

Decolonisation or Recolonisation? Rethinking the Bharatiya Sanhitas

- Prataya Sarkar¹

Abstract

The recent replacement of the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act with the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA) has been hailed as the long-awaited act of decolonising the criminal justice apparatus of India. In this article, that claim is critically analyzed by situating the Sanhitas within the historical trajectory of colonial codification as also the constitutional evolutions post-independence. It argues that even as the Sanhitas usher in important changes like the formal recognition of community service, digitalisation of procedure, and gender-sensitive reform endeavours their very structure retains the colonial archipelago of domination. Provisions that beef up the authority of the police, keep repressive offenses like sedition (relabeled) active, and accord primacy to the security of the State over the freedom of the person signal the persistence of authoritarianisms, even as they are cloaked in the patina of nationalism.

The analysis is organized into five successive sections: an examination of the colonial system of governance under the law, a critical deconstruction of the BNS and its interconnections with the IPC, an evaluation of procedural reforms launched by the BNSS, a review of evidentiary reforms introduced by the BSA, and an extensive evaluation of the systemic challenges faced during the transformation, including digital marginalization to institutional tension. Observations comparative to other common law jurisdictions other than India point up India's divergence from universal standards for progressive, consultative change.

The article concludes that the Sanhita project represents a paradox: it aims to represent decolonization and modernity while simultaneously jeopardizing the entrenchment of a robust state apparatus equipped with advanced technological surveillance tools. The determination of whether these codes establish a genuinely citizen-focused legal framework or merely refine the colonial heritage of state authority will ultimately be resolved within the context of constitutional adjudication.

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Introduction

In August 2023, the Indian Parliament carried through arguably the most comprehensive legislative overhaul in the Republic's history, upending its long-established criminal justice legislation of the colonial period. Indian Penal Code (IPC) of 1860, Code of Criminal Procedure (CrPC) of 1973, and Indian Evidence Act of 1872 acts, which had controlled aspects of crime, punishment, procedure, and evidence for generations succumbed to three new codes under new names: the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA) Act. It was not merely framed as a technically corrected edition of existing law but was framed as a miniature constitutional moment: a self-professed departure from the "colonial mentality" which, according to the government's own narrative, had long dominated India's judicial system.

The symbolism of the transition was intentional and unmistakable. Familiar titles were replaced by names borrowing from a sanskrit theme, invoking Bharatiyata (Indianness), and the legislative transition itself was framed as a negation of the legacy of colonialism. The government connected this transformation to its broader ideological agenda, summarized in the "Panch Pran" or five vows enshrined on the occasion of the 75th anniversary of Indian independence. Included was the abandonment of the colonial mindset. Through the issuance of the Sanhitas, this was therefore viewed as a milestone towards the restitution of self-rule in the area of criminal law rendering danda (penalty) and imperial domination in nyaya (justice) and an equitably citizen-centered approach.

But, as with most significant initiatives relating to nation-building, the liberating rhetoric hides more than it reveals. Beneath the façade of decolonial representation is a latent and inherent paradox. Sanhitas can be clothed in liberalization and liberating garb, but the second glance betrays an alternate motivation: the surge of state authority. They preach a tech-savvy and efficient citizen-focused administration; however, their terms overwhelmingly swing the balance firmly in the direction of the state, expanding its powers of observation, investing more prosecutorial discretion, and installing stronger control measures. By implication, the reform raises a difficult question have we really nurtured decolonization of criminal jurisprudence, or have we merely exchanged a mechanism of control for a different, only this time under the banner of an efficient centrist authority rather than a colonial overlord?

In order to get a sense of the meaning of this moment, it needs to be situated in a longer time frame. Indian criminal jurisprudence, and its policing and bureaucratic aspects, is a legacy of

pre-Independence rule by the British. Neither the Indian Penal Code of 1860 nor its later supplementary legislations, r.e., the Evidence Act of 1872 and the Criminal Procedure Code of 1898 (later amended in 1973), was constituted as a instrument of restorative justice for a freed population; rather, it offered a systematic form of maintaining order amongst a subjected population. Enacted under the patronage of Lord Macaulay, the IPC was unambiguously reflective of Victorian morality, of the needs of a utilitarian order, and of administrative needs of ruling over a colony. Its ancillary legislations, r.e., the Evidence Act of 1872 and the Criminal Procedure Code of 1898 (later amended in 1973), similarly demonstrated a logic of control and predictability, significant amidst the proper administration of a large and heterogeneous colony.

The persistence of these codes of law in free India, though in forms altered, was more a pragmatic than an ideological decision. They provided a pre-existing structure of governance, and in the fervent enterprises of postcolonial state-formation, there was a tendency toward continuities and not ruptures. These laws framed criminal law and criminal procedure over a few decades, always, however, revised so that these remained relevant and in accordance with the maturing social, political, and constitutional sensibility of India. However, the predominant structural ethos of the codes of law of the colony characterized by incline toward state power, predominance of order over liberties of individuals, and resort to coercion over and above processes of rehabilitation remained fundamentally unchanged.

It is in this perspective that the Sanhita reforms need to be assessed. The statement of the government betrays a shift: from outside-in preoccupation to inside-out, from punitive to restorative, and from colonial compulsion to democratic recovery. However, such assertions demand critical analysis. Finally, what does real decolonisation of legal regimes involve? Does it involve language and representation alone, or does it involve a qualitative shift in values and framework? Does the replacement of a colonial code by one of indigenous appellation involve adequate decolonisation, or does it involve something deeper in the state-citizenry relation? The Sanhitas certainly bring in major revisions. They explicitly bring in offenses like terrorism, organized crime, and sexual offenses, thus recognizing the present-day realities of society. They use technology for evidence gathering, for proceedings at trials, and for forensic practices, ostensibly with the aim of curtailing delay and increasing efficacy. They make efforts at updating antiquated language, and consequent accessibility improves. Such aspects cannot be considered minor, and in a nation wherein backlog and procedural uncertainty stall justice, it may even appear revolutionary. It is equally important, however, to observe what does not change or, rather, what becomes more entrenched. The powers regarding preventive detention have been increased, the limits of police discretion have been elucidated, and many provisions appear to erode the thin balance between liberty and security. The person, instead of remaining the subject of justice, risks falling under a heightened vigilance of the state. And, no less, there could be an argumentation wherein the end result is not decolonization within a fundamentally transformative sphere, but rather a recalibration: a reinterpretation of the logics of colony

within a postcolonial landscape, underpinned by the modalities of a 21st-century surveillant state.

