



NEW CRIMINAL LAWS - GS II MAINS

Q. India's criminal laws have developed through centuries, shaped by indigenous legal customs, foreign intrusions, and colonial influences. Examine the new criminal laws in this regard and check their pursuit of a just and equitable legal landscape. (15 marks, 250 words)

News: *New criminal laws in force; Cr.PC, IPC applicable only for old cases*

What's in the news?

- Three new criminal laws - Bharatiya Nyay Sanhita (BNS), Bharatiya Nagrik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA) will come into effect in India.

Key takeaways:

- These laws, passed by Parliament in December, aim to update India's criminal justice framework by replacing the Indian Penal Code (IPC) of 1860, the Criminal Procedure Code (CrPC) of 1973, and the Indian Evidence Act of 1872.
- While these changes are seen as necessary updates to colonial-era laws, the process of their formulation and the content of the new laws have raised some concerns.

Need for Criminal Law Reforms in India:

1. Colonial Legacy:

- The previous laws were a legacy of British colonial rule, crafted to uphold their influence over India's legal system.
- Example - Section 124A of the IPC, criminalising sedition, was introduced by the British to suppress dissent against colonial rule. It remains controversial for its potential misuse against activists and journalists.

2. Punishment-Centric Approach:

- The earlier laws prioritised punishment over ensuring justice for citizens.
- Example - The death penalty exists for several offences in the IPC, often drawing debate on its effectiveness as a deterrent and its alignment with evolving societal values.

3. Outdated Framework:

- Enacted in the 19th century, the laws did not align with contemporary societal norms, technological advancements, or the evolving needs of justice.
- In 2018, the Supreme Court struck down adultery as unconstitutional, highlighting the need for laws to adapt to social changes.

4. Low Conviction Rates:

- The antiquated laws contributed to low conviction rates and prolonged legal processes, diminishing public trust in the legal system



- In 2022, India's National Crime Records Bureau reported a conviction rate of just 19.7% for heinous crimes like murder and rape.

5. Gender Insensitivity:

- The previous laws inadequately addressed crimes against women and children, reflecting a lack of sensitivity.
- A 2020 survey by the National Family Health Survey-5 found that one in three women in India have experienced physical or sexual violence, indicating the need for robust legal protections against gender-based crimes.

6. Complex Procedures:

- Complicated procedures and excessive paperwork led to delayed trials and inefficiencies in the criminal justice system.
- A 2023 study by the Centre for Public Interest Litigation found that only 0.1% of witnesses in rape cases receive any form of protection, hindering prosecution efforts.

7. Potential for Misuse:

- Authorities could misuse the laws to target individuals and infringe on civil liberties, such as the misuse of sedition charges.
- Example - The vague definition of "unlawful activities" in anti-terrorism laws has been used to target minority groups and activists, raising concerns about human rights violations.

