronic evidence presented in court.

The "Authenticity Gap": A Critical Vulnerability

Despite these modernising steps, the BSA has been criticised for failing to address a fundamental vulnerability flagged by both the Supreme Court and the Parliamentary Standing Committee: the risk of tampering with electronic evidence during the investigation process itself. The BSA provides a procedural framework for admitting evidence but lacks substantive safeguards to ensure the integrity of that evidence from the moment of seizure. This creates what can be termed an "authenticity gap."

The new certification process under Section 63, while appearing robust, may exacerbate this issue. In most criminal investigations, electronic devices are seized by and remain in the custody of the police. Consequently, the "person in charge" providing the certificate will often be a police officer, and the "expert" will likely be from a state-run forensic science laboratory. This creates a problematic scenario where the state, as the prosecuting agency, is effectively certifying the authenticity of its own evidence. For an accused person, particularly one lacking financial resources or technical expertise, challenging the integrity of a state-certified electronic record presents a formidable, if not insurmountable, obstacle. Proving that a video file was manipulated, metadata was altered, or a log file was edited after seizure requires a level of forensic capability that is often beyond the reach of the average defendant. The BSA's framework, therefore, while technologically progressive on the surface, creates a significant imbalance of power in practice. It implicitly shifts the burden onto the accused to disprove the integrity of digital evidence presented by the state. Without robust, mandatory, and independent mechanisms for the verification of digital

evidence from the point of seizure, the "authenticity gap" could become a major source of procedural unfairness and wrongful convictions in the digital age.

Other Notable Changes

Beyond electronic evidence, the BSA introduces other significant modifications. It formally allows for **oral evidence to be given electronically** (e.g., via video conferencing), a practice that became widespread during the COVID-19 pandemic but now receives statutory backing, offering greater flexibility and efficiency in trial proceedings. Additionally, the BSA expands its **applicability to courts-martial**, creating a uniform system of evidence for both civilian and military justice systems, a departure from the IEA which excluded most military courts. However, critics have noted that the BSA fails to incorporate several key recommendations from past Law Commission reports, such as creating a presumption that a police officer is responsible for any injuries sustained by an accused while in police custody. This omission is seen as a missed opportunity to introduce greater police accountability into the law of evidence.

Part III: Implementation, Impact, and Critical Evaluation

Section 7: Successes and Failures in Practice: A Multi-Perspective Assessment

The transition from a legal framework over 160 years old to a completely new regime is a monumental undertaking, and its success cannot be judged merely by the text of the new statutes. Since their implementation on July 1, 2024, the BNS, BNSS, and BSA have begun to shape the on-ground realities of India's criminal justice system. A multi-perspective assessment, drawing from government pronouncements, media reports, and critiques from civil society and legal practitioners, reveals a complex and evolving picture of both claimed successes and significant practical failures and challenges.

Claimed Successes and Potential Benefits

Proponents of the new laws, including the government, highlight several areas

where the reforms are expected to yield transformative benefits, aligning with the stated goals of creating a more just, efficient, and modern system.

- **Enhanced Victim Empowerment:** The new laws are widely seen as taking a significant step towards a more victim-centric justice system. The statutory codification of the Zero FIR allows victims, especially of heinous crimes, to register a complaint at any police station, facilitating immediate action and evidence preservation without being turned away due to jurisdictional issues. The BNSS mandates that victims be kept informed about the progress of their case within 90 days, a provision aimed at increasing transparency and victim confidence. Furthermore, the requirement for statements of rape victims to be recorded by female officers and the mandatory provision of free first-aid to victims of crimes against women and children are seen as crucial steps towards a more sensitive and supportive process.
- **Potential for Increased Efficiency and Transparency:** The emphasis on technology and strict timelines is projected to be a major success in tackling the endemic problem of judicial delays. The ability to file FIRs online, conduct hearings via video conferencing, and serve notices electronically is expected to streamline procedures and reduce bureaucratic hurdles. Mandatory timelines for filing charge sheets, framing charges, and delivering judgments are designed to inject a sense of urgency and accountability into the system, theoretically leading to faster justice delivery.
- **Modernisation of Substantive Law:** The BNS is credited with addressing contemporary social realities by defining new offences like mob lynching, organised crime, and snatching, which were inadequately covered by the IPC. The introduction of community service as a punishment for petty offences is viewed as a progressive, reformatory step away from purely punitive measures. These changes are seen as making the law more relevant to the challenges of 21st-century India.