The central theme of this paper falls within the paradox presented by the Sanhita gambit. On the one hand, the reforms here are interpreted as a civilizational act looking to proclaim and retrieve Indian legal sovereignty. By contrast, there is the potential of these reforms reinforcing the very attributes of authoritarian control which had previously been subjected to critique in the colony's criminal law system. That tension, built into the Sanhitas, goes beyond formal theoretical possibility; it possesses significant real-world implications for the everyday lives of justice among Indians at large. Will the Sanhitas open room for the correction of system-level issues of delay, arbitrariness, and lack of transparency? Or will these reforms, in appearing to make more efficient and better culturally consonant the criminal law, serve instead to facilitate the strengthening of a more powerful carceral state one normalized domestically but no less coercive? The ramifications matter. Criminal law is, after all, not merely abstract area of scholarship, but the most concrete location of interaction between the state and citizens, and often this will occur at a time of utmost vulnerability. Accusation, investigation, verdict, or punishment entail facing the state's instruments of coercion in their most concrete form. It is here, then, within the sphere of criminal law, that the natural attributes of the political entity become apparent from first glance: does it have paternalist, autocratic, and centralized tendencies, or does it hold participatory, rights-oriented ideals and democratic principles? By recalculating the bedrock laws of this interaction, the Sanhita reforms constitute a constitutional change within India's criminal jurisprudence. If, though, this change is of a liberating, or of a repression-marked sort, is at this time uncertain, though it cannot be denied in terms of importance. This paper attempts to elucidate this meaning through a detailed analysis of the Indian criminal law of the present time through three dimensions. First, it explores the colonial foundations of India's criminal code, tracing the ways in which the early codes acted as tools of control and not of justice, while examining the reasons for the survival of their structural traces. Next, it assays the Sanhitas' substantive and procedural reforms, and their herein lying promise and danger. Lastly, it discusses the challenges inherent in implementation, and especially those built into India's weakened institutions, and contemplates the larger ramifications of the relationship between citizens and the state. Here, the paper hopes to go beyond the poles of adoration and condemnation, placing the Sanhita reforms in a broader historico-cultural framework of law, authority, and social relationships in India. Whatever these reforms turn out to be, they will have to be measured against the first principles of liberty, dignity, and justice, which a post-imperial democracy cannot do without, if decolonisation is meant to have more than symbolic meaning. The degree up to which Sanhitas meet this criterion or only reproduce technologies of control under new disguise will determine their impact on India's jurisprudential landscape and political parlance for the foreseeable future. It is, then, necessary first, and only then, to learn from history. Only if we understand something of the pre-independence criminal law system the modalities of control, the shape of codification, and the surprising continuities extant at Independence can we judge, accurately, the Sanhita reforms' claims of breaking and of revival.

2. Colonial Legal Framework: Control, Codification, and Continuity

To evaluate the contention that new criminal laws of India signify a process of "decolonisation," it would be necessary to look back at the law it supplants. Its criminal law system was constructed, over 160 years, over three principal elements: the Indian Penal Code of 1860, the Code of Criminal Procedure of 1898 (later amended in 1973), and the Indian Evidence Act of 1872. All of these acts have their genesis in colonial authority, forged in a political context in which the overriding objective was not administration of justice among the colonised nations, but preserving order and proclaiming imperial control over a large and heterogeneous tract of land.

The very genesis of the IPC demonstrates this dynamic. Composed by Thomas Babington Macaulay and his initial Law Commission, the Code was celebrated in Britain as a work of legislative brilliance an endeavor at fashioning a consistent, complete, and codified criminal law system for a colony which had theretofore been regulated under a patchwork of customary, religious, and regional statutes.² But the argument was less emancipatory than administrative. The British desired predictability and efficiency in the administration of criminal justice, both in order to standardize the treatment of their subjects and to shelter the officials of the colony from the perceived arbitrariness of the indigenous orderings.³ As formulated by Macaulay himself, the Code was meant to supply "a body of criminal law, as complete as we can make it, which shall be intelligible to all, and which shall remain unaltered for ages."⁴ Below this utilitarian façade existed a more urgent reality: the IPC was a grammar of control.

The grammar of the IPC worked in two ways. First, through the creation of homogeneous categories of punishment and crime, the IPC allowed the colonial state to control deviance in line with the priorities of empire. Second, through basing its authority on the act of codification and not custom, it overwrote indigenous normative regimes, and so formalised the authority of the colonial state. Such "offence"-categories only mirrored this logic.⁵ Crimes which jeopardised the safety of the colonial administration e.g., rebellion, sedition, and conspiracy were severely punished, while structural violence built into colonial rule, for example, racial discrimination and harsh labour practices, were untouched.

² Anshuman Garg, "Thomas Macaulay, The Indian Penal Code (1837)" in *Cambridge Repository* (2023)

³ The Origins of Due Process in India: The Role of Borrowing in Personal Liberty Jurisprudence," *Berkeley Law* (2003)

⁴ Elizabeth Kolsky, "Codification and the Rule of Colonial Difference: Criminal Law in Colonial India," *Law and History Review* (2005)

⁵ Thomas Babington Macaulay, *A Penal Code Prepared by the Indian Law Commissioners* (London: Pelham Richardson, 1838)

- Codification as a Device of Power

Codification was itself a political act. By reducing law to a written, general code, the British tried to end interpretive pluralism and judicial discretion characteristic of pre-colonial regimes of justice. The IPC was thus not only a code of law, but a technology of governance.⁶ Its abstractness and generality entailed a pretension of neutrality, but in practice, it consolidated the priorities of empire. Criminalising was controlling, and codifying was centralising power.

Underlying the same philosophy was the procedural and evidentiary regimes brought in tandem with the IPC. The Criminal Procedure Code created a rigidly hierarchical structure of policing, prosecuting, and judge and jury, centralizing power in the executive and ensuring trials would be adversarial, not conciliatory.⁷ Sir James Fitzjames Stephen's Indian Evidence Act reinforced this logic further by putting documentary and testimonial forms of evidence center stage, forms of evidence which frequently placed Indian litigants at a disadvantage.⁸ Rules of admissibility and of relevance, touted as universal, were in reality crafted for the purposes of the colonies: reliable evidence was that which was, in the eyes of the colonial court, intelligible, and frequently excluded forms of evidence which were orally transmitted, customary, and communally based forms of proof.⁹

Individually, the three codes failed to provide a system of criminal justice for the people, but instead, created an administrative framework for officials.¹⁰ The codes reduced the idea of law to administrative convenience, thus excluding the restorative and ethical elements of justice inherent in pre-colonial practices.

- The Penalisation of Dissent

The architectural framework of suppression was epitomized in statutes such as Section 124A of the Indian Penal Code addressing sedition. Enacted in 1870, this offense rendered any expression, whether spoken or written, that aimed to engender “hatred or contempt” towards the government or to incite “disaffection” as criminal. Its purpose was not to safeguard India as a nation-state; rather, its aim was to insulate the colonial regime from political opposition. As the nationalist movement intensified, Section 124A emerged as the preferred instrument

⁶ David Skuy, "Macaulay and the Indian Penal Code of 1862: The Myth of the Superiority of the English Legal System," *Modern Asian Studies* (1998)

⁷ Elizabeth Kolsky, "Colonial Law in India and the Victorian Imagination" (Cambridge University Press, 2021)

⁸ James Fitzjames Stephen, *The Indian Evidence Act* (Calcutta: Thacker Spink and Co., 1872)

⁹ Siyuan Chen, "Sir James Fitzjames Stephen's Indian Evidence Act of 1872: On the Verge of Abolition in Singapore?" *Asian Law Institute 11th Conference* (2014)

¹⁰ Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford University Press, 1998)

against those who dissent. Prominent figures such as Bal Gangadhar Tilak, Mahatma Gandhi, Annie Besant, and numerous other freedom advocates faced trials and convictions under its expansive and ambiguous provisions. During his trial in 1922, Gandhi notably proclaimed that “affection cannot be manufactured or regulated by law,” thereby illuminating the provision's oppressive character.

This criminalisation of dissent was no afterthought; it was a product of the *raison d'être* of the colonial codes themselves. Criminalising “disaffection” meant discouraging the prospect of popular sovereignty. Here, then, the IPC was political document as much as it was law, investing in its provisions the colonial state's fears and its modes of control.

- Continuity after Independence

The major paradox in India's postcolonial jurisprudential account is that, after gaining independence in 1947, the pre-existing colonial structure was not abolished. After the promulgation of the Constitution in 1950, the new nation of India announced itself a sovereign democratic republic committed to liberty, equality, and justice. It, however, continued the self-same criminal laws that had been instruments of its own oppression. Motivations behind this were of a pragmatic and political hue. Practically, a rising state could not do without the pre-established framework of governance and risk collapse.¹¹ Politically, these codes, no matter the circumstances of their promulgation, provided an appearance of order and stability at a moment of profound transformation.

