

Human Rights and Criminal Justice Reforms under the New Criminal Laws, 2023

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Abstract:

India's three new criminal laws—the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam—seek to modernise substantive criminal law, procedure and evidence. This article examines these reforms from a human-rights perspective. It analyses electronic reporting, forensic investigation, victim participation, trial timelines, undertrial release, community service and recognition of digital evidence. These measures may improve access, transparency and procedural efficiency. At the same time, provisions concerning extended police-custody flexibility, handcuffing, preliminary inquiries, trials in absentia and broadly framed national-security offences raise concerns regarding liberty, equality, privacy and fair trial. The continuation of the marital rape exception and inadequate recognition of gender-diverse victims also reveal unfinished reforms. The article concludes that the new framework can advance human rights only through strict judicial supervision, effective legal aid, forensic capacity, data protection, police accountability and rights-sensitive implementation.

Keywords: Human rights, criminal justice reform, Bharatiya Nyaya Sanhita, BNSS, Bharatiya Sakshya Adhiniyam, fair trial, victim rights.

1. Introduction

Criminal law represents one of the strongest forms of State power. Through arrest, search, detention, prosecution and punishment, it may lawfully restrict liberty and privacy. For this reason, criminal justice cannot be evaluated only by the number of convictions or the speed of investigation. A legitimate system must protect society while respecting the dignity of accused persons, victims, witnesses, prisoners and other individuals affected by legal proceedings.

The Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and Bharatiya Sakshya Adhiniyam, 2023 (BSA) replaced the Indian Penal Code, Code of Criminal Procedure and Indian Evidence Act respectively. All three came into force on 1 July 2024, subject to the savings and transitional provisions contained in the enactments.

The stated reform direction includes citizen-centric procedure, greater use of technology, forensic investigation, time-bound justice and improved treatment of victims. Several changes are capable of advancing human rights. Electronic reporting can reduce territorial barriers; forensic evidence may reduce dependence on confession-based investigation; and undertrial-release provisions may limit excessive detention.

Nevertheless, procedural efficiency and human rights are not automatically identical. Faster investigation may become unfair investigation if forensic capacity is weak. Digital proceedings may improve access while excluding people without connectivity or technological literacy. Expanded police powers may improve evidence collection but also increase the risk of coercion.

India's prison system makes this inquiry especially important. The official Prison Statistics India report recorded 4,34,302 undertrial prisoners as of 31 December 2022. A 2026 parliamentary question also noted that undertrials continued to constitute more than three-fourths of the prison population. Criminal-law reform must therefore be judged not merely by legislative novelty but by its capacity to reduce unnecessary incarceration and make procedure fair in practice.

2. Objectives of the Study

The study seeks to:

1. examine the principal human-rights reforms introduced by the three criminal laws of 2023;
2. analyse their implications for victims, accused persons, witnesses and prisoners;
3. identify provisions that may create risks to liberty, privacy, equality and fair trial;
4. evaluate the relationship between technological modernisation and procedural justice; and
5. propose measures for rights-based implementation.

3. Research Methodology

The article follows a qualitative, doctrinal and analytical methodology. Primary sources include the Constitution of India, the BNS, BNSS, BSA and relevant Supreme Court judgments. Official information from the Ministry of Home Affairs, India Code and parliamentary responses has also been used.

The provisions have been analysed through the principles of dignity, equality, legality, proportionality, presumption of innocence, access to justice and procedural fairness. No primary survey or empirical field investigation has been undertaken. Statistical information is reproduced only from official government sources.

4. Constitutional Foundation of Human Rights in Criminal Justice

Article 14 of the Constitution protects equality and guards against arbitrary State action. Article 20 provides safeguards relating to retrospective punishment, double jeopardy and self-incrimination. Article 21 protects life and personal liberty, while Article 22 provides specific safeguards concerning arrest and detention. Article 39A directs the State to ensure equal justice and free legal aid.

In *Maneka Gandhi v. Union of India*, the Supreme Court held that a procedure depriving a person of liberty must be fair, just and reasonable rather than merely formally enacted. The constitutional validity and application of the new laws must therefore be tested not only by their wording but also by whether their procedures operate fairly.

In *Hussainara Khatoon*, the Court recognised speedy trial as an essential part of Article 21 and held that free legal services form part of fair procedure. Speed is therefore a human right when it prevents prolonged detention, but speed cannot justify denial of adequate defence or meaningful hearing.

