AS INTRODUCED IN THE RAJYA SABHA
ON THE 7TH FEBRUARY, 2025

Bill No. LXIV of 2024

THE CRIMINAL LAWS (REPEAL) BILL, 2024

A

BILL

to repeal the Bharatiya Nyaya Sanhita, 2023; the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023.

BE it enacted by Parliament in the Seventy-fifth Year of the Republic of India as follows:—

Short title and commencement.

1. *(1)* This Act may be called the Criminal Laws (Repeal) Act, 2024.

(2) It shall come into force at once.

Repeal of certain enactments.

2. The enactments specified in the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

Savings.

3. The repeal by this Act of any enactment shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, forfeiture, obligation, liability, claim or demand, or

any indemnity already granted, or punishment incurred in respect of any offence committed against any enactment so repealed or the proof of any past act or thing; nor affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

Revival of operation of previous enactments.

4. The repeal of the enactments specified in the Schedule to this Act shall, with immediate effect, restore and revive the operation of the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872, as they stood prior to their repeal by the said enactments.

45 of 1860.
2 of 1974.
1 of 1872.

THE SCHEDULE

(*See section 2*)

REPEALS

Year	Act No.	Short Title	Extent of repeal
2023	45	The Bharatiya Nyaya Sanhita, 2023	The whole
2023	46	The Bharatiya Nagarik Suraksha Sanhita, 2023	The whole
2023	47	The Bharatiya Sakshya Adhiniyam, 2023	The whole

STATEMENT OF OBJECTS AND REASONS

The Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagrik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhiniyam (BSA) were passed by the Lok Sabha on 20th December 2023, and by the Rajya Sabha on 21st December 2023. These legislations received the assent of the Hon'ble President on 25th December 2023 and came into effect on 1st July 2024. The promulgation of these laws represents a significant shift in India's legal framework, as they replaced the Indian Penal Code (IPC) 1860; the Code of Criminal Procedure (CrPC) 1973; and the Indian Evidence Act 1872.

The Union Government has hailed these laws as a modernization of India's legal system, yet both the process of their passage and their content have sparked significant concern, as no meaningful debate was held in Parliament, despite their profound implications for India's criminal justice framework. To add to the concerns, no substantial pre-legislative consultation within the public domain was conducted prior to the Bills being introduced in Parliament. At the core of the concern are the ambiguously worded provisions, a substantial expansion of police powers, broader discretion in arrests and investigation, extended remand periods, infringement of federal principles, etc. These Acts appears to diminish judicial oversight while bolstering state authority without adequate checks and balances. The vague nature of several clauses are likely to grant the Government broad latitude, stoking fears of arbitrary enforcement and casting the ominous shadow of a police state.

Instead of implementing the recommendations of several Law Commissions for the betterment of the criminal justice system, these Acts have made superficial changes to the criminal laws of India. They do not adequately address the systemic delays and inefficiencies in the judicial process, such as slow trials, overcrowded prisons, and case backlogs. Despite claims of breaking from colonial legacies, these new criminal laws largely perpetuate the colonial-era philosophy. While the names of the laws have been Indianized and certain procedural updates made, the core structure—centered on state authority and punitive justice—remains largely unchanged. It represents a cosmetic revision of colonial-era codes, with some regressive modifications. Perhaps the most significant alteration has been the renumbering of the sections.

The absence of adequate stakeholder consultation has further deepened these concerns. The Pre-Legislative Consultation Policy of 2014 mandates that draft legislation or key points in a brief note shall be made publicly available for at least thirty days. However, the draft versions of these Bills apparently were not released to the public. Although the Bills were referred to the Parliamentary Standing Committee on Home Affairs, many of the Committee's recommendations seems to have been disregarded. The hurried passage of these Bills, with minimal input from neutral experts, civil society, and marginalized communities, reflects a concerning neglect of democratic participation in shaping legal reforms.

These legislations have raised significant concerns for expanding the powers of law enforcement agencies, potentially leading to misuse and violations of civil liberties. Despite longstanding issues of alleged custodial torture and police brutality in the Indian criminal justice system, the new laws fail to include sufficient provisions addressing these concerns. The Bharatiya Nagarik Suraksha Sanhita allows police to detain individuals for up to 15 days intermittently during the first 40

or 60 days of a 60 or 90 day judicial custody period. This means a Magistrate may order that an accused person can be transferred from judicial custody back to police custody at any point beyond the first 15 days of arrest, even if judicial custody has already been granted. This staggered approach to police custody complicates bail applications, as courts will be more reluctant to grant bail during the entire remand period if the police have not exhausted all 15 days of custody. This practice contradicts Supreme Court guidelines, which generally stipulate that police custody should be confined to the first 15 days of remand.