As a result, there was an odd coexistence of a democratic constitution alongside colonial criminal law. The tension was patent. Whilst, on the one hand, Article 21 ensured personal liberty, Article 19 enshrined freedom of speech and of assembly, and Article 14 assured equality before law, on the other, the IPC, CrPC, and Evidence Act contained provisions restricting liberty, criminalising dissent, and centralising authority in the executive.¹² Such coexistence generated decades of contestation, wherein the courts frequently acted in a mediatory role.

- Inclusion of Constitutional Moralities by Judges

¹¹ Kartik Kalyan Raman, “Utilitarianism and the Criminal Law in Colonial India: A Study of the Practical Limits of Utilitarian Jurisprudence,” *Modern Asian Studies*, Vol. 28, No. 4 (1994)

¹² A. Ganachari, “Combating Terror of Law in Colonial India: The Law of Sedition and the Nationalist Response” in *Engaging Terror: A Critical and Interdisciplinary Approach* (Boca Raton: Brown Walker Press, 2009)

Throughout its history, the Supreme Court of India has aimed to mitigate the severity of colonial legislation by incorporating principles of constitutional morality. Pivotal rulings have broadened the interpretation of Article 21, evolving it from merely protecting against capricious deprivation of life and liberty into a foundational source of substantive rights. In the case of *Maneka Gandhi v. Union of India* (1978), the Court determined that the "procedure established by law" must be characterized as just, fair, and reasonable, thereby limiting the possibilities for executive arbitrariness as delineated in the Criminal Procedure Code (CrPC).

Likewise, the Court eroded the law of sedition, reading down Section 124A of the Indian Penal Code in *Kedar Nath Singh v. State of Bihar* (1962) so as only to apply to incitement of violence or public unrest. Although the provision stayed on the statute, its sweep was reduced so as to harmonise the law with the constitutional right of free speech.¹³ Even the Evidence Act was interpreted over time so as to bring it in line with due process, so that courts would demand fairness in the admission of confessions and custodial statements.

These judicial intercessions failed to eradicate the colonial sources of the codes of law; but these tempered their most harsh features. Through the use of creative meanings, the courts tried to reconcile a democratic constitution and a colonial code of law, and created a kind of hybrid system, neither purely colonial nor totally decolonised.

- The Logic of Path Dependence

Why did the Republic persist in colonial criminal laws for over seventy years? The answer lies in the principle of path dependence. Institutional arrangements, once established, tend to make their own logic self-perpetuating. Law enforcement, courts, and prosecutors acclimate themselves to the status quo, thus creating vested interests resistant to significant overhauls. Moreover, the exercise of coercive power inherent in the colonial criminal codes was most beneficial for the postcolonial regimes, which grappled with their own problems of dissent, insurgency, and social unrest. Lacking these powers would have translated into a weakening of state power. Accordingly, regimes after regimes retained the colonial framework, even if committed to change.

The survival of sedition through 2023 is remarkable. Despite repeated criticism, it remained in statutes of law, used by governments of all stripes against opposition and targets of hostility. Its persistent survival underscores a larger truth: colonial law remains alive not only through inertia, but because it serves the purposes of those exercising power. Towards the Sanhitas:

¹³ Sedition in India: Origins, Challenges and Reputational Costs," Konrad Adenauer Stiftung Policy Paper (2022)

Rupture or Repet In this background, the Sanhita reforms would have to be measured. They are proclaimed by the government as a revolutionary turn a radical departure from colonial attitudes. But the pertinent question is whether these reforms mark significant decolonization or a repetition of the colonial modalities under a new disguise. Have the laws which once favoured imperial ambitions been modified in favour of democratic ideals? Has the balance between governmental powers and individual liberties been transformed in favour of the citizens? Or do the Sanhitas, like their predecessors, favour order over freedom, efficiency over fairness, and domination over justice? The responses can only be understood through a thorough analysis of the newly established codes. Accordingly, we must now focus on this endeavor, starting with the Bharatiya Nyaya Sanhita (BNS), which is considered to be the presumed successor to Macaulay's Indian Penal Code (IPC). Whereas the IPC served as the framework for colonial governance¹⁴, the BNS demonstrates how the contemporary Indian state aims to reinterpret that framework in the 21st century.

3. A Substantive Overhaul? Deconstructing the Bharatiya Nyaya Sanhita (BNS)

If the Indian Penal Code of 1860 served as the framework for colonial governance, then the Bharatiya Nyaya Sanhita of 2023 represents its contemporary equivalent¹⁵ a document that suggests the possibility of emancipation yet necessitates thorough examination to ascertain if it truly readjusts the dynamics between the state and the individual. On an initial review, the BNS appears to exemplify modernization: the introduction of new offenses, updated language, the integration of technological realities, and progressive sentencing options such as community service. However, when subjected to more rigorous scrutiny, the alleged "substantive overhaul" becomes increasingly ambiguous, and in some aspects, even more concerning than its colonial forerunner. The fundamental contradiction re-emerges: although the colonial term "sedition" has been removed, gender justice has been prominently emphasized, and new punitive measures have been developed, the core principle of state centralization and the expansion of the carceral system persist unaltered.

- Sedition's Spectre: Section 152 and the Semantics of Dissent

One of the most strongly advertised revisions in the BNS was the abrogation of sedition, long symbolizing both colonial domination and later postcolonial misuse. Section 124A of the IPC

¹⁴ N.A. Krashenninnikova, "Indian Penal Code of 1860: The History of Creation and Special Features," *Pravovedenie*, Vol. 61, No. 3 (2017)

¹⁵ Sarkar's Commentary on the Bharatiya Nyaya Sanhita, 2023 (7th Edition, 2025) - Eastern Book Company

had, for years, criminalized acts and speech inciting "disaffection" against the ruling authorities.¹⁶ Although, in the 1962 case of *Kedar Nath Singh v. State of Bihar*¹⁷, the courts limited it to only be used in cases of incitement of violence or public disturbance, the law was nevertheless used and abused against activists, journalists, and political opponents time and again. Its scrapping was thus overwhelmingly seen as a necessary act of decolonization.

However, the euphoria around the celebration may be misplaced. Section 152 of the BNS defines the offence described as "acts endangering sovereignty, unity and integrity of India." On initial reading, this looks more precise and defensible, consonant with Article 19(2) of the Constitution, under which there may be reasonable restriction on free speech in the national interests of sovereignty and integrity. Upon closer analysis, however, we find disturbing vagueness.¹⁸ While the statute criminalises "subversive activities," "whetting up separatist sentiments," and "endangering unity," it does not provide clear definitional limits. Unlike Section 124A of the IPC, which was advantaged by years of judicial interpretation narrowing its compass, Section 152 of the BNS is textually vague.¹⁹ Vagueness inherent in this section widens the discretion given to the state, and there may be a wide interpretation allowing for anything seen by the government as destabilising dissent or protest to come within its sweep.

In a sense, though sedition was not explicitly abolished, it was subjected to a rebranding exercise. The label, tainted by its colonial legacy, is excised; the power behind it, now less rigid and more potent, endures, though. And this shift in nomenclature is problematic precisely because of the lack of the constitutional guarantees which were judicially interpolated around sedition. If the courts do not again step in to restrict its meaning, Section 152 threatens the resurrection of the specter of sedition in a new, ostensibly cleansed, and thus more underhanded form.²⁰ It is here, then, that the decolonial argument most unmistakably fails: law, meant to quell dissent under colonialism, cannot be decolonized if it is simply reconceived in terms of sovereignty instead of loyalty to the Crown.

- Gender Justice: A Progression or a Lateral Movement?

