

IS THERE A NEED TO REPLACE THE IPC, THE CRPC AND THE EVIDENCE ACT?

Relevant for: Indian Polity | Topic: Indian Constitution - Historical underpinnings & Evolution

To enjoy additional benefits

CONNECT WITH US

August 18, 2023 02:04 am | Updated 02:50 am IST

COMMENTS

SHARE

READ LATER

Unbridled reign: The new CrPC seems to give a lot of discretionary powers to the police, like the 'right to handcuff'. | Photo Credit: Getty Images/iStockphoto

On August 11, 2023, [Union Home Minister Amit Shah introduced three Bills in the Lok Sabha](#); the Bharatiya Nyaya Sanhita Bill to replace the Indian Penal Code, 1860, the Bharatiya Nagarik Suraksha Sanhita Bill to replace the Code of Criminal Procedure, 1973 and the Bharatiya Sakshya Bill to replace the Indian Evidence Act, 1872. The proposal raises questions on whether the existing laws were being misused for them to be changed, and the amendments made in the new Bills. In a conversation moderated by **Sonam Saigal, Prakash Singh** and **Shahrukh Alam** discuss whether the existing laws need to go. Edited excerpts:

How different are the new Bills different from the prevalent laws?

Prakash Singh: It is true that the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC) and the Indian Evidence Act were fully operational, their sections were utilised in the criminal justice system and the public had become used to it. But it would be an exaggeration to say that they reflected the changing values and the democratic aspirations of the people. Much water has flowed down the rivers ever since the IPC was enacted in 1860. The entire socio-economic scenario and political complexion have changed. I think a need was felt that these laws should reflect the change. What they (the government) have done is undertake a tremendous exercise. For example, in the IPC, 175 sections have been amended, eight new sections have been added and 22 sections have been repealed to generate the Bharatiya Nyaya Sanhita Bill.

Editorial | [Rebooting the codes: On the IPC, CrPC and Evidence Act](#)

Shahrukh Alam: It is very true that the codes (IPC, CrPC and Evidence Act) probably did not fully reflect the changes in society. But there seems to be some ambiguity about how these new laws would relate to all the precedents, jurisprudence and case laws that were developed on the basis of the old codes.

There is a debate going on across the world in terms of criminal justice jurisprudence, which talks about keeping someone in detention without being charged. In Scotland, the amount of time for which you can keep someone in detention without bringing charges against them is six

hours. However, in our country, it was 60 days and the new Bill proposes 90 days. So, it seems we are going in the opposite direction. The new CrPC seems to have formalised this principle not just for acts related to terrorism, but for any IPC offence.

Explained | [Sedition 'repealed', death penalty for mob lynching: the new Bills to overhaul criminal laws](#)

The new CrPC also seems to give a lot of discretionary powers to the police, like the 'right to handcuff' which we have never had in India. Now there's discretion to handcuff, to arrest women after sunset in exceptional circumstances, and to use any force and means necessary when arresting a person. That could legitimise encounters and all kinds of violence.

The new Bharatiya Nyaya Sanhita Bill allows custody from 15 days which can go up to 90 days. As a former police officer, do you think it is needed?

Prakash Singh: There is a general consensus that these Bills should not be pushed in a hurry. Now that the Bills are in the public domain, let the general public comment on them.

Opinion | [New Bills and a principled course for criminal law reforms](#)

As far as handcuffing is concerned, I don't think anyone understands how big of a concern it is for the police. It is alright for the Supreme Court to say in the D.K. Basu vs State of West Bengal (1996) case that people should not be handcuffed. But if you see the practice in many democratic countries, there are stringent provisions about handcuffing. I have seen heads of state being handcuffed. In India, even if a man is a member of the mafia, you can't handcuff him. And then why should you force me (the police) to touch somebody? He may be suffering from some skin disease. One doesn't know how filthy or dirty he [the accused] is, so I don't want to hold him by his hand.

Shahrukh Alam: This (right to handcuffing) has become part of the actual provision in the Bill. So we have gone past the stage of debate. Case laws like D.K. Basu and Kedar Nath Singh vs State Of Bihar (1962) (judgment by the Supreme Court of India that upheld the validity of sedition), have set down some laws.

Also read | [Congress demands larger debate on three Bills to replace criminal laws](#)

But the new Bill causes a rupture. This is a repeal and a revocation. This is not an amendment.