Another key indication that the new criminal laws aim to concentrate power in the hands of the police is seen in Section 172 of the BNSS, which mandates that all individuals must comply with the lawful directions of a police officer. This section further stipulates that any person who resists, refuses, ignores, or disregards such directions may be taken into custody by the police officer and either presented before a Magistrate, or released in petty cases within 24 hours. Notably, this provision lacks any accompanying safeguards to protect citizens from potential abuse of this authority, effectively granting police officers broad discretion without corresponding accountability. This absence of checks arms the police with significant impunity and immunity from action in cases of wrongful use of their powers. It is to be read with the fact that Section 175(4) of the BNSS introduced new restrictions on the powers of Magistrates in ordering investigation against public servants arising from the discharge of their official duties. This new sub-section stipulates that a Magistrate can order an investigation into such complaints only upon the compliance of two conditions: (a) after receiving a report containing the facts and circumstances of the incident from the superior officer of the accused public servant, and (b) after considering the response of the public servant as to the situation that led to the incident. A similar safeguard protecting police officers from accountability is found in Section 223 of the BNSS, which deals with Complaints to Magistrates. While the main body of Section 223 of BNSS reproduces Section 200 of the CrPC regarding the examination of complainants, a crucial addition by way of Section 223(2) significantly impacts a citizen's ability to seek redress for abuse of power by public officials even through the Courts of law. This new sub-section conditions the Court's ability to take cognizance of a complaint against a public servant by requiring (a) that the accused public servant be given an opportunity to explain the circumstances leading to the alleged incident, and (b) that a report on the facts be obtained from the superior officer of the accused. In practice, it is notoriously difficult to secure an admission of wrongdoing from a public servant or an impartial report from a superior officer. Section 175(4) and section 223(2) of BNSS effectively codify this systemic administrative reluctance, creating a legal barrier that prevents citizens from approaching the Courts with complaints of abuse of power by public officials.

Section 436A of the repealed Code of Criminal Procedure provided that any individual detained for a period amounting to half of the maximum sentence for the alleged offence—except where the death penalty is a potential punishment—was entitled to be released on bail, with or without sureties. While section 479 of BNSS retains this provision, it introduces new significant restrictions. The new provision further excludes two key categories from its application: (i) offences punishable by life imprisonment, and (ii) cases where investigations, inquiries, or trials for multiple offences or more than one case are pending. These exclusions significantly narrow the scope of the provision, potentially disqualifying a large number of undertrial prisoners from receiving mandatory bail. Given that charge sheets often include

multiple offences, this change will disproportionately affect undertrial prisoners, further contributing to prolonged detentions without trial.

The BNSS also permits the use of handcuffs in a wide range of situations, contradicting established rulings of the Supreme Court and guidelines set by the National Human Rights Commission. The Supreme Court has held that handcuffing is inhumane, unreasonable, arbitrary, and in violation of Article 21 of the Constitution. It also held that in rare cases where handcuffs are necessary, the escorting authority must provide recorded reasons for their use, and under no circumstances can an undertrial prisoner be handcuffed without judicial consent. However, these crucial safeguards have been disregarded in the new law, effectively undermining protections against the arbitrary use of handcuffs.

Additionally, while the Code of Criminal Procedure (Amendment) Act, 2005 introduced section 311A in the erstwhile CrPC empowering Magistrates to obtain handwriting or signature specimens from arrested individuals, the BNSS expands this authority. Under the new provisions, Magistrates can now also collect finger impressions and voice samples from individuals who are not even under arrest (Sec. 349). This expansion comes at a time when the constitutional validity of the Criminal Procedure (Identification) Act, 2022—which allows for broader data collection from criminals and accused persons—is under judicial scrutiny before the Delhi High Court.

The new criminal laws significantly reduce judicial oversight, particularly in areas such as pre-trial detention. For instance, increased reliance on video conferencing for court appearances, while aimed at improving efficiency, could compromise the fairness and transparency of judicial processes. This shift raises concerns about the potential infringement on fundamental rights, especially for marginalized communities, who may lack access to digital infrastructure or the resources to defend themselves in this new system.

Section 273 of the repealed CrPC, which required that evidence be taken in the physical presence of the accused, has been altered in Section 308 of the BNSS. The new provision also allows for the accused's presence *via* audio-video electronic means, effectively undermining the right to a free and fair trial. This seriously infringes on the accused person's right to mount proper and effective defence. For those unable to secure bail, the requirement for physical presence in Court was a crucial safeguard, allowing accused individuals to meet with their lawyers and family members, and to actively engage in preparing their defence against the charges. By replacing this with audio-video conferencing, these critical rights are eroded, amounting to a serious violation of Article 21 of the Constitution.