The Supreme Court has also reaffirmed that effective legal aid is a fundamental right beginning at important stages such as remand and bail. Merely appointing an inexperienced or inactive lawyer does not satisfy the constitutional obligation. These constitutional standards remain applicable despite replacement of the earlier criminal codes.

5. Structure and Reform Orientation of the New Laws

The BNS defines offences and punishments. It introduces organised crime, petty organised crime and terrorism into the general penal law, recognises community service as a form of punishment and reformulates several offences previously contained in the Indian Penal Code. Community service may encourage proportionate and non-custodial responses to selected minor offences, although consistent sentencing guidelines are required.

The BNSS regulates reporting, arrest, investigation, bail, trial, appeal and execution of sentences. It gives statutory recognition to electronic communication, audio-video processes and forensic investigation.

The BSA expressly includes electronic and digital records within the concept of documentary evidence. Emails, server logs, smartphone records, messages, websites, location evidence and voicemail may qualify as documents. It also regulates the admissibility and certification of electronic records.

Together, the laws attempt to shift criminal justice towards technology-supported and time-bound administration. Their human-rights value, however, depends on whether the new powers are accompanied by independent oversight and equal access.

6. Reforms Capable of Strengthening Human Rights

6.1 Electronic reporting and removal of territorial barriers

Section 173 of the BNSS permits information concerning a cognisable offence to be given orally or electronically, irrespective of the area in which the offence occurred. An electronically supplied complaint must be signed within three days.

This provision gives statutory support to the principle commonly associated with a Zero FIR. A victim should not be turned away merely because the police station considers that another station has territorial jurisdiction. It can be especially useful in cases of trafficking, cybercrime, sexual violence and offences committed during travel.

Electronic reporting may also assist persons who face mobility, distance or social barriers. Its success requires accessible portals, acknowledgement receipts, local-language interfaces and protection against unauthorised disclosure of sensitive complaints.

6.2 Safeguards relating to arrest

The BNSS retains important protections such as informing the arrested person of the grounds of arrest and, where applicable, the right to bail. It requires designated police officers to maintain arrest information and recognises the arrested person's right to meet an advocate of choice during interrogation, though not necessarily throughout the entire interrogation.

Section 35 continues the requirement that arrest for many offences punishable up to seven years must be justified by specified necessities, such as preventing further offences, ensuring proper investigation, preventing evidence tampering or securing the accused's presence. This reflects the principle that arrest should not be automatic merely because a cognisable offence has been alleged. These safeguards should be implemented together with the Supreme Court's custodial-protection jurisprudence. The Court has repeatedly treated illegal detention, custodial humiliation and physical abuse as violations of personal liberty and dignity.

6.3 Forensic investigation and videography

For offences punishable with imprisonment of seven years or more, section 176 of the BNSS requires a forensic expert to visit the crime scene, collect forensic evidence and arrange videography of the process, subject to implementation arrangements.

Scientific investigation can protect both victims and accused persons. Reliable physical and digital evidence may reduce dependence upon eyewitnesses, forced confessions and subjective police conclusions. Videography can improve the integrity of crime-scene collection and create a record for later scrutiny.

Forensic reform, however, requires laboratories, trained personnel, standard evidence-handling procedures and protection against contamination. An inaccurate or poorly preserved scientific report may acquire an undeserved appearance of certainty and produce serious injustice.

6.4 Victim information and participation

The BNSS directs the police to inform the informant or victim about the progress of an investigation within ninety days, including through electronic communication. This can reduce the uncertainty experienced by victims who otherwise receive little information after filing a complaint.

The law also strengthens participation at later stages. Section 360 prevents a court from allowing withdrawal from prosecution without first giving the victim an opportunity to be heard. The BNSS retains victim-compensation provisions and requires every State Government to prepare and notify a witness-protection scheme.

These measures recognise that victims are not merely sources of evidence for the prosecution. They possess legitimate interests in information, protection, participation and reparation. Nevertheless, an opportunity to be heard should not be confused with control over conviction or punishment; criminal adjudication must remain fair to all parties.

6.5 Time-bound investigation and adjudication

The BNSS introduces timelines at different stages. In a Sessions trial, the charge is to be framed within sixty days from the first hearing on charge. After completion of arguments, judgment should ordinarily be delivered within thirty days and may be extended to forty-five days for recorded reasons.