Identified Failures and Implementation Challenges

Despite these potential benefits, the implementation of the new laws has been fraught with challenges, and critics point to several areas where the reforms are either failing

or risk causing more harm than good.

- **Infrastructural and Technological Deficit:** The most significant and widely cited failure is the massive gap between the laws' technological ambitions and the on-ground reality of the country's legal infrastructure. The mandates for mandatory video recording of searches, forensic investigation for a wide range of crimes, and digital court proceedings presuppose a level of technological penetration, funding, and digital literacy that is severely lacking, especially in rural and semi-urban areas. Without adequate digital infrastructure, high-speed internet connectivity, and secure data storage facilities in every police station and court, these provisions risk becoming either unimplemented or a source of new procedural bottlenecks and legal challenges.
- **Lack of Training and Capacity Building:** The transition to a new legal regime requires a colossal effort in retraining millions of stakeholders, including police personnel, prosecutors, judicial officers, and defence lawyers. While the Bureau of Police Research & Development (BPR&D) and various judicial academies have initiated training programs, the scale of the task is immense. There are widespread concerns that personnel at the grassroots level are not adequately prepared to understand and apply the nuances of the new laws, leading to confusion, procedural errors, and potential miscarriages of justice. The lack of public awareness about the changes further compounds this problem.
- **Potential for Increased Judicial Backlog and Confusion:** Far from streamlining the system, the transition phase is feared to be exacerbating the judicial backlog. The coexistence of two parallel legal systems—with cases registered before July 1, 2024, proceeding under the old laws and new cases under the Sanhitas—has created significant procedural confusion. Courts are being flooded with litigation on transitional issues, such as which procedural code applies to bail applications or appeals in old cases. This legal uncertainty consumes valuable judicial time and resources, detracting from the core goal of speedy case disposal.

The practical implementation of the new criminal laws appears to be creating a "dual-track" criminal justice system. The first track is the aspirational, technologically

advanced, and efficient system envisioned by the statutes, which may be partially realised in well-resourced metropolitan centers. The second, more prevalent track is the on-the-ground reality, constrained by decades of systemic deficiencies in infrastructure, funding, and training. The vast gap between these two tracks is where the true "success" or "failure" of the reforms will be determined. The outcome is unlikely to be a uniform national transformation but rather a patchwork of uneven progress, where the benefits of the new laws are accessible to some while the procedural burdens and risks of injustice fall disproportionately on those in under-resourced regions and from marginalized communities. This unevenness threatens to deepen, rather than alleviate, existing inequalities in access to justice across the country.

Section 8: The New Laws and the Constitution: An Analysis of Civil Liberties

A central and recurring critique of the new criminal laws is that, contrary to the narrative of creating a citizen-centric system, they contain provisions that significantly enhance state power and pose a direct threat to the fundamental rights guaranteed by the Constitution of India. This section undertakes a rigorous constitutional analysis of the most contentious provisions, assessing their compatibility with the principles of liberty, free expression, and due process that form the core of India's constitutional democracy.

Freedom of Speech and Expression (Article 19)

The new laws introduce several vaguely worded offences that are seen as posing a direct threat to the freedom of speech and expression.

- **Section 152 BNS (Acts Endangering Sovereignty):** As discussed previously, this provision replaces the colonial sedition law. Its broad and undefined terms like "subversive activities" and "encouraging feelings of separatist activities" create a potent tool for the state to criminalise dissent and critical speech. Unlike Section 124A IPC, which the Supreme Court had read down to apply only to speech that incites violence, Section 152 is a new statute. This lack of judicial precedent means its wide language could be interpreted by law enforcement to

target journalists, activists, and academics who are critical of government policies, leading to a profound chilling effect on public discourse.