Another aspect under which the BNS has been assessed is the issue of gender justice. The government has framed the newly enacted code as a progressive step in strengthening

¹⁶ Rishika Sahgal, "Decolonizing Criminal Law in India," Pure Research Repository, University of Birmingham (2024)

¹⁷ *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955

¹⁸ Moiz Tundawala, "On India's Postcolonial Engagement with the Rule of Law," *NUJs Law Review* (1991)

¹⁹ A Critical Analysis of Sec-152 BNS, "International Journal of Research and Publications Review, Vol. 6, Issue 5

²⁰ Comparison of Section 152 BNS with Section 124A IPC," Delhi Law Academy (2024)

protections against sexual violence. Some reforms are unquestionably positive: time limits for law enforcement agencies to conclude investigations and produce charge sheets in cases of rape and sexual assault seek to counteract the persistent delay that frustrates justice for survivors. Provisions increasing penalties for offenses against women, and formalizing new grades of offenses, reflect an awareness of the persistent incidence of violence based on gender in India today.

But these reforms are marred by major omissions. Foremost among these is the express continuation of the exception of marital rape. Section 63 of the BNS, just like its counterpart in the IPC, lays down that sexual intercourse by a man with his wife, if she is over 18 years of age, does not constitute rape. All these years, this exception has been the object of sustained criticism by feminist scholars, activists, and several Law Commissions, since it enshrines the male chauvinist belief that marriage constitutes irrevocable consent to sexual intercourse.²¹ In a nation where the Constitution guarantees equality before law and dignity of the person, the continuation of the exception of criminalizing rape within marriage constitutes not only legislative stagnation but a deliberate failure to eradicate deeply ingrained male chauvinist paradigms. The implication of this elision is compounded considering the government's narrative of decolonisation. Laws enacted under the colonies often manifested Victorian morality and patriarchal authority; and so, the persistence of the marital rape exception betrays consensus with the very colonial logic decolonisation would ostensibly reject. Should decolonisation of law involve reassessments of law frameworks in consonance with constitutional precepts and prevailing social situations, the BNS falls sorely short of this aim.²² It maintains state authority in the face of resistance while fails to safeguard a woman's bodily self-determination in her most intimate relationship telling asymmetry in the priorities of the reform.

In addition, though the BNS applies offenses of organised crime to women, it does so reactively, not transformedly. It addresses the symptom of gender violence, not its structurally entrenched basis. The underlying feminist critique law must confront the patriarchal order inherent in society and the state remains unaddressed.²³ Gender justice under the BNS thus appears less a step in the right direction than a step off course, symbolically progressive and conservatively so at heart.

- The new punitive approach: from community service to organised crime

²¹ Discarding the Marital Rape Exemption: From Fundamental Rights to Vulnerability Theory," Oxford Human Rights Hub (2025)

²² Marital Rape and Indian Jurisprudence," International Journal of Research and Publications Review, Vol. 5, Issue 11

²³ Shivika Uma, "Why the Bharatiya Nyay Sanhita is a missed opportunity for gender justice," Jindal Global Law Review (2024)

A third area of noteworthy amendment in the BNS lies in its penal structure. At the one end, the inclusion of community service sentences for petty offenses would appear to mark a positive step. Such a shift would mark a movement toward restorative principles of justice, centered on rehabilitation and reincorporation rather than detention.²⁴ In light of the overcrowding so pervasive in Indian prisons and the detrimental ramifications entailed in short spells of imprisonment, this change may bring major gains if carried out with accuracy and fairness.

In contrast, the BNS incorporates important punitive provisions into the general penal code. For instance, Section 113 sets forth a comprehensive definition of the term "terrorist act" so similar to the one under the Unlawful Activities (Prevention) Act (UAPA). By harmonizing counter-terrorism provisions into the general penal code, the BNS effaces the distinction between typical criminal law and exceptional security laws. It produces two major outcomes: first, it makes exceptional powers the norm under ordinary criminal law, and, second, it lowers the threshold for their exercise.

This step has important consequences. The IPC was traditionally a code of general application, preoccupied with crimes against social order murder, theft, assault, fraud. Terrorism and organised crime were addressed through special legislations, explained as exceptional measures against exceptional threats.²⁵ By taking up such offenses for inclusion in the BNS, the distinction between ordinary law and law of emergencies fades into nothingness. The state gains the power of treating regular criminal procedures as instruments of extraordinary coercion.

The dangers of this phenomenon become evident through India's experiences of anti-terrorism bills. Laws like TADA and POTA were notorious for misuse, unevenly targeting marginalized groups and political dissenters.²⁶ While the UAPA is law, it has been severely criticized owing to its ambiguous definitions and harsh conditions of grant of bail. By including these qualities in the BNS, the state endangers the normalization of the exceptional, thus transforming the penal code into a tool of both regular criminal processes and of securitization. Therefore, the citizen is no longer only subjected to criminal law but might also become a suspect of a perpetual state of emergency.²⁷

²⁴ Alternative Sentencing in India: The Legal Dimensions of Community Service under BNS 2023," *International Journal of Criminal, Common and Statutory Law*, Vol. 5, Issue

²⁵ Community Service as a Punishment Under BNS," *International Journal of Legal Research*, Vol. 5, Issue 7

²⁶ Manisha Sethi, "Tenuous Legality: Tensions Within Anti-Terrorism Law in India," *Socio-Legal Review*, Vol. 13, Issue 2 (2022)

²⁷ C.R. Kumar, "Human Rights Implications of National Security Laws in India," *Denver Journal of International Law and Policy* (2005)

- Continuities in the Name of Change

Seen holistically, the BNS presents a disturbing picture. Cosmetic changes removal of colonial language, addition of new offenses of a modern kind, gesture towards community service are accompanied by structural similarities: nebulous speech offenses, patriarchal exceptions, and criminalisation through securitisation.²⁸ Decolonisation rhetoric thus covers up a deeper reality of centralisation. Far from undoing the logic of the colonial IPC, the BNS expands it into new arenas, enabling the state with augmented flexibility and coercive capacity and leaving lingering hopes of rights-based reform unrealised.

It is tempting to describe the BNS as progress merely because it replaces a 160-year-old law. Age does not, though, make something valid. Validity is proved by whether the new code enshrines constitutional values of liberty, equality, and dignity.²⁹ By this criterion, the BNS appears less a qualitative change than a rebooted status quo of dissent in place of sovereignty, of autonomy in place of patriarchy, and of liberty in place of security.

From Substantive Law to Procedure and Evidence The implication of this recalibration cannot be holistically understood without a broad analysis of its evidentiary and procedural counterparts. Even the most nuanced substantive provisions remain mediated by investigative, trial, and evidence procedures.³⁰ If, in the biting phrase of the jurist Henry Maine, procedure is the handmaid of justice, then in the Indian context, it has acted historically as the handmaid of power dictating the form in which citizens engage the state at points of weakness. And so, the recently adopted Bharatiya Nagarik Suraksha Sanhita (BNSS) and the Bharatiya Sakshya Adhiniyam (BSA) must be analyzed in tandem with the BNS, not as value-neutrality components but integral components of the new carceral landscape.³¹ It is to these questions of procedure and evidence the processes of citizen-state interaction that we turn next.

5. The Tremors of Transition: Implementation, Access to Justice, and Comparative Lessons

²⁸ Bharatiya Nyaya Sanhita: Decolonising or Reinforcing Colonial Ideas?," National Law School Blog (2024)

²⁹ K.D. Gaur, Textbook on The Bharatiya Nyaya Sanhita, 2023 (9th Edition) - LexisNexis

³⁰ N.V. Paranjape, The Bharatiya Nagarik Suraksha Sanhita, 2023 (9th Edition) - Eastern Book Company

³¹ Anil Dawra and Kanu Priya, Textbook on Bharatiya Nagarik Suraksha Sanhita, 2023 (1st Edition) - Eastern Book Company

While substantive criminal law determines what is criminal, it is the rule of procedure which dictates the manner in which the state exercise its powers of coercion.³² Procedure is the invisible structure of authority: it determines arrest, investigation, evidence, and trial, and so impacts the everyday interfacing of the state and its citizens. Here, the BNSS and the BSA cannot be seen simply as technical manuals; rather, they become instruments which rebalance the equation of power within the Indian republic.³³ Their value resides not in expansive proclamations, but in microregulatory prescriptions determining deprivation of liberty, fabrication of truth, and limits of state authority.