8. Lack of Victim-Centric Focus:

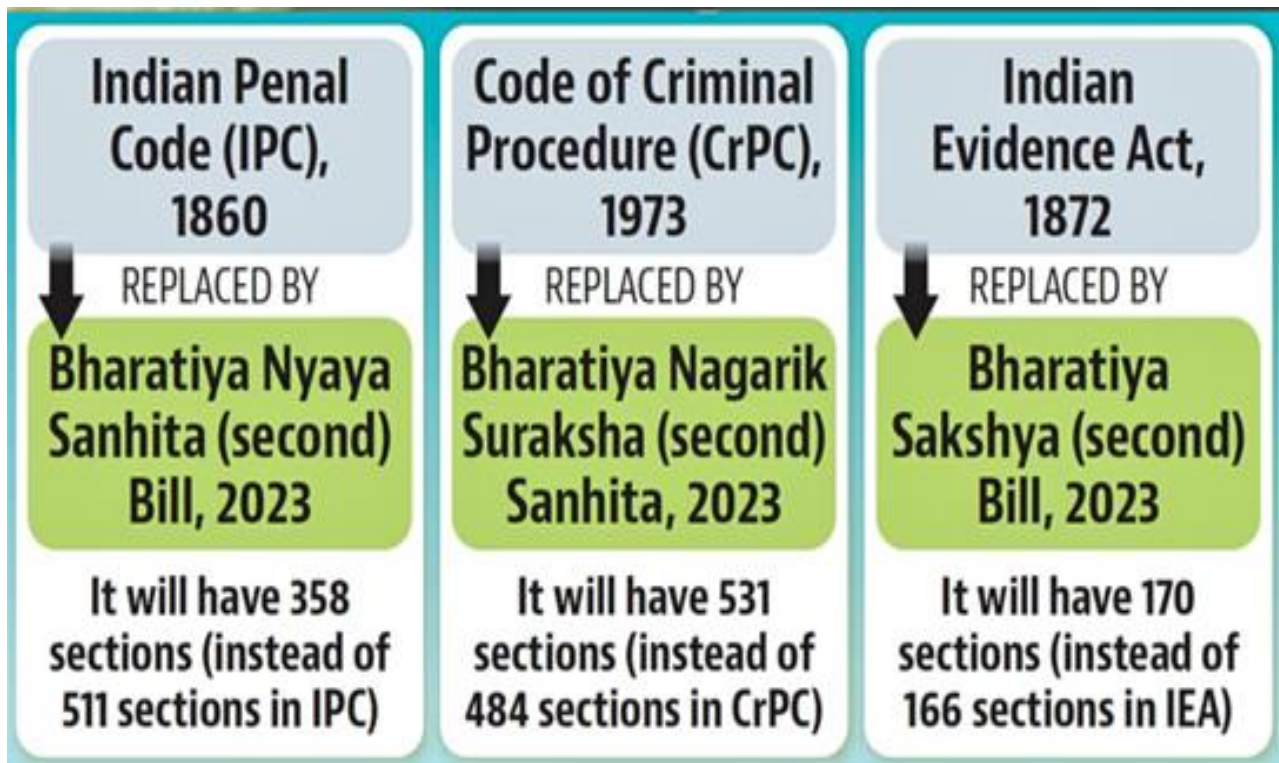
- The focus often centred on legal technicalities rather than providing support and justice for victims.
- A 2022 report by the National Crime Victims Relief Fund found that only 30% of eligible victims receive compensation, highlighting the need for a streamlined and accessible system.

9. Inadequate Technological Integration:

- The older laws lacked provisions for leveraging modern technology, impeding efficient investigation and evidence presentation.
- India witnessed over 2.4 million cybercrime cases in 2022, but the conviction rate stands at a mere 3.4%, showcasing the need for technological advancements and skilled cybercrime investigators.

10. Limited Scope:

- The laws failed to adequately address contemporary issues like cybercrimes, terrorism, and organised crime.
- Emerging crimes like crypto-jacking and drone-based attacks lack specific legal frameworks, leaving authorities unprepared and response mechanisms unclear.



Key Features of the Bharatiya Nyaya Sanhita, 2023:

It replaces the Indian Penal Code, 1860 and, will have 356 sections instead of the earlier 511 sections, 175 sections have been changed, 8 new sections have been added and 22 sections have been repealed.

1. Sedition:

The Act removes this offence. It instead penalises the following:

- exciting or attempting to excite secession, armed rebellion, or subversive activities.
- encouraging feelings of separatist activities.
- endangering sovereignty or unity and integrity of India.

2. Defines Terrorism and Organised Crime:

- The Act defines terrorism as an act that intends to threaten the unity, integrity, and security of the country, to intimidate the general public or disturb public order.
- It also defines organized crime and imposes penalties.

3. Protection to Women:

- The Act allows death penalty for gang rape of women below 18 years of age.
- The Act penalises the act of sexual intercourse with a woman through deceitful means with a simple or rigorous imprisonment up to 10 years, and a fine.



Key Features of the Bharatiya Sakshya Adhiniyam, 2023:

It repeals the Indian Evidence Act, 1872, will now have 170 sections instead of the earlier 167, 23 sections have been changed, 1 new section has been added and 5 have been repealed.