- **Section 197(1)(d) BNS (False and Misleading Information):** This new offence criminalises the act of making or publishing "false and misleading information jeopardising the sovereignty, unity and integrity or security of India". The phrases "false and misleading" and "jeopardising" are not defined, creating ambiguity about what constitutes a punishable act. This provision could be used to prosecute individuals for sharing information that the government deems inconvenient or incorrect, even if there is no intent to cause public disorder or violence. It creates a significant risk of selective and arbitrary enforcement, undermining the free exchange of information and ideas that is vital for a functioning democracy.

Right to Life and Personal Liberty (Article 21)

Several provisions in the BNSS have been identified as potentially violating the right to life and personal liberty, which the Supreme Court has interpreted to include the right to dignity, fair procedure, and a speedy trial.

- **Expansion of Police Custody:** The alteration of the police custody regime in Section 187 BNSS, allowing for intermittent remand up to 40 or 60 days post-arrest, is a major concern. This prolonged exposure to police custody, a period when an accused is most vulnerable, is seen as increasing the risk of custodial torture, coercion, and the fabrication of evidence, thereby vitiating the principles of a fair trial. It fundamentally alters the balance between the investigative needs of the state and the liberty of the individual, tilting it heavily in favour of the former.
- **Statutory Sanction for Handcuffing:** The introduction of a statutory provision (Section 43(3) BNSS) permitting the use of handcuffs directly contradicts a long line of Supreme Court judgments that have held the practice to be prima facie unconstitutional, degrading, and a violation of human dignity under Article 21. By giving statutory backing to this practice for a wide range of offences, the BNSS appears to legislatively overrule judicial precedent that has protected personal liberty, raising serious constitutional questions.
- **Trial in Absentia:** The BNSS introduces provisions for conducting a trial and

pronouncing judgment in the absence of a proclaimed offender. While aimed at preventing fugitives from evading justice, this raises concerns about the fundamental right to a fair trial, which includes the right of the accused to be present, to confront witnesses, and to present a defence. Safeguards to ensure that this provision is used only in the most exceptional circumstances are critical to prevent it from violating due process.

Conversely, the BNSS also contains provisions that aim to uphold the speedy trial component of Article 21. The mandatory timelines for investigation and trial are a direct legislative response to judicial directives aimed at reducing delays in the justice system. The success of these provisions in practice will determine whether the BNSS, on balance, strengthens or weakens the procedural fairness guaranteed by Article 21.

Rights of the Arrested (Article 22) and Presumption of Innocence

The new laws also impact the specific safeguards provided to arrested persons and the foundational principle of the presumption of innocence.

- **Preventive Detention:** Section 172 of the BNSS, which allows police to "detain" or "remove" a person for failing to comply with directions to prevent a cognizable offence, creates a form of preventive detention that bypasses the judicial scrutiny mandated for arrests under Article 22. Since this is not classified as an "arrest," it is unclear if constitutional safeguards, such as the right to be produced before a magistrate within 24 hours, would apply. This ambiguity could lead to its misuse for arbitrary, short-term detention without accountability.
- **Erosion of Presumption of Innocence:** The principle that an accused is innocent until proven guilty is a cornerstone of criminal jurisprudence. Provisions like Section 10 of the BNS, which allows for a conviction even when the court is uncertain about which specific offence has been committed, directly undermine this principle by accepting doubt as a basis for punishment. Similarly, the BNSS provision mandating the prominent digital display of the names and addresses of arrested persons (Section 37) is seen as a violation of this presumption, as it effectively brands individuals as criminals in the public eye before a trial has even begun, infringing on their right to privacy and a fair trial.

The new laws appear to engineer a subtle but significant shift in the constitutional balance between the security of the state and the liberty of the individual. For decades, the application of the colonial-era codes was progressively tempered by post-independence constitutional jurisprudence from the Supreme Court, which read expansive protections for individual liberties into the statutory text. The new laws, by replacing the old statutes entirely, effectively "reset" this jurisprudence. The protective gloss of decades of case law—which narrowed the scope of sedition, restricted the use of handcuffs, and placed limits on police powers—has been wiped away. This forces a re-litigation of fundamental rights in a new, and in many respects more state-centric, statutory context. It creates a period of legal uncertainty where the executive and police may feel empowered by the new, explicit text of the law, while the judicial checks developed over 70 years have been rendered partially obsolete, compelling civil liberties to be defended from a new and potentially weaker starting position.