- The Digital Dragnet: Technology, Surveillance, and Evidence

Most evident is the formal inclusion of technology in criminal procedures at law. BNSS stipulates audio-visual recording of searches and seizures, and the BSA widens the basis for electronic and digital evidence admissibility. Initially, these reforms evoke a shift toward enhanced openness and upgradation. They do so, though, at the same time as they expose citizens to a new world of surveillance. Oral testimony cannot be manipulated or falsified so easily as digital files, and the BSA does not provide sufficient safeguards against falsification of same.³⁴

Furthermore, the BNSS grants officials the authority of collecting cyber specimens, including speech samples, fingerprints, and iris scanning, without sufficient judicial control. At a time when information and power become synonymous, laws of this sort risk transforming each citizen into a potential data item available for governmental analysis.³⁵ Privacy granted under the constitution and categorically reaffirmed in *K.S. Puttaswamy v. Union of India* (2017)³⁶ would thus be jeopardised if laws of procedure entrench investigative convenience over informational autarky. By extension, then, technological exuberance over these amendments might conceal a further violation of civil liberties.

- Reevaluating Law Enforcement Authority: Detention, Restraints, and Accountability

The BNSS adds a subtle but important twist to the law of custody regulation. While the custodial time limit cap (90 days in the case of serious offenses) is retained, the most important

³² Ratanlal & Dhirajlal's *The Bharatiya Nyaya Sanhita* 2023 (36th Edition) - LexisNexis

³³ M.A. Malik, "Changing Dimensions of Federalism in India," Indian Law Institute

³⁴ A Review of Criminal Law Reforms in India: Shaping the Future of Criminal Law in India," SSRN Electronic Journal, December 31, 2024

³⁵ Bureau of Police Research & Development, "Ready Reckoner Highlighting the Use of Technology in New Criminal Act," 2024

³⁶ Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors., (2017)

development is permission for staggered custody 15 days at most, divided over the investigation period. Such flexibility greatly enhances law enforcement's ability to carry on prolonged interrogations, stoking fears of custodial torture and coercion.³⁷ Protection against arbitrary detention is offered by Article 22 of the Constitution; however, staggered custody compromises the underlying principle of this protection by extending the state's control over the suspect longer than heretofore suffered.

Standardisation of handcuff procedures remains hotly contested nevertheless. Conventionally, the Supreme Court itself has decried habitual handcuffing as inhumane and a violation of personal dignity, most particularly in the classic case of *Prem Shankar Shukla v. Delhi Administration* (1980)³⁸. BNSS, in permitting handcuffing under specified situations, flies in the face of this ruling and approves of a practice which law principles had attempted to eradicate. Such a back-pedaling bespeaks a lamentable retreat from a dignity-based approach to jurisprudence.³⁹

- The Federal Question: Centralisation by Stealth

The criminal procedure had traditionally offered a supple tool, affording States the liberty of adapting procedural law to their respective socio-political situations. Conversely, the BNSS attempts to enshrine an exhaustive and harmonious procedural code. Although uniformity may enhance coherence, it poses the danger of restraining the legislative autonomy of States and centralising control over a subject constitutionally delegated to the State List. Such a transformation of structure stealthily but substantially compromises India's federal balance⁴⁰, transforming criminal law from a community responsibility into an area of control under central authority.

The BNSS and BSA thus do not only "modernise" practice; they reorder the underlying relationship between citizen and state. By interweaving surveillance technologies, extending police powers, and reshaping federal dynamics, these codes reveal the possibility of practice being so formidable a locus of power as substantive law.⁴¹ In this regard, it is important to critically examine the larger question of transition. How will the procedural reforms work in practice? Would it enhance accessibility of justice or widen existing inequities? Moreover, what can be learned from the comparative Perspectives of other postcolonial democracies'

³⁷ Overview of Major Reforms in All Criminal Laws," Bureau of Police Research & Development, June 2024

³⁸ *Prem Shankar Shukla vs Delhi Administration*, AIR 1980 SC 1535, Supreme Court of India

³⁹ Overview of Major Reforms in All Criminal Laws," Bureau of Police Research & Development, June 2024

⁴⁰ Concurrent Power of Legislation under List III of the Indian Constitution," Ministry of Law & Justice

⁴¹ Supreme Court Review 2024: Balancing the interests of states in a federal structure," Supreme Court Observer, December 26, 2024

experiences of reforming laws? These questions pave the way for the discussion in the following pages.

Reform of law does not frequently entail textual revisions. Success of law hinges upon its evolution from paper law to execution, from forms to court experience, and from ideals of legislatures to lived experience. Enactment of the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhinyam (BSA) constitutes a constitutional change in criminal jurisprudence of India; challenge of implementation, nevertheless, continues to be a daunting one. Accelerated reform through the so-called "big bang" concept of 2023 replacement of laws of centuries through a sole statute bears risks that overwhelm abstract arguments against centralization or expansion of procedures⁴². Implications of this shift shall meaningfully impact accessibility of justice, administrative capability of institutions, and, ultimately, population's confidence in the criminal jurisprudence establishment.

- An Overburdened System: Expenses Related to Training, Infrastructure, and Financial Resources

Logistically, the implementation of Sanhitas is a complex matter. Criminal jurisprudence in India is sprawling, with over two million policemen, some thirty thousand judges of different ranks, and hundreds of thousands of registered advocates-at-law. It is important that all parties receive training not only on new provisions of law but, more importantly, on grasping principles, nuances, and interlinkages underlying the same. BNSS, for instance, delineates staggered provisions of custody, guidelines on cyber evidence, and new investigation procedures. Otherwise, there is a huge likelihood of these advances being inappropriately used, interpreted, or simply overlooked.

The judicial system today is beset by major problems. Judges, who for decades relied on the tested precedents of the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Evidence Act, now have to harmonize these with recently legislated provisions, frequently without appropriate interpretative guidance⁴³. Against the backdrop of more than 50 million active cases pending before Indian courts, even slight misinterpretation or delay resulting from new codes will increase existing pre-procedural obstacles. Such a scenario is not hypothetical; instances of slow reforms, e.g., amendments of the CrPC or the Sexual Harassment of Women

⁴² Imparting Training of Stakeholders for Implementation," Press Information Bureau, July 23, 2024

⁴³ National Initiative to Reduce Pendency and Delay in Judicial System," Bureau of Police Research & Development, March 2023

at Workplace (Prevention, Prohibition and Redressal) Act, indicate a tendency of transition lacunas to breed uneven practices and judicial indecision.⁴⁴

The infrastructure challenge involved is of similar scale. Sanhitas' integration of technology, through audio-visual recording, electronic record-keeping, and electronic submission of evidence, will require a major upgrade of forensic labs, districts courts, and police stations. In over seven hundred districts, this will entail purchase of new equipment, creation of secure networks, and maintaining complex digital infrastructure. Financial consequences will be seismic and potentially divert scarce resources from other critical components of the criminal justice system, victim services, witness protection, and rehabilitation programs. Altogether, the transformation entitles not only legislative change, but total overhauling of the entire system a task of monumental scale whose enormity merits recognition.

Instituting computer processes by Sanhitas poses another important issue: equity. Access disparity and computer literacy levels figure most strongly in India, especially across rural contexts and vulnerable groups. Such use of electronic mechanism for filing FIRs, submission of evidence online, and computer tracking of cases creates a possibility of creating a new level of inequity based on access to justice.⁴⁵ People who lack smartphones, do not have steady internet connections, or lack familiarity with the tools of technology may be effectively denied participation in procedural activities and so violate the basic tenet of accessibility of the processes of the justice system across socio-economic levels.

