

# India's New Criminal Justice System: Turning A Month Old With Baby Steps

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*In one month, the New Laws have been subject to commendation and scrutiny alike and throw up some interesting developments*

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## Introduction

1. It has been a month since the Government had ushered in the new criminal laws. These include the Bharatiya Nyaya Sanhita, 2023 ("BNS"), Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), and Bharatiya Sakshya Adhinyam, 2023 ("BSA"), collectively the "New Laws". These laws repeal and supersede the Indian Penal Code, 1860 ("IPC"), Code of Criminal Procedure, 1973 ("CrPC"), and the Evidence Act, 1872 ("Evidence Act") respectively. The Delhi High Court proclaimed that the BNSS heralds a "transformative era in criminal justice"[1].

2. The New Criminal Laws are, of course, being applied across India. The Allahabad HC recognized delivery of summons upon a company through its director under the BNSS, something which wasn't expressly mentioned under CrPC and now provides greater clarity [2]. The Delhi HC appreciated the modern methods adopted, e.g.: where BNSS requires audio-visual recording of any search and seizure [3]. The MHA has also published standard operating procedures to guide law enforcement agencies (LEAs) on preliminary enquiries, e-FIRs, zero FIRs and recording evidence electronically under the New Laws. For example, there are measures suggested such as hashing of electronic evidence to prevent tampering, recording any transfer to maintain chain of custody and creating mirror images, i.e., identical copies of the electronic evidence that can be produced in court.



3. In one month, the New Laws have been subject to commendation and scrutiny alike and throw up some interesting developments.

#### **Pre-implementation Hurdles**

4. At least three PILs have reportedly been filed before the Supreme Court seeking a stay on implementing the New Laws and an expert committee to examine their viability. While the petitioner in the first PIL lacked locus, the second was withdrawn because it was “drafted in a casual manner”. Without any order for stay in the third PIL [4], the New LAWS paved their way to implementation on 1st July 2024, as notified in February 2024.

5. High Courts have also had pleas challenging the constitutionality of the New LAWS. In one such PIL [5], the Madras HC was reported to have questioned whether these laws were meant to confuse people and whether smaller amendments could’ve sufficed. The HC remarked typically amendments to law are referred to the law commission and its views are considered but in case of the New LAWS, this was not done. The case is pending.

#### **Not Without Dissent**

1. The implementation has not been without protest. Lawyers in Delhi and Chennai have reportedly protested against implementation inter alia citing concerns of excessive powers of pre-trial detention accorded to the police under the BNSS [6] and the Hindi nomenclature of these laws purporting to be violative of constitutional principles. Local bar associations have been in support as well. While requesting the bar associations to refrain from agitations, the Bar Council of India (BCI) has invited representations and proposed to form a committee to initiate dialogues with the Government to amend the New Criminal LAWS suitably. Addressing another concern, the MHA has also issued a letter to all state chief secretaries clarifying that places under police control or police stations cannot be designated under the BNSS to examine witness through audio-visual electronic means.

2. We may also see state-specific amendments to the New LAWS. The Law and Parliamentary Affairs Minister of Karnataka has suggested that the state may amend the duration of pre-trial custody under the BNSS. Since these laws may be legislated by both Central and State Governments, more states may opt to pass amendments. For example, the BNS in a broad stroke criminalizes any act endangers the sovereignty or unity and integrity of India, which State Governments may choose to decriminalize.

#### **What’s In A Name**

3. A recurring theme of the New LAWS is their nomenclature of incorporating Hindi or Sanskrit titles. Interestingly, this theme has found its way into judicial discourse too.

4. In the Madras HC, a PIL filed argued that the Hindi names violated the fundamental right to practice any profession of non-Hindi-speaking people since it was confusing and arduous. The matter currently stands adjourned [7]. In another matter, it was argued that the New LAWS only attempt to “Sanskritise” the titles without any substantive overhaul [8]. The Kerala HC heard submissions on a PIL that the Hindi titles violate the Constitution which provides for English to be used in the higher judiciary and legislative texts, unless deviated by law [9]. Orders by the HC are expected soon.



5. Adding a different (and elaborate spin) on this unusual issue, the Punjab & Haryana HC expounded on the nomenclature of the New Laws while deciding on an anticipatory bail application under the BNSS [10]. The HC attended to the abbreviations BNS, BNSS and BSA while tracking the usage of abbreviations from the Romans to today's instant messaging era. It concluded that the use of the abbreviations BNS, BNSS and BSA if standardized can overcome any linguistic challenges.