Section 9: The Judiciary Responds: Emerging Jurisprudence and Transitional Challenges

The implementation of the new criminal laws has immediately cast the judiciary into a critical and complex role: that of an interpreter, a troubleshooter, and a manager of a nationwide legal transition. Since July 1, 2024, High Courts across the country and the Supreme Court have been inundated with petitions grappling with the myriad procedural and substantive questions arising from the shift. The initial judicial response reveals a system actively working to prevent legal chaos, establish guiding principles for the transition, and begin the long process of testing the new provisions against constitutional benchmarks.

Navigating the Transitional Maze

The most immediate challenge for the judiciary has been to address the legal vacuum and confusion surrounding cases that straddle the implementation date. The statutes themselves did not provide a clear and comprehensive roadmap for this transition, leading to conflicting interpretations and a flurry of litigation.

High Courts have had to issue guidelines on fundamental questions. For instance, several courts have grappled with which procedural code—the old CrPC or

the new BNSS—applies to investigations, bail applications, and appeals related to FIRs registered before July 1, 2024. The emerging consensus, as seen in rulings from the Bombay, Kerala, and Gauhati High Courts, is that for FIRs registered prior to the cut-off date, the investigation and subsequent proceedings will continue to be governed by the CrPC. However, any new applications, such as for bail, filed on or after July 1, 2024, must be filed under the provisions of the new BNSS, even if the underlying case is under the old laws. This hybrid approach, while pragmatic, highlights the complexity of running two parallel procedural systems. The sheer volume of such early litigation indicates that the legislature left a significant "implementation gap," forcing the courts to engage in case-by-case interpretation to ensure procedural consistency and prevent systemic collapse.

Early Jurisprudence on Substantive Provisions

Beyond transitional issues, courts have begun to interpret and apply the new substantive provisions, offering the first glimpses of the emerging jurisprudence.

- **Retrospective Application of Beneficial Provisions:** A key issue that reached the Supreme Court is whether beneficial provisions of the new laws can be applied retrospectively. In a significant development, the Supreme Court held that Section 479 of the BNSS, which allows for the release of first-time undertrial prisoners after they have served one-third of their potential sentence, should have retrospective application. The Court directed jail authorities across the country to process the applications of eligible undertrials, including those in cases registered before July 1st, under this new, more lenient provision. This ruling underscores a judicial inclination to extend the reformatory aspects of the new laws to as wide a population as possible, prioritizing personal liberty.
- **Interpretation of New Definitions and Powers:** High Courts have started to interpret the scope of new provisions. The Kerala High Court, for example, interpreted the term 'intellectual disability' under Section 368 of the BNSS to include conditions like Alzheimer's Dementia, thereby extending procedural protections to a wider range of vulnerable individuals. In another case concerning the expanded police custody powers under Section 187 of the BNSS, the Karnataka High Court ruled on its application, a judgment which the Supreme

Court later declined to interfere with, signaling an early, albeit cautious, judicial examination of the law's most controversial aspects.

The judiciary is not just passively interpreting the new laws; it is actively co-managing their implementation. By issuing guidelines on transitional procedures and ruling on the retrospective application of key sections, the courts are filling a vacuum of clear legislative and executive direction. This role is crucial for maintaining stability and fairness during a period of immense legal churn. However, it also places an enormous burden on an already overstretched judicial system. The early rulings suggest a judiciary committed to upholding core principles of liberty and fairness, but the true test will come as more substantive challenges to the constitutional validity of provisions concerning state security, police powers, and free speech make their way through the appellate system.

Judicial Training and Adaptation

Recognizing the monumental challenge of this legal shift, judicial institutions have also been proactive in capacity building. The National Judicial Academy (NJA) and various State Judicial Academies have been organizing extensive training programs and workshops for judicial officers across the country. The NJA is actively coordinating with police training academies to facilitate training for all stakeholders, and has been tasked with providing training materials and resource persons. These programs are designed to familiarise judges with the key changes, the mapping of old sections to new ones, and the potential interpretative challenges they will face. This concerted effort in judicial education is vital for ensuring a smooth and consistent application of the new legal regime and for mitigating the confusion and procedural errors that could otherwise arise.