Furthermore, this tech-focused approach aligns with the ideals of procedural literacy. While technology exists, the ability to navigate complex electronic platforms depends on educational materials, assistance, and direction resources frequently not available in smaller towns and rural locales. Without these, underprivileged groups might be subjected to procedural unfairness, delay, or harm. As a result, there is a possibility that the Sanhitas' sense of efficiency and improvement might, ironically, worsen pre-existing inequality in the Indian criminal court system.

- The Comparative Study: Global Views of Criminal Law Reforms

India's approach to criminal law reform differs substantially from that used by common law countries that have undertaken analogous reforms. In countries like the United Kingdom, Canada, and Australia, criminal code revisions tend to involve a slow, consultative, and

⁴⁴ One Year of New Criminal Laws which Came into Force on 1st July 2024," Vision IAS, July 1, 2025

⁴⁵ Programme Report for the judges in-charge of judicial education & directors," National Judicial Academy, 2024

iterative approach. By way of example, the United Kingdom carried through its criminal law reform over a number of decades, and this was assisted by the use of comprehensive consultation between members of the legal profession, scholars, representatives of civil society, and affected groups. Correspondingly, the Canadian approach to codification was based on incremental change, enabling courts and law enforcement agencies to mature independently while releasing space for empirical assessments of outcomes at intermediate points within the evolution of the Code of Canada. By contrast, India's approach to fundamentally overhauling its criminal jurisprudence through a unitary statute represents a significant departure from tried and tested best practice. Such acceleration of reform frustrates systematic review, experimentation, and opportunity for correction. It allows minimal room for the use of feedback mechanisms, and this may result in the embedding of error in procedures or in the content of the resulting perdurable jurisprudence.⁴⁶ Moreover, the failure to introduce phased implementation increases the likelihood of interpret differences, differential use, and law suits founded upon uncertainty within transitional provisions. Further insights come from other postcolonial jurisprudential frameworks. In Kenya, a 2010 amendment of the penal code and criminal procedure was carried through over several years, buttressed by large-scale training programs of law enforcement officials, members of the judiciary, and lawyering professions, alongside education of the general population. After 1994, South Africa went through gradual reforms which harmonised its criminal law with constitutional values of equality and human rights, taking extreme care in considering regional institution-building ability.⁴⁷ These examples suggest transformative successful change in the law is most likely when gradual, consultative, and accompanied by investments in human and institution-building capacity factors which, in their "big bang" form, are not met here by the Sanhita reforms.

- Implementation, Litigation, and Transitional Uncertainty

Even under the most favorable conditions, the new criminal law transition ushers in a time of ambiguity. Judges may interpret the extent of new offenses differently, law enforcement officials may exceed their powers through new powers granted, and members of the Bar may confront formidable educational challenges. Such a level of ambiguity creates a fertile soil for litigation. In the initial years, it is highly likely courts will be deluged by challenges on not only the content of the Sanhitas but also differences in procedures, standards of proof, and issues of retroactivity. Such challenges have a potential of exacerbating pre-existing judicial delays, of further delaying delivery of justice to the victim, and of jeopardizing the uniformity of principles of law.

⁴⁶ The Comparative Method and Law Reform," SSRN, November 3, 2012

⁴⁷ C.M. Fombad, "Comparative Research in Contemporary African Legal Studies," Journal of Legal Education, 2018,

Transitional provisions, which aim at carrying forward old cases, will naturally be general. When a case is transitioned from having been started under the IPC, CrPC, or Evidence Act to needing to be continued under the Sanhitas, there will be questions of which of the procedural rule applies, what rights and protections carry over, and at what level of sentence alteration there needs adjustment. There is no express direction, risk of inconsistency of application of these provisions both by litigants and courts, and risk of defeating the entire exercise of reform.

- Towards a Fair Assessment

The aftershocks of change thus ripple through several domains. These include institutional dimensions, affecting law enforcement authorities, judicial practices, and administrative abilities; structural components, requiring technological developments and enhancements of forensic practices; social elements, posing the risk of widening inequities of accessibility; and procedural levels, generating ambiguity and questions of law. Whilst the Sanhitas hold promise of securing a more unifying and up-to-date criminal jurisprudence, the realistic challenges attendant upon putting them into practice are huge and may overwhelm advantages, at least in the near term.

The global examples offered here highlight the merits of slow and deliberate change. Such large-scale and fast-scale overhauls of criminal law in India form a large experiment perhaps engendering a system of active citizen participation or, alternatively, entrenching inefficiency, inequality, and centralized authority. Its general success will, in turn, rely not only on the provisions of the statute itself but also on the distribution of resources, quality of training offered, level of oversight, and vigor of enforcer institutions.⁴⁸ Evolution of the Citizen-State Model At its heart, these questions raise a broader one: how do the Sanhitas change the relationship of citizens and the state in practice? Reforms of major significance have the potential not only to redefine crime definitions, but improvements in procedures may affect investigative and powers of evidence; nevertheless, only through their application will the confines of freedom, accountability, and justice become apparent. Therefore, the consequences of this transition transcend simple logistical issues they have democratic consequences. They determine whether India's criminal jurisprudence can fulfill constitutional responsibilities in a fair, transparent, and inclusive manner⁴⁹. As the nation proceeds through this transition period, understanding gleaned through national practices and comparative constitutional law entreats

⁴⁸ Ministry of Law & Justice, "Training of Judicial Officers on New Criminal Laws," Parliamentary Response, October 2024,

⁴⁹ Hans-Heinrich Jescheck, "The Significance of Comparative Law for Criminal Law Reform," Hastings International and Comparative Law Review, 1981

caution, holistic consultative processes, and vigilant oversight. Its prospective success, though ambitious, of the Sanhitas holds both promise of benefits and inherent risks. Its success will be measured in the end not only by aspirations of legislation but through their capacity for delivering justice, by securing rights, and maintaining the delicate harmony between authority of the state and freedom of the person. The discussion needs now to turn toward an underlying analysis of the consequence of the reform's impact on liberty, on justice, and on democracy. Broadly, the Sanhitas' dedication toward decolonizing and updating law needs rigorous analysis given and within the framework of extant conditions of centralism, of procedures, and of the perennial challenges toward achieving accessibility of laws and administration of justice.

6. Conclusion & Suggestions

The enactments of the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam in 2023 form one of the largest overhauls of India's criminal jurisprudence since independence was gained by the nation. Framed as a decolonisation programme, it seeks to turn the jurisprudential paradigm from the colonial mode of administration towards a citizencentred model of justice built on the basis of cultural truth and constitutional morality. The Sanhita project, in its discursive exercise, identifies itself with a broader ideological mission of eradicating the "colonial mentality" enshrined in jurisprudential practices and founding a peculiarly Indian jurisprudence an aspiration that is laudable and symbolically important.⁵⁰

However, the decolonization narrative is complex, marked by contestation, and fundamentally contradictory. In the substantive, procedural, and evidence domains, the Sanhitas reveal a divided course: on one hand, there is compliance with and assimilation of technological integration; on the other hand, there remains, and in some ways, an escalation of colonial models of state power, control, and discretion.⁵¹ In other words, the project is at the same time revolutionary and conservative, progressive and centralizing, outward looking and inward focused on the citizens and the state an inconsistency which embodies the very essence of recent reform in Indian criminal law.⁵²

- Modernisation et la promesse de progrès

⁵⁰ Rishika Sahgal, "Decolonizing Criminal Law in India" in *The Routledge International Handbook on Decolonizing Justice*, eds. Chris Cunneen et al. (London: Routledge, 2023), 391-401.

⁵¹ Digital Transformation In The Light Of New Criminal Laws," AK Legal, July 26, 2024.

⁵² S.M.A. Ali, "Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities?" *International Annals of Criminology* 62, no. 2 (2024): 406-425.