1. Provisions of Evidences:

- The Act provides rules for the admissibility of evidence in legal proceedings. The new Act retains several parts of the Act.
- It removes certain colonial references from the Act, widens the ambit of electronic records admissible as evidence, and removes provisions related to telegraphic messages.

2. Admissibility of Electronic or Digital Records as Evidence:

- The Act provides for two kinds of evidence – documentary and oral evidence.
- The Act provides that electronic or digital records will have the same legal effect as paper records.

3. Expand the Definition of Document:

- The law expands the definition of documents to include electronic or digital records, e-mails, server logs, computers, smart phones, laptops, SMS, websites, locational evidence, mails, messages on devices.

Key Features of the Bhartiya Nagarik Suraksha Sanhita, 2023:

It will replace Criminal Procedure Code, 1898, now has 533 sections, 160 sections of old law have been changed, 9 new sections have been added and 9 sections have been repealed.

1. Trials in Electronic Mode:

- The Act provides that all trials, inquiries, and proceedings may be held in electronic mode.

2. Forensic Investigation:

- The Act mandates forensic investigation for offences punishable with at least seven years of imprisonment.

3. Timelines for Procedures:

- The Act prescribes timelines for various procedures.
- For instance, it requires medical practitioners who examine rape victims to submit their reports to the investigating officer within seven days.
- Other specified timelines include:
 - Giving judgement within 30 days of completion of arguments (extendable up to 60 days).
 - Informing the victim of progress of investigation within 90 days.
 - Framing of charges by a sessions court within 60 days from the first hearing on such charges.



Significance of the New Criminal Laws:

1. Decolonisation of Laws:

- These three outgoing laws were made to strengthen British rule and their purpose was to punish not to give justice and had signs of slavery.
- These new laws have been passed for decolonization of laws and to remove these signs of slavery.

2. Protect Rights of Citizens:

- The soul of the three new laws is to protect all the rights given to Indian citizens by the constitution, and their purpose is to give justice.

3. Transparency and Efficiency:

- The new provision has been made through these laws to enhance transparency and efficiency of the system.
- It is done by digitization of the entire process of the criminal justice system from FIR to case diary, case diary to charge sheet and charge sheet to judgement.

4. Quicker Justice:

- Provision has been made in India's criminal justice system for quicker justice that now anyone will be able to get justice within a maximum of 3 years.
- It will be compulsory for the Police to give the status of the complaint in 90 days and thereafter every 15 days, to the complainant.

Concerns/Issues in the Acts:

1. Opacity in the Crafting of the Act:

- There is issue raised of opacity in crafting of the Acts as the inputs of the stakeholders and the final report of the MHA's Committee For Reforms In Criminal Laws (CRCL) has not been put in the public domain.

2. Issue of Increased Suspicion:

- The framework produced by the Acts views citizens with such increased suspicion and mistrust that the state appears to almost be in opposition to the citizen.

3. Continuation of Colonial Power:

- A notable feature of colonisation is suppression in the pretext of security by giving the executive unchecked police powers.
- The Bharatiya Nagarik Suraksha Sanhita (BNSS) Act expands the police power as it allows police custody for periods longer than is allowed under the current Criminal Procedure Code.
- It also increase in the use of police or police adjacent powers, is a continuation of colonial powers and not a route for undoing them.



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4. Inadequate Police and Prison Reforms:

- Police and Prison has been seen as relics of colonization.
- Yet, the decolonisation that the Acts seek to achieve provides no scope for their reform.

India's criminal laws have developed through centuries, shaped by indigenous legal customs, foreign intrusions, and colonial influences. The legal framework is in a constant state of evolution, adapting to contemporary challenges while safeguarding principles of justice, fairness, and human rights. Reforms are integral to this process, ensuring the legal system remains responsive to the needs of a dynamic society. In this ongoing journey, India strives to reconcile historical influences with a commitment to uphold fundamental values in the pursuit of a just and equitable legal landscape.