Part IV: Consolidated Analysis and Recommendations

Section 10: Comparative Ledger: Pros and Cons of the New Criminal Laws

This section synthesizes the detailed analysis from the preceding parts into a structured, comparative format, as requested. The following tables provide an at-a-glance summary of the key advantages (Pros) and disadvantages (Cons) of each new

law when compared to its colonial-era predecessor.

Table 1: Comparative Analysis of Merits and Demerits of BNS vs. IPC

Pros of BNS (Relative to IPC)	Cons of BNS (Relative to IPC)
Modernisation of Offences: Codifies contemporary crimes such as Organised Crime (Sec 111), Terrorism (Sec 113), Mob Lynching (Sec 103), and Snatching (Sec 309), making the penal code more relevant to 21st-century challenges.	Vague Offences Against the State: Introduces broadly defined offences like "acts endangering sovereignty" (Sec 152) and "subversive activities," which replace sedition with a more potent and ambiguous tool for potentially suppressing dissent and free speech.
Repeal of Archaic Provisions: Formally repeals outdated and judicially invalidated colonial-era provisions, including Section 124A (Sedition), Section 377 (as it applied to consensual acts), and Section 497 (Adultery), aligning the statute with modern constitutional jurisprudence.	Failure to Enact Progressive Reforms: Fails to address critical issues despite widespread calls for reform. Most notably, it retains the marital rape exception and does not make the offence of rape gender-neutral, thus failing to protect male and transgender victims of sexual assault.
Introduction of Reformatory Punishment: Introduces "community service" as a form of punishment for several petty offences, signaling a philosophical shift towards restorative and rehabilitative justice over purely punitive measures.	Implementation Gaps: Lacks a clear definition or implementation framework for new concepts like "community service," creating ambiguity and rendering the provision potentially ineffective in practice.
Focus on Crimes Against Women & Children: Consolidates offences against women and children into a dedicated chapter and introduces new offences like sexual intercourse by deceitful means (Sec 69), demonstrating a heightened legislative focus on protecting vulnerable groups.	Legal Vacuum Creation: The complete repeal of Section 377 (Unnatural Offences) has created a legal void for prosecuting non-consensual penile non-vaginal sexual assaults (sodomy) against men, women, and transgender individuals.
Structural Streamlining: Simplifies the penal code by reducing the total number of	Increased Punitive Measures: Enhances punishments for numerous offences and

Pros of BNS (Relative to IPC)	Cons of BNS (Relative to IPC)
sections from 511 to 358 and consolidating all definitions into a single section, enhancing clarity and accessibility.	adds more provisions for capital punishment, running counter to global trends and recommendations from the Law Commission of India to abolish the death penalty.
Partial Gender Neutrality: Moves towards gender neutrality in some offences, such as voyeurism and assault with intent to disrobe, by replacing "any man" with "whoever" as the perpetrator.	Duplication and Overlap with Special Laws: The inclusion of "terrorist act" (Sec 113) in the general penal code creates an overlap with the UAPA, granting police discretion to bypass procedural safeguards present in the special law.

Table 2: Evaluation of Procedural Gains and Losses / Risks under BNSS vs. CrPC

Pros of BNSS (Procedural Gains)	Cons of BNSS (Procedural Losses/Risks)
Mandatory Timelines for Speedy Justice: Introduces strict, enforceable timelines for investigation, filing of charge sheets, framing of charges, and pronouncement of judgments to combat systemic delays.	Expansion of Police Custody Powers: Drastically alters the 15-day police custody rule, allowing it to be sought intermittently within the first 40/60 days of detention. This significantly increases the risk of custodial coercion and undermines the right to liberty.
Integration of Technology: Provides statutory backing for the use of technology at all stages, including e-FIRs, video conferencing for trials and witness examination, and electronic service of summons, promoting efficiency and transparency.	Statutory Sanction for Handcuffing: Explicitly permits the use of handcuffs for a range of offences, directly contradicting and legislatively overruling decades of Supreme Court jurisprudence that deemed the practice inhumane and unconstitutional.
Codification of Victim-Centric Provisions: Gives statutory force to progressive practices like Zero FIR and mandates that victims be kept informed of investigation progress, empowering them	Dilution of Undertrial Bail Provisions: Restricts the applicability of statutory bail (release after serving a portion of the potential sentence) by excluding individuals facing multiple charges, a

