

Critique of India's new criminal laws

Submission of information to UN Special Procedures

Submission made to the UN Special Procedures regarding India's three new criminal laws – the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS) and the Bharatiya Sakshya Adhinyam (BSA). The laws enable the over-broad criminalisation of legitimate, non-violent dissent and opposition, and grants unfettered powers to the state to selectively and arbitrarily arrest and prosecute individuals, particularly by branding them as terrorists and as anti-national.

**SOUTHASIA
JUSTICE
CAMPAIGN**

southasiajusticecampaign.org

5 July, 2024

Description

The Bharatiya Nyaya Sanhita (BNS) has replaced the Indian Penal Code, 1860 (IPC) with effect from 1 July 2024. The Bharatiya Nagarik Suraksha Sanhita (BNSS) has replaced the Code of Criminal Procedure, 1973 (CrPC) with effect from 1 July 2024. The Bharatiya Sakshya Adhinyam (BSA) has replaced Indian Evidence Act, 1872 (Evidence Act) with effect from 1 July 2024. These bills were passed in December 2023 without debate or substantive discussion on their provisions, as a majority of the members of parliament belonging to the opposition had been suspended at the time when the bills were passed. Members of the opposition had previously critiqued the laws, arguing that they posed a significant threat to civil liberties and democratic freedom. However, the laws were passed without taking this into account, without any critical discussion in the Parliament and ignoring demands for a larger public debate on the bills involving legal experts and stakeholders.

In the lead up to 1 July 2024, there was widespread criticism of provisions in the three laws accompanied by repeated calls by members of parliament, bar associations and state bar councils, senior lawyers, and other stakeholders seeking for implementation of the three new laws to be deferred until there could be proper debate and discussion on these laws. For instance, in an open letter to the government in June 2024, the Constitutional Conduct Group raised concerns over provisions in the new laws that enable the over-broad criminalization of legitimate, non-violent dissent and opposition, as well as the unfettered power to selectively and arbitrarily arrest and prosecute, particularly by branding individuals as terrorists and as anti-national. However, despite objections from multiple sources, the government refused to delay implementation of these laws, which came into force on 1 July 2024.

There have also been a number of attempts at raising challenges to these laws. On 20 May 2024, the Supreme Court refused to entertain a petition challenging the three laws on the basis that it was premature since the laws were yet to come into operation. Consequently, a separate petition is now pending before the Supreme Court, seeking a stay on the implementation of the new laws on the basis of a number of problematic provisions, and also highlighting that due to suspension of members of the opposition, these laws were passed without detailed debate or effective discussion in the Parliament.

There are a number of problematic provisions, particularly in the BNS and the BNSS which would impact rights of Indian citizens, as listed below:

- Section 11 of the BNS provides for solitary confinement, despite it being recognized as form of psychological torture and a violation of the right to dignity.
- Section 69 of BNS, criminalizes sexual intercourse under "deceitful means" with possible imprisonment of up to 10 years, accompanied by fines. There is a risk that this could be misused to criminalize consensual relationships and potentially amplify narratives like "*love jihad*" which are used to incite hate and discrimination against religious minorities in India.

- Section 152 of the BNS used new nomenclature to criminalize ‘sedition’ and retains the overly broad and arbitrary language which drew criticism in its old form under section 124A IPC. Section 152 BNS has, in fact, further broadened the provision to criminalize even “*encouraging feelings of separatist activity*”, bringing further restrictions on dissent, free speech and opposing views.
- Section 63 of the BNS states that marital rape is permissible if the wife is not a minor. Further, there are no provisions in the BNS dealing with rape or other non-consensual sexual acts where the victim is not a woman or a child. Offences targeting transgender persons are not criminalized.
- While sections 103(2) and 117(4) of BNS appear to criminalize mob lynchings without expressly using this term, ‘religion’ is glaringly absent from the grounds listed for lynchings.
- The definition of “organized crime” under section 111(1) of the BNS is overbroad encompassing a range of activities from economic offenses to cyber-crimes with severe consequences, and leaving terms like "cyber-crimes having severe consequences" open to interpretation.
- Section 113 of the BNS, adopts an expansive definition of “terrorist act” from the draconian Unlawful Activities (Prevention) Act (UAPA), making the provision even more draconian by getting rid of two safeguards in the UAPA which are themselves inadequate, namely, sanction from the government for prosecution and the mandatory requirement of an independent authority to peruse the evidence before such sanction is granted. The already vague and overbroad definition of "terrorism" is further expanded to include acts that "disturb public order" or "destabilize the country", increasing the risk of misuse particularly to shut down dissent and protest. The discretion granted to police officers to choose whether to prosecute these offences under existing statutes like the UAPA and other state-specific laws or the new BNS provisions, without clear guidelines creates the possibility of misuse and inconsistent application.
- Section 226 of the BNS criminalizes any attempt to commit suicide with the intent to compel or restrain a public servant from discharging his official duty – thereby prescribing potential imprisonment as a consequence of hunger strikes or other such forms of protest.
- Section 187 permits the accused to be sent to police custody at any time during the first 60/90 days of detention, subject to a maximum of 15 days police custody. However, with orders from a magistrate, the permissible period under police custody appears to have been increased from its previous maximum of 15 days under the CrPC to 60 or 90 days under section 187(3) of the BNSS, depending on the offence. This extension exacerbates existing concerns custodial torture and forced confessions, further undermining fair trial safeguards.
- Contrary to the Supreme Court’s stance that handcuffing is an affront to individual dignity and is unconstitutional, to be used only as a last resort, section 43(3) of the BNSS allows the ‘handcuffing’ of under-trial prisoners who are repeat offenders or alleged to have committed listed serious offences.
- Section 37 of BNSS mandates the name and address of an accused person be prominently displayed along with the nature of the offense, violating the accused person’s right to privacy and rendering them vulnerable to targeting by the society even without a conviction.