Such timelines can advance the right to speedy trial. Delayed proceedings harm victims, weaken evidence and impose social and financial costs on accused persons. When an accused remains detained, delay becomes a direct deprivation of liberty.

Timelines should nevertheless remain realistic. Judicial vacancies, repeated adjournments, unavailable witnesses and delayed forensic reports cannot be corrected through statutory numbers alone. Rushed proceedings could reduce cross-examination, defence preparation and the quality of judgments.

6.6 Undertrial detention and bail

Section 479 provides that an eligible undertrial should generally be released on bail after detention extending to one-half of the maximum prescribed imprisonment. A first-time offender may be released on bond after completing one-third of that period. The benefit does not apply in the same manner to offences carrying death or life imprisonment, and multiple pending cases may restrict eligibility.

This reform acknowledges that imprisonment before conviction must not become an indirect sentence. In a special campaign up to 26 November 2024, States and Union Territories identified 951 prisoners under section 479, of whom 334 were granted bail or release by courts. The difference between eligibility and actual release illustrates that legal provisions need prison-level screening, legal aid and timely court applications.

6.7 Digital evidence and electronic proceedings

The BSA gives electronic and digital records formal evidentiary recognition, while section 530 of the BNSS permits trials and proceedings—including summons, warrants, evidence, appeals and other processes—to be conducted electronically.

These changes may reduce delay, travel costs and risks associated with transporting prisoners or vulnerable witnesses. They may also help witnesses who live far from the court.

Digitalisation must nevertheless preserve open justice, confidential lawyer-client communication, accurate identification and the accused's ability to understand and challenge evidence. Electronic convenience cannot replace meaningful participation.

7. Human-Rights Concerns and Unfinished Reforms

7.1 Expanded flexibility in police custody

Under the previous procedural framework, police custody was ordinarily understood as confined to the initial fifteen days after arrest. Section 187 of the BNSS permits the maximum fifteen days of police custody to be authorised in whole or in parts during the initial forty or sixty days of the overall sixty- or ninety-day detention period, depending on the offence.

The total maximum remains fifteen days, but its distribution over a longer period can expose an accused to repeated transfers from judicial to police custody. This may create anxiety, disrupt access to counsel and increase the opportunity for coercive interrogation.

Magistrates should therefore demand specific reasons for every later request, examine previous interrogation records and independently verify allegations of ill-treatment. Production before the court must be substantive judicial supervision rather than a routine administrative formality.

7.2 Statutory permission to use handcuffs

Section 43 allows police to use handcuffs in specified cases, taking account of the nature and gravity of the offence. The listed categories include habitual or repeat offenders, escaped persons and persons accused of offences such as organised crime, terrorism, murder, rape, acid attack, trafficking and offences against the State.

Handcuffing directly affects dignity and the presumption of innocence. The Supreme Court has historically treated routine handcuffing and public humiliation as incompatible with personal liberty unless specific security reasons exist.

The statutory list should not be treated as automatic permission. Police and courts should assess actual escape risk, violent conduct and security requirements in the individual case. Reasons should be recorded, and unnecessary public exposure should be prohibited.

7.3 Preliminary inquiry before registration

Section 173(3) permits a preliminary inquiry, with prior approval of a senior police officer, in certain cognisable offences punishable with imprisonment between three and seven years. The inquiry is intended to determine whether a prima facie case exists and should be completed within the statutory period.

A carefully limited inquiry may prevent obviously false prosecutions. Conversely, it can delay evidence collection or create another opportunity to refuse registration, particularly where the complainant is poor or socially vulnerable. Clear reasons, written records and review mechanisms are therefore necessary.

7.4 Trial in absentia

Section 356 permits inquiry, trial and judgment in the absence of a proclaimed offender after statutory steps have been taken. The provision seeks to prevent an accused from defeating justice by deliberately absconding.

Trial in absentia is nevertheless an exceptional departure from the accused's right to be present, instruct counsel and challenge evidence. Courts should insist upon convincing proof that the accused knowingly avoided proceedings. Effective legal representation and a meaningful opportunity to challenge the judgment upon later appearance are necessary safeguards.

7.5 Broad national-security and organised-crime provisions

The BNS includes organised crime under section 111 and terrorism under section 113. It also criminalises acts endangering India's sovereignty, unity and integrity under section 152, including conduct through electronic communication.