In substantive terms, the Sanhitas contain a range of reforms showcasing an awareness of challenges facing criminal justice in the 21st century. Application of technological tools like audio-visual recording of searches, introduction of electronic evidence protocols, and systematic administration of digital cases signals a commitment to updating procedures through law, enhancing transparency, and strengthening administrative effectiveness. Innovations of the kind of community service⁵³ as an alternate sentences show a response to rehabilitation justice and the need for reducing the congestion in India's over-crowded prison system.

Some of the detailed procedural improvements, including clearer timeframes for investigation and prosecution, evince a will to promote law enforcement accountability. Efficient operation of the digitisation of criminal procedure itself promises reduced delays, enhanced evidence integrity, and a more efficient judicial system.⁵⁴ Towards this end, Sanhitas seamlessly articulate a will towards a legal system attuned to contemporary technological, social, and administrative realities.

- The Limits of Decolonization

In spite of these developments, the claim of decolonisation of the project is substantially weakened. The evolution of sedition into Section 152 of the BNS illustrates the ways in which prevailing structures of state power get reshaped instead of uprooted. Such a semantic shift, from "sedition" to vaguely defined threats of sovereignty and unity, arguably expands state discretion while not sufficiently dealing with constitutional safeguards. Correspondingly, the survival of patriarchal aspects, especially the retention of the exception of marital rape⁵⁵, highlights the selective nature of reform: while Sanhitas challenge colonial law in language, they fail to confront the entrenched social rank-orders and inequalities inescapably inherent in substantive principles of law.

Procedurally, the BNSS and BSA provide mechanisms for state power that, while technologically sophisticated, risk encroaching on citizens' rights. Expanded custody powers, the codification of handcuffing, and permissive rules for the collection of digital data collectively shift the citizen-state balance toward the latter. The centralisation of procedural norms threatens federal flexibility, undermining the capacity of states to adapt criminal justice mechanisms to local conditions. These dimensions reveal that the Sanhitas, rather than entirely

⁵³ Udit Raj Sharma and Nidhi, "'Community Service Sentence' as an Alternative Mode of Punishment in India," *UPES Law Journal* (2024): 408-413.

⁵⁴ SC to examine validity of BNS 'sedition' provision," *Times of India*, August 8, 2025

⁵⁵ "Challenges to the Marital Rape Exception," *SC Observer*, October 16, 2024.

dismantling the colonial apparatus, repurpose it for a modern state equipped with unprecedented surveillance and prosecutorial powers.

- Implementation Difficulties and Access to Justice

The transformation towards an entirely overhauled criminal justice system presents significant challenges to its implementation. Its retraining of law enforcement officials, judges, and prosecutors, alongside enhanced technological and forensic capacity, will demand significant resources and efficient institutional cooperation. Moreover, such intense reliance on technological methods will risk alienating the underprivileged groups of society deprived of proper information technology infrastructure, potentially creating a new level of disparity in terms of accessibility of justice.⁵⁶

One can learn from the comparative experience of postcolonial jurisdictions like South Africa and Kenya the merits of gradual, consultative reform. Incremental adaptation of the law enables courts, law enforcement, and the citizenry to conform naturally, giving time to recognize, rectify, and hone gaps in implementation. By contrast, India's "big bang" method will expose the system to possibilities of procedural confusion, interpretative vagueness, and litigation liable to erode the Sanhitas' legitimacy in their formative years.⁵⁷ Accordingly, even though the Sanhitas may hold the promise of greater efficiency, they risk overloading institutions overburdened for decades under judicial backlog.

Judicial Review and the Constitutional System In the backdrop of these tensions, the Supreme Court, and the larger judiciary, become final arbiters of the Sanhitas' legitimacy. Constitutional challenges are on the cards, especially pertaining to freedoms of speech, rights of privacy, procedural guarantees, and female equality. Some of the landmark judicial verdicts, including *K.S. Puttaswamy v. Union of India*⁵⁸ and *Kedar Nath Singh v. State of Bihar*⁵⁹, reflect the ability of the judiciary to check state power through judicial interpretation. In the years to come, courts will determine whether textual reforms of the Sanhitas lead to substantive protection of constitutional rights or whether these end up further embedding a comprehensive, discretionary, and security-focused state apparatus.

⁵⁶ "Investigation and trial: Analyzing procedural challenges in Indian criminal justice system," *Criminal Law Journal* 4, no. 2 (2025): 150-165

⁵⁷ Sandra F. Joireman, "The Evolution of the Common Law: Legal Development in Kenya and India," *University of Richmond Law Review* (2006): 64-89

⁵⁸ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1. [-44]

⁵⁹ Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

Judicial oversight will be instrumental in clearing confusion over staggered custodial arrangements, collecting electronic evidence, and increasing investigative powers. Pragmatic consequences of the Sanhitas will fundamentally rely on courts' inclination and capability of controlling executive excesses, ensuring due process, and upholding the constitutional balance between governmental authority and personal freedoms.⁶⁰ Correspondingly, the success of the reform is a testament of institutional vigor alongside legislator foresight.

- Sanhita Paradox and the Future of Criminal Justice.

Overall, then, the Sanhita project enacts a story of conflicting modernities. It attempts to forge a legally valid identity at once culturally authentic ("Bharatiya") and technically advanced. Through its hopes of technological advance and structural efficiency, it achieves a kind of modernity. But in its claims toward decolonisation and civic empowerment, it is deeply ambivalent. Neither the colonial logic of control hierarchy, discretion, and security has been abandoned; rather, it has been updated and incorporated into a system ostensibly committed to end-terms of present-day relevance and civic participation.

This paradox holds important implications for the democratic system of India. The Sanhitas give the state instruments that, though historically destined for the ends of imperialism, are modern in composition, blending old repressive authority and new digital technologies of surveillance. The liberal face of law featuring the citizen, visible in provisions of community service and specified time limits for investigation, co-exists with instruments increasing discretionary authority, centralising authority, and validating extraordinary powers. It may thus end up viewing the Sanhitas not so much as decolonisation instruments, but as a law structure dedicated to the purposes of state power consolidation in the twenty-first century.

However, this conclusion cannot be treated as a final one. Future years will determine whether Sanhitas become an instrument of citizen-oriented justice or a strengthened instrument of governmental control. Judicial intervention, active participation from the civil society, and rigorous execution will be critical in determining this course. It will become the responsibility of constitutional courts, experts in law, and human rights advocates to actively interpret, question, and enrich the law, ensuring that developments in technology do not overwhelm the basic ideals of freedom, equality, and dignity.

A New Legal Order or a Reinforced Status Quo? In short, the Sanhitas form a very ambitious attempt at recovering India's criminal jurisprudence. They form a palimpsest of law: beneath

⁶⁰ Anushka Pandey, "Bharatiya Nyaya Sanhita: Decolonising or Reinforcing Colonial Ideas?" *National Law School Blog*, January 24, 2024.

the discursive idiom of decolonisation, there is an infrastructure which sustains, and adds to, the coercive capacity of the state. They are technically forward-looking, detail-conscious at the level of procedure, and institutionally centralising. It is an open question whether this is a new order of law, or a secured status quo, depending on the interrelationship of law, institutions, and society in the years ahead.⁶¹ The Sanhitas offer a unique opportunity a chance to reconcile India's colonial legal legacy with the constitutional vision of a citizen-centred democracy. Realising this potential, however, will require more than statutory change; it demands judicial vigilance, institutional reform, and public engagement.⁶² Absent these, the Sanhitas risk being remembered not as a moment of liberation, but as the moment India perfected a legal architecture that combines the disciplinary logic of its colonial past with the surveillance capabilities of the digital age. The ultimate measure of success, therefore, will be whether the law serves the citizen or merely strengthens the state a question that will define the future of criminal justice in India.

⁶¹ Ali, "Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities?"