Pros of BNSS (Procedural Gains)	Cons of BNSS (Procedural Losses/Risks)
within the criminal justice process.	change that could affect a majority of undertrials and worsen prison overcrowding.
Mandatory Forensic Investigation: For offences punishable with 7 years or more, forensic investigation is now mandatory, including video recording of the evidence collection process. This aims to improve the quality and scientific basis of investigations.	Risk of Procedural Injustice: The heavy reliance on technology and forensics without commensurate investment in infrastructure, training, and resources, especially in rural areas, risks creating a two-tiered justice system and procedural unfairness.
Streamlined Procedures: Makes summary trials mandatory for petty offences to ensure expeditious disposal and introduces provisions for trial in absentia to prevent proclaimed offenders from stalling the justice process.	Increased Police Discretion without Accountability: Grants wider discretionary powers to the police (e.g., in deciding between UAPA and BNS for terrorism) without introducing corresponding mechanisms for accountability or oversight to prevent misuse.

Table 3: Assessing the Modernization of Evidentiary Framework BSA vs. IEA

Pros of BSA (Modernisation Gains)	Cons of BSA (Risks and Ambiguities)
Primacy of Electronic Evidence: Elevates electronic and digital records to the status of primary evidence, a fundamental shift that aligns the law of evidence with the realities of the digital age.	Lack of Safeguards Against Tampering: Fails to introduce sufficient safeguards to prevent the tampering or contamination of electronic evidence during the investigation process, a key concern raised by the Supreme Court and the Parliamentary Standing Committee.
Clearer Certification Process: Replaces Section 65B of the IEA with a more detailed certification process under Section 63, mandating a two-part certificate (from the person in charge and an expert) and the	The "Authenticity Gap": Creates a situation where the state, as the prosecuting agency, is often responsible for certifying the authenticity of its own electronic evidence, placing an extremely

Pros of BSA (Modernisation Gains)	Cons of BSA (Risks and Ambiguities)
use of hash values to ensure data integrity.	high burden on the accused to challenge its integrity.
Flexibility in Testimony: Explicitly allows for oral evidence to be given electronically (e.g., via video conferencing), providing greater flexibility for witnesses and potentially expediting trial proceedings.	Potential for Contradiction: Creates a potential ambiguity by classifying electronic records as primary evidence in some contexts while simultaneously requiring a stringent certification process (akin to secondary evidence) for their admissibility in others.
Uniform Applicability: Extends the applicability of the evidence law to courts-martial, thereby creating a uniform and consistent evidentiary standard across both civilian and military justice systems.	Omission of Key Recommendations: Fails to incorporate important reformatory recommendations from past Law Commission reports, such as creating a legal presumption against police officers in cases of custodial injury or death.
Expanded Definitions: Broadens the definitions of "document" and "evidence" to comprehensively include a wide range of digital data, from server logs and emails to smartphone content, making the law future-ready.	Increased Burden on the Accused: The technical complexity of challenging certified digital evidence (e.g., proving a deepfake or altered metadata) creates a significant practical and financial burden on the accused, potentially leading to an imbalance of power in the courtroom.

Section 11: Conclusion: The Future of Criminal Justice in India

The enactment of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam is, without question, the most ambitious and comprehensive restructuring of India's criminal justice system since its codification in the 19th century. The legislative overhaul was driven by the compelling and legitimate objectives of decolonising a colonial-era legal framework and modernising it to meet the demands of a 21st-century democracy. The new laws successfully introduce several progressive and long-overdue reforms: they recognise new forms of crime, empower victims, mandate the use of technology, and aim to instill a culture of

efficiency through statutory timelines.

However, this analysis reveals that the new legal regime is a complex and deeply paradoxical project. It is marked by a fundamental tension between its stated, often liberal, objectives and the practical effect of many of its key provisions. While it liberalises certain social offences and introduces restorative concepts, it simultaneously enacts broadly defined state-security laws and expands the coercive powers of the police in ways that directly challenge constitutional safeguards and decades of protective jurisprudence. The promise of a citizen-centric system of *Nyaya* (justice) often stands in stark contrast to provisions that appear to prioritise state control and security over individual liberty. The narrative of decolonisation, while politically potent, has been used to shepherd in a legal framework that, in some respects, is more draconian than the colonial laws it replaces.