Serious threats to public security require effective laws. Human-rights concerns arise when broadly worded expressions are applied to peaceful dissent, journalism, academic discussion or political criticism. Courts and investigators must distinguish incitement to violence or unlawful secessionist activity from constitutionally protected disagreement.

The coexistence of terrorism provisions in the BNS and special legislation may also produce inconsistent charging and procedural consequences. Written guidelines and independent prosecutorial review are needed to prevent arbitrary selection of the harsher framework.

7.6 Gender justice and bodily autonomy

Although the BNS reorganises sexual offences, its definition of rape continues to contain an exception for sexual acts by a man with his own wife where the wife is not below eighteen years of age.

This exception leaves a significant conflict between marital status and the principles of bodily autonomy, dignity and equal protection. The sexual-offence framework also largely uses gender-specific categories that may not adequately protect male and transgender victims of comparable sexual violence.

A comprehensive reform should focus on absence of consent, exploitative circumstances and the seriousness of the act, while retaining appropriate safeguards against misuse.

7.7 Digital exclusion and privacy

Electronic reporting, video proceedings and digital evidence can improve access, but they also generate risks of surveillance, data leaks and exclusion. Rural residents, prisoners, persons with disabilities and individuals unfamiliar with technology may be unable to use electronic systems effectively.

Crime-scene videos, medical records, witness statements and biometric data require secure storage and limited access. Technology should supplement physical access to police stations and courts rather than become the only available route.

8. Major Findings

The study finds that the new laws contain genuine human-rights reforms. Electronic reporting, forensic investigation, victim updates, witness protection, trial timelines and expanded undertrial-release provisions can improve access and accountability.

At the same time, the legislation increases or reorganises significant State powers. Flexible police custody, statutory handcuffing, preliminary inquiries and trials in absentia require rigorous judicial control.

The reforms remain highly dependent upon institutional capacity. Forensic laboratories, trained judges, competent defence counsel, functioning digital infrastructure and accountable police are as important as the statutory text.

Finally, several substantive equality issues remain unresolved, particularly marital sexual violence, gender-inclusive protection and the relationship between national-security offences and freedom of expression.

9. Recommendations

First, police, prosecutors and magistrates should receive compulsory rights-based training on arrest, remand, handcuffing, electronic evidence and victim communication.

Second, every police-custody application should explain the specific investigative purpose, previous interrogation and reasons why judicial custody is insufficient. Magistrates should record independent findings.

Third, handcuffing should require an individualised risk assessment and written reasons, with prompt judicial review.

Fourth, forensic institutions must be expanded without compromising independence and quality. Evidence-collection protocols, laboratory accreditation and chain-of-custody audits should be standardised nationally.

Fifth, legal aid must be available from the first remand hearing and should continue through bail, trial and appeal. Courts should evaluate the quality, not merely the formal appointment, of legal representation.

Sixth, prisons should regularly identify persons eligible under section 479 and forward their cases to legal-services institutions and courts without waiting for individual applications.

Seventh, digital criminal-justice systems should follow privacy-by-design principles. Sensitive data should be encrypted, access-controlled and retained only for a defined legal purpose.

Eighth, Parliament and judicial institutions should periodically review the operation of trials in absentia, preliminary inquiries, national-security offences and police custody using publicly available, disaggregated data.

Finally, further substantive reform is needed to establish a consent-centred and gender-inclusive law of sexual offences consistent with dignity and equality.

10. Conclusion

The new criminal laws of 2023 constitute the most extensive restructuring of India's general criminal-law framework in decades. They recognise digital communication, modernise evidentiary rules, introduce forensic requirements and provide greater procedural visibility to victims.

Their human-rights significance, however, cannot be determined merely by the number of new provisions. Criminal justice protects rights only when arrest is necessary, custody is supervised, legal aid is effective, evidence is reliable and trials remain both speedy and fair.

The BNSS provides new tools for accessibility and efficiency, but it also creates powers capable of affecting liberty and dignity. The BNS incorporates community service and contemporary forms of crime while retaining provisions that require further constitutional and equality-based scrutiny. The BSA modernises evidence but makes secure and technically competent handling of digital records indispensable.

Ultimately, legislative replacement is only the beginning of criminal justice reform. Its success will depend upon daily decisions made by police officers, forensic experts, prosecutors, legal-aid lawyers, magistrates and judges. Human dignity must remain the organising principle at every stage—from first information and arrest to trial, sentencing and release.

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