⁶² Sahgal, "Decolonizing Criminal Law in India," 391-401

Bibliography:

1. **A. Ganachari**, “Combating Terror of Law in Colonial India: The Law of Sedition and the Nationalist Response,” in *Engaging Terror: A Critical and Interdisciplinary Approach* (Boca Raton: Brown Walker Press, 2009).
2. **A Critical Analysis of Sec-152 BNS**, *Int’l J. of Rsch. & Pub. Rev.*, Vol. 6, Issue 5.
3. **AK Legal**, “Digital Transformation In The Light Of New Criminal Laws,” July 26, 2024.
4. **Ali**, “Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities?” *Int’l Annals of Criminology* 62, no. 2 (2024): 406–425.
5. **Anil Dawra & Kanu Priya**, *Textbook on Bharatiya Nagarik Suraksha Sanhita* (Eastern Book Co. 2023).
6. **Anushka Pandey**, “Bharatiya Nyaya Sanhita: Decolonising or Reinforcing Colonial Ideas?” *National Law School Blog* (Jan. 24, 2024).
7. **Bureau of Police Research & Development**, *Overview of Major Reforms in All Criminal Laws* (June 2024).
8. **Bureau of Police Research & Development**, *Ready Reckoner Highlighting the Use of Technology in New Criminal Act* (2024).
9. **Bureau of Police Research & Development**, *National Initiative to Reduce Pendency and Delay in Judicial System* (Mar. 2023).
10. **C.M. Fombad**, “Comparative Research in Contemporary African Legal Studies,” *J. Legal Educ.* (2018).
11. **Concurrent Power of Legislation under List III of the Indian Constitution**, Ministry of Law & Justice.
12. **Criminal Law Journal**, “Investigation and Trial: Analyzing Procedural Challenges in Indian Criminal Justice System,” 4:2 (2025): 150–165.
13. **David Skuy**, “Macaulay and the Indian Penal Code of 1862: The Myth of the Superiority of the English Legal System,” *Mod. Asian Stud.* (1998).
14. **Digital Transformation In The Light Of New Criminal Laws**, AK Legal (July 26, 2024).
15. **Elizabeth Kolsky**, “Codification and the Rule of Colonial Difference: Criminal Law in Colonial India,” *Law & Hist. Rev.* (2005).
16. **Elizabeth Kolsky**, *Colonial Law in India and the Victorian Imagination* (Cambridge Univ. Press 2021).
17. **Hans-Heinrich Jescheck**, “The Significance of Comparative Law for Criminal Law Reform,” *Hastings Int’l & Comp. L. Rev.* (1981).
18. **James Fitzjames Stephen**, *The Indian Evidence Act* (Calcutta: Thacker Spink & Co., 1872).
19. **Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.**, (2017) 10 SCC 1.
20. **K.D. Gaur**, *Textbook on The Bharatiya Nyaya Sanhita* (LexisNexis 2023).

21. **Kartik Kalyan Raman**, "Utilitarianism and the Criminal Law in Colonial India: A Study of the Practical Limits of Utilitarian Jurisprudence," *Mod. Asian Stud.* 28:4 (1994).
22. **Kedar Nath Singh v. State of Bihar**, AIR 1962 SC 955.
23. **Konrad Adenauer Stiftung**, "Sedition in India: Origins, Challenges and Reputational Costs," Policy Paper (2022).
24. **M.A. Malik**, "Changing Dimensions of Federalism in India," Indian Law Institute.
25. **Manisha Sethi**, "Tenuous Legality: Tensions Within Anti-Terrorism Law in India," *Socio-Legal Rev.* 13:2 (2022).
26. **Ministry of Law & Justice**, "Training of Judicial Officers on New Criminal Laws," Parliamentary Response (Oct. 2024).
27. **Moiz Tundawala**, "On India's Postcolonial Engagement with the Rule of Law," *NUJS L. Rev.* (1991).
28. **N.A. Krashennikova**, "Indian Penal Code of 1860: The History of Creation and Special Features," *Pravovedenie* 61:3 (2017).
29. **N.V. Paranjape**, *The Bharatiya Nagarik Suraksha Sanhita* (Eastern Book Co. 2023).
30. **National Judicial Academy**, *Programme Report for the Judges in-Charge of Judicial Education & Directors* (2024).
31. **One Year of New Criminal Laws Which Came into Force on 1st July 2024**, Vision IAS (July 1, 2025).
32. **Prem Shankar Shukla v. Delhi Administration**, AIR 1980 SC 1535.
33. **Press Information Bureau**, "Imparting Training of Stakeholders for Implementation," July 23, 2024.
34. **Prataya Sarkar**, Assistant Professor, School of Legal Studies, REVA University, Email: prataya.sarkar@reva.edu.in, Mobile: 9233981551.
35. **Radhika Singha**, *A Despotism of Law: Crime and Justice in Early Colonial India* (Oxford Univ. Press 1998).
36. **Ratanlal & Dhirajlal**, *The Bharatiya Nyaya Sanhita 2023* (LexisNexis 2023).
37. **Rishika Sahgal**, "Decolonizing Criminal Law in India," *Pure Research Repository*, Univ. of Birmingham (2024).
38. **Rishika Sahgal**, "Decolonizing Criminal Law in India," in *The Routledge International Handbook on Decolonizing Justice*, eds. Chris Cunneen et al. (Routledge 2023).
39. **Sandra F. Joireman**, "The Evolution of the Common Law: Legal Development in Kenya and India," *U. Richmond L. Rev.* (2006).
40. **Sarkar's Commentary on the Bharatiya Nyaya Sanhita** (7th ed. Eastern Book Co. 2025).
41. **S.M.A. Ali**, "Bharatiya Nyaya Sanhita: Decolonizing Criminal Law or Colonial Continuities?" *Int'l Annals of Criminology* 62:2 (2024): 406–425.
42. **SC to Examine Validity of BNS 'Sedition' Provision**, *Times of India* (Aug. 8, 2025).
43. **SC Observer**, "Challenges to the Marital Rape Exception," (Oct. 16, 2024).
44. **Sedition in India: Origins, Challenges and Reputational Costs**, Konrad Adenauer Stiftung Policy Paper (2022).

45. **Siyuan Chen**, “Sir James Fitzjames Stephen's Indian Evidence Act of 1872: On the Verge of Abolition in Singapore?” *Asian Law Institute 11th Conference* (2014).
46. **Supreme Court Observer**, “Supreme Court Review 2024: Balancing the Interests of States in a Federal Structure” (Dec. 26, 2024).
47. **The Comparative Method and Law Reform**, SSRN (Nov. 3, 2012).
48. **Thomas Babington Macaulay**, *A Penal Code Prepared by the Indian Law Commissioners* (London: Pelham Richardson 1838).
49. **Udit Raj Sharma & Nidhi**, “‘Community Service Sentence’ as an Alternative Mode of Punishment in India,” *UPES L. J.* (2024): 408–413.
50. **Vision IAS**, “One Year of New Criminal Laws Which Came into Force on 1st July 2024,” July 1, 2025.
51. “**Alternative Sentencing in India: The Legal Dimensions of Community Service under BNS 2023**,” *Int’l J. Crim., Common & Stat. L.* Vol. 5, Issue 7.
52. “**Comparison of Section 152 BNS with Section 124A IPC**,” Delhi Law Academy (2024).
53. “**Discarding the Marital Rape Exemption: From Fundamental Rights to Vulnerability Theory**,” Oxford Human Rights Hub (2025).
54. “**Marital Rape and Indian Jurisprudence**,” *Int’l J. of Rsch. & Pub. Rev.*, Vol. 5, Issue 11.
55. “**Overview of Major Reforms in All Criminal Laws**,” Bureau of Police Research & Development (June 2024).
56. “**Programme Report for the Judges in-Charge of Judicial Education & Directors**,” National Judicial Academy (2024).