The success of the modernising aspects of the Sanhitas—particularly the integration of technology and forensics—is entirely contingent on the state's capacity and willingness to invest massively in infrastructure, technology, and, most importantly, the continuous training of its personnel. Without this, the laws' most ambitious provisions risk becoming either dead letters or, worse, new instruments of procedural injustice. The initial phase of implementation has already exposed significant challenges, from a lack of preparedness at the grassroots to a wave of litigation over transitional ambiguities, placing an immense burden on the judiciary to manage the shift.

Ultimately, the future of criminal justice in India will be shaped not by the text of the Sanhitas alone, but by the manner in which this inherent tension is resolved by the institutions responsible for their enforcement and interpretation. The judiciary, in particular, is now tasked with the monumental responsibility of breathing constitutional life into these new statutes, of reading down provisions that threaten fundamental rights, and of ensuring that the pursuit of efficiency does not come at the cost of fairness and due process. The "jurisprudential reset" effected by this overhaul requires a vigilant and proactive judiciary to rebuild the guardrails that protect citizens from the arbitrary exercise of state power.

Based on this comprehensive analysis, the following forward-looking recommendations are proposed for key stakeholders:

- **For the Legislature:**

1. **Undertake a Review and Amendment Process:** Initiate a post-enactment review to address the ambiguities and overly broad definitions in critical provisions, particularly Section 152 BNS (acts endangering sovereignty), Section 113 BNS (terrorist act), and Section 111 BNS (organised crime), to prevent their misuse and align them with constitutional principles of clarity and proportionality.
2. **Introduce Accountability Mechanisms:** Enact legislation that introduces stronger accountability mechanisms for law enforcement, including amendments to address custodial violence and the wrongful invocation of stringent laws, to counterbalance the expanded police powers under the BNSS.
3. **Codify Implementation Frameworks:** Provide clear statutory guidelines and frameworks for the implementation of new concepts like "community service" to ensure their uniform and effective application.

- **For the Judiciary:**

1. **Develop Protective Jurisprudence:** Proactively engage in the constitutional review of contentious provisions, particularly those related to police custody, use of handcuffs, and offences impacting free speech, to establish clear jurisprudential guardrails that protect fundamental rights.
2. **Issue Uniform Transitional Guidelines:** The Supreme Court should consider issuing comprehensive, nationwide guidelines to address the procedural ambiguities arising from the transition, ensuring consistency across High Courts and lower courts to minimise litigation and confusion.
3. **Oversee Technological Implementation:** Mandate and monitor the creation of robust, transparent, and auditable protocols for the handling of electronic evidence from seizure to trial to safeguard its integrity and prevent tampering.

- **For the Executive:**

1. **Prioritise Infrastructure and Funding:** Allocate substantial and

dedicated funding for the nationwide upgradation of technological infrastructure in police stations, courts, and forensic laboratories to meet the mandates of the new laws.

2. **Institute Comprehensive and Continuous Training:** Move beyond initial orientation to establish a system of continuous and in-depth training for all police, prosecution, and judicial personnel, focusing on both the letter of the new laws and the constitutional spirit in which they must be implemented.
 3. **Ensure Transparency:** Make public all reports and stakeholder consultations that formed the basis of the new laws, including the report of the Committee for Reforms in Criminal Laws, to foster public trust and enable informed academic and public debate.
- **For Civil Society and Legal Academia:**
 1. **Conduct Empirical Monitoring:** Undertake rigorous, data-driven monitoring of the on-ground implementation of the new laws, with a specific focus on their impact on marginalised and vulnerable communities.
 2. **Promote Public Legal Education:** Launch widespread public awareness campaigns to educate citizens about their rights and the procedural changes under the new legal regime.
 3. **Engage in Strategic Litigation and Advocacy:** Continue to challenge provisions that are prima facie unconstitutional and advocate for legislative amendments that strengthen due process, protect civil liberties, and truly align India's criminal justice system with the constitutional promise of justice, liberty, equality, and fraternity.

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