#### **In With The Old And In With The New**

6. Some confusion continues on whether the old criminal laws continue to apply. The BNSS allows for proceedings initiated before 1st July to be governed under CrPC under its repeal and transition provision, section 531 of the BNSS. This BNSS provision prescribes that all proceedings such as appeal, application, trial, inquiry or investigation pending existing immediately before 1 July 2024 must be treated under the CrPC as if the BNSS had not come into force. Fundamentally, a person cannot be subject to a law that did not exist at the time of commission of the offence. But the confusion seems to persist on the applicability of BNSS on offences committed prior to 1st July under the IPC.

7. Police forces such as in Telangana and Delhi have circulated memos clarifying that for FIRs registered after 1st July regarding offences committed before 1st July, the law governing offences would be IPC and the law governing procedure would be BNSS.

8. The Punjab and Haryana HC has prescribed guiding principles and clarified that any filings post 1st July (even related to FIRs registered prior to 1st July) would be under BNSS [11]. While this appears to be conflicting with the repeal and transition provision of the BNSS, the Kerala HC has followed a similar approach [12]. However, the Chief Justice of Punjab and Haryana HC promptly issued a circular allowing filings under both new and old laws, which cannot be objected by the court registries.

9. The Delhi HC allowed a plea for quashing an FIR under the BNSS while the FIR itself was filed under the IPC prior to 1st July [13]. The Allahabad HC has even asked police to explain why an FIR registered post 1st July was not done so under BNSS [14]. However, there have been conflicting views. The Rajasthan HC held that proceedings resulting from an FIR registered under the old laws will continue to be governed under the old laws even if they commence after 1st July [15]. The Home Minister has reportedly stated that old laws apply for offences committed before 1st July. Given the oscillating views, further clarifications (beyond police memos) and Supreme Court's interpretation is warranted.

#### **So What's New**

10. The best way to bring in a new framework at the backdrop of an old system whose roots go deep is to ensure a smooth transition. While it may take substantial time to completely replace the old with the new, the lessons from the first month of India's new criminal justice system teach us some important focus areas to enable an overhaul of this scale. Confusion and disagreements over the New Criminal Laws will continue to arise and key issues need to be addressed. Clarity on how different permutations of criminal procedure will be dealt with during the transition period and building capacity in all stakeholders from legal practitioners to the law enforcement agencies together will be a welcome step. Last but not the least, the use of



technology in criminal procedure is another dimension flowing from the New Laws that will take some time getting used to.

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[1] Bantu v. State Govt. of NCT of Delhi (Bail Appln. 2287/2022) on 8 July 2024.

[2] M/S Parthas Textiles And Another vs State of UP and Another (A482 No. 11672 of 2024) on 9 July 2024.

[3] Bantu v. State Govt. of NCT of Delhi (Bail Appln. 2287/2022) on 8 July 2024.

[4] Anjale Patel and another v. Union of India (W.P.(CrI.) No. 307/2024).

[5] RS Bharathi v Union of India and Another (WP 20193/2024) on 19 July 2024.

[6] Section 187 of the BNSS.

[7] B. Ramkumar Adityan v. Cabinet Secretary & Ors (WP 17877 of 2024) on 3 July 2024.

[8] RS Bharathi v Union of India and Another (WP 20193/2024) on 19 July 2024.

[9] P. V. Jeevesh v Union of India and Others (WP(C) 19240/2024) on 29 July 2024.

[10] Manpreet Kaur v. State of Punjab (CRM-M-32804-2024) on 19 July 2024.

[11] XXXX v State of UT of Chandigarh and Another (CRM-M-31808-2024) on 11 July 2024.

[12] Abdul Khader v State of Kerala (CRL. A NO. 1186/2024) on 15 July 2024.

[13] Prince v. State of Govt of NCT of Delhi & Ors (Bail Appln. 2399 of 2024) on 12 July 2024.

[14] Deepu & Ors v. State Of U.P. & Ors. (CrI. Misc. WP 12287 of 2024) on 23 July 2024.

[15] Krishan Joshi v. State of Rajasthan (S.B. Criminal Misc (Pet.) No. 4285 of 2024) on 9 July 2024.



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