The new criminal laws are incompatible with international human rights standards for the following reasons:

1. The provisions can result in arbitrary deprivation of liberty, violating the requirements of Articles 9 and 15 of the International Covenant on Civil and Political Rights (ICCPR) which include the right not to be subjected to arbitrary arrest or detention, the right to know the reasons for one's detention and charges, and the right to be brought before a judge within a reasonable time following arrest or detention. Further, they also run contrary to the rights enshrined in articles 3, 9 of the Universal Declaration on Human Rights (UDHR) as well as under principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
2. The provisions also violate the right to a fair trial, as envisioned under Article 14 ICCPR and Article 10 and 11 UDHR.
3. The wide powers under the new criminal laws are likely to be misused to suppress dissent and peaceful protests, resulting in violations of the freedom of opinion and expression, which is protected under Article 19 of the ICCPR and Article 19 of the UDHR.

The three new laws are available for download here:

1. [THE BHARATIYA NYAYA SANHITA, 2023](#)
2. [THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023](#)
3. [THE BHARATIYA SAKSHYA ADHINIYAM, 2023](#)

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Reference: 8zet1pi8**Date:** Friday, July 5, 2024**Type:** Bill, legislation, policy or practice**Original:** English**Consent:** Not required**Related mandates**

- arbitrary Detention
- freedom of opinion and expression
- terrorism
- torture
- violence against women and girls

Submitted by

Name: South Asia Justice Campaign (SAJC)**Type:** Group**Email:** SAJCcampaign@proton.me**Describe the activities of the group/community, civil society or other entity:**

SAJC is a platform of individuals and groups committed to furthering justice, peace, and harmony in South Asia. SAJC raises issues concerning justice and the rights of vulnerable groups and works to bring South Asian communities together to foster peace, understanding, and well-being.

Case details

Country where the incident allegedly occurred/is occurring/might occur: India**Province / district / area:** N/A, applicable across India

If relevant to your submission, please indicate whether there are additional country/ies where the incident allegedly occurred/is occurring/might occur, or otherwise related to the case submitted India

City: N/A, applicable across India**Date(s) as may be relevant:**

Three new criminal laws Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhinyam, set to replace the Indian Penal Code, 1860; Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 respectively. These three laws came into force on 1 July 2024.

Please provide a detailed description of the context; summarize the concerned bill, legislation or policy, including their stage of development, or describe the concerned practice:

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In the lead up to 1 July 2024, there was widespread criticism of provisions in the three laws accompanied by repeated calls by members of parliament, bar associations and state bar councils, senior lawyers, and other stakeholders seeking for implementation of the three new laws to be deferred until there could be proper debate and discussion on these laws. For instance, in an open letter to the government in June 2024, the Constitutional Conduct Group raised concerns over provisions in the new laws that enable the over-broad criminalization of legitimate, non-violent dissent and opposition, as well as the unfettered power to selectively and arbitrarily arrest and prosecute, particularly by branding individuals as terrorists and as anti-national. However, despite objections from multiple sources, the government refused to delay implementation of these laws, which came into force on 1 July 2024.

There have also been a number of attempts at raising challenges to these laws. On 20 May 2024, the Supreme Court refused to entertain a petition challenging the three laws on the basis that it was premature since the laws were yet to come into operation. Consequently, a separate petition is now pending before the Supreme Court, seeking a stay on the implementation of the new laws on the basis of a number of problematic provisions, and also highlighting that due to suspension of members of the opposition, these laws were passed without detailed debate or effective discussion in the Parliament.

Please describe on whom or which group the bill, legislation, policy or practice has/would have an impact, what rights would allegedly be affected and how:

There provisions which would impact rights of Indian citizens are below:

- Section 11 BNS provides for solitary confinement, despite it being recognized as form of psychological torture and a violation of the right to dignity.

- Section 63 BNS states that marital rape is permissible if the wife is not a minor. Further, there are no provisions in the BNS dealing with rape or other non-consensual sexual acts where the victim is not a woman or a child. Offences targeting transgender persons are not criminalized.
- Section 69 BNS, criminalizes sexual intercourse under "deceitful means" with possible imprisonment of up to 10 years, accompanied by fines. There is a risk of misuse to criminalize consensual relationships and potentially amplify narratives like "love jihad" which are used to incite hate and discrimination against religious minorities in India,
- While sections 103(2) and 117(4) of BNS appear to criminalize mob lynching without expressly using this term, 'religion' is glaringly absent from the grounds listed for lynching.
- The definition of "organized crime" under section 111(1) BNS is overbroad encompassing a range of activities from economic offenses to cyber-crimes with severe consequences, and leaving terms like "cyber-crimes having severe consequences" open to interpretation.
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- Section 152 BNS uses new nomenclature to criminalize 'sedition' and retains overly broad and arbitrary language which drew criticism in its old form under section 124A IPC. In fact, section 152 BNS further broadens the provision to criminalize even "encouraging feelings of separatist activity", bringing further restrictions on dissent, free speech and opposing views.
- Section 226 BNS criminalizes any attempt to commit suicide with the intent to compel or restrain a public servant from discharging his official duty – thereby prescribing potential imprisonment as a consequence of hunger strikes or other such forms of protest.
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- Contrary to the Supreme Court's stance that handcuffing is an affront to individual dignity and is unconstitutional, to be used only as a last resort, section 43(3) BNSS allows the 'handcuffing' of under-trial prisoners who are repeat offenders or alleged to have committed listed serious offences.
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Additional information

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- The provisions also violate the right to a fair trial, as envisioned under Article 14 ICCPR and Article 10 and 11 UDHR.
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