What would you say are the similarities between the existing laws and the new Bills?

Shahrukh Alam: I think the new Bills are very similar to the existing laws. Violence is still going on and detention without charges is still going on. The Bills endorse, legitimise and formalise these practices, so there is no substantial departure. Substantive sections have been jumbled which has caused more ambiguity and confusion. For instance, the Bill replaces sedition with 'subversive activities', which makes it very vague and broad. Terrorist acts have also been defined under the new Bills, even though we have special legislation like the Unlawful Activities (Prevention) Act (UAPA). Also, if you damage property, that could constitute a terrorist act. Another section talks about provocation and intimidation of the government. But anything can provoke the government, and that would be considered a terrorist act.

Also read | [New criminal laws portend great danger to democracy, says Teesta Setalvad](#)

Prakash Singh: A lot of it is old wine in new bottles. But of course, there are changes. The Bills

have introduced certain new sections. For example, in the Bharatiya Nyaya Sanhita Bill, terrorism has been defined, organised crimes have been added, and sedition has been repealed. 'Subversive activities' have been added and it needs to be defined. There are new provisions regarding community service; mob lynching has been defined as an offence; stricter punishment has been proposed for crimes against women.

But what is worrying me the most is that the number of important sections have been changed. For example, Section 302 of the IPC will become Section 101 and Section 420 will become Section 316. For the last 164 years that we have had the IPC, these Sections are there in the public mind. The whole of India knows that Section 302 is murder, 420 is cheating, 379 is punishment for theft and 395 is punishment for dacoity. By changing the numerical figure, the documentation is going to be a huge problem in the National Crime Records Bureau and Crime and Criminal Tracking Network and Systems. I wish some sections that are very common and are in the public consciousness are retained.

Usually, laws are changed when they become obsolete. Are there any provisions in the IPC, CrPC and the Indian Evidence Act that, according to you, are being misused?

Prakash Singh: Certain sections are misused, but the misuse of an Act does not make it irrelevant. You have to find ways to prevent the misuse.

Also read | [New criminal laws will have no bearing on UAPA and MCOCA: official](#)

Shahrukh Alam: The courts had already decriminalised consensual sex between adult gay men. Section 377 was read down but non-consensual sex was still an offence. However, the removal of the Section in the new Bill leaves no scope for prosecuting rape in the case of adult men, or transsexual people. The new rape provisions are gendered and apply only to women. Also, the new Bill reflects a lot of issues that have come up in political debates recently. For instance, mob lynching has been recognised as a separate offence in the new Bill and the sentence is seven years. It is a fact that people are being killed for who they are. But interestingly, again, it has become discretionary. The sentence ranges from seven years to life sentence and death.

On the other hand, Love Jihad, which has been defined as 'concealing your identity before marriage' in the Bharatiya Nyaya Sanhita Bill has been made into a separate offence and the sentence is 10 years. In the same Bill, sexual offences are a separate chapter, but that is limited to sexual offences with respect to women. It [the government] has forgotten about sexual offences perpetuated by men on men or women on women.

Are there welcome changes in the new Bills?

Prakash Singh: Yes certainly. The fact that they have attempted to define terrorism, is a step in the right direction. It is good that organised crimes have been defined. Once the trial concludes, the judgment has to be given within 30 days and only two adjournments are allowed. I think these are welcome changes with the intention of expediting the criminal justice system.

Shahrukh Alam: There are some provisions that say if you can't finish the trial within six months in petty offences, then that person will not be tried. So that is welcome. But this pertains to only petty offences and has not been linked with serious offences.

Substantive sections have been jumbled which has caused more ambiguity and confusion. For instance, the Bill replaces sedition with 'subversive activities', which makes it very vague and broad.

Prakash Singh is a former IPS officer and Shahrukh Alam is an advocate at the Supreme Court.

COMMENTS

SHARE

[crime, law and justice / criminal](#)

BACK TO TOP

Comments have to be in English, and in full sentences. They cannot be abusive or personal. Please abide by our [community guidelines](#) for posting your comments.

We have migrated to a new commenting platform. If you are already a registered user of The Hindu and logged in, you may continue to engage with our articles. If you do not have an account please register and login to post comments. Users can access their older comments by logging into their accounts on Vuukle.

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

CrackIAS