The Bharatiya Sakshya Adhiniyam's focus on electronic evidence has also sparked serious concerns about data privacy and the risk of increased state surveillance. The lack of robust safeguards for handling electronic evidence raises the potential for manipulation and selective targeting of individuals or groups. Questions have been raised about how this electronic evidence will be collected, authenticated, and utilized in Court, with many fearing that the absence of clear protocols could undermine justice and due process.

Several provisions in the new laws, particularly those addressing cybercrime, terrorism, and offences against the state, are ambiguously worded, leaving them vulnerable to broad interpretation. Such vague definitions could be misused by authorities to target individuals based on subjective criteria, resulting in arbitrary

enforcement. This approach risks overcriminalization, leading to overcrowded prisons and disproportionately affecting marginalized communities that are more vulnerable to state actions. The combination of expanded police powers and broad legal provisions creates significant potential for misinterpretation and misuse.

Moreover, the inclusion of organized crime and terrorism into the general criminal law framework overlaps with existing special laws, such as the highly criticised Unlawful Activities (Prevention) Act, 1967 (UAPA). This redundancy may create confusion and lead to inefficiencies in enforcement. A crucial question arises as to why there is a push for a general law when specialized laws are already in place. Integrating laws pertaining to terrorism and organized crime into the ordinary penal framework could also result in significant ambiguity regarding legal procedures and jurisdiction. Provisions of the UAPA that address terrorism, punishments for terrorist acts and for recruiting individuals for terrorist activities have largely been replicated in Section 113 of the Bharatiya Nyaya Sanhita, 2023. This duplication could lead to prosecution for the same offence under two different laws by two separate agencies—the National Investigation Agency and local state police—thereby exacerbating confusion.

Similarly, the offence of sedition has been retained in Section 152 of the BNS with an overly broad and vague definition, effectively making it more stringent and contravening the spirit of the Supreme Court's directions on this matter. Terms such as "subversive activities" and "separatist activities" remain undefined, apart from leaving it unclear how to assess what constitutes encouragement of "feelings" related to separatist activities or what actions might endanger the sovereignty, unity, or integrity of India. Given these imprecise and sweeping provisions, Section 152 is highly susceptible to misuse and abuse. In a vast and diverse country like India, raising grievances on behalf of different castes, communities, or groups could easily be interpreted as promoting separatist tendencies by these vague provisions. The reach of the new provision is extensive and could encompass a wide range of activities that the State may label as encouraging subversive or separatist sentiments, or threatening the nation's sovereignty and integrity. For instance, a caste group advocating for its rightful share of reservation benefits, educational quotas, or development funding may find itself accused of fostering separatist feeling. This shift clearly aims to suppress and silence democratic voices by criminalizing non-violent protests, agitation, and citizen campaigns against government policies. Section 152 can be weaponized against any form of democratic dissent or assertion.

Reflecting the overarching theme of the new laws that empower the police and state with extensive authority from the moment of arrest until the conclusion of a trial, the BNSS introduces a provision for the seizure, attachment, and distribution of property pending trial. Under Section 107 of the BNSS, a police officer investigating a case may approach the jurisdictional Court for attachment if they have reason to believe that any property belonging to the accused is derived from or obtained—directly or indirectly—as a result of criminal activity. Sections 107(5) to (7) stipulate that if the Court believes that issuing a notice would thwart the intent of the attachment or seizure, it may issue an *ex parte* interim order for the direct attachment or seizure of the property in question. Moreover, it also provides that if the Court or Magistrate determines that the attached or seized property constitutes proceeds of crime, the Court shall direct the District Magistrate to distribute such proceeds to the affected parties within 60 days. It is crucial to note that these significant powers can be exercised solely based on accusations from police

officials, even before giving the accused the opportunity for a fair trial to establish their innocence or guilt.

Similarly, the new laws grant police arbitrary powers in cases where the prescribed jail term is less than seven years. Police can refuse to file FIRs for crimes punishable by imprisonment between three to seven years and can take a 14-day period to assess the validity of allegations. This discretion has been introduced despite several Supreme Court rulings mandating police to register FIRs immediately upon receiving complaints from victims, aimed at curbing corruption. The Supreme Court's ruling in Lalita Kumari *vs.* State of Uttar Pradesh underscored the necessity of immediate FIR registration based on the substance of a complaint, effectively ending the prior practice of police delaying or avoiding case registrations. The introduction of new twin preconditions in Section 173(3) of the BNSS—requiring prior permission from the Deputy Superintendent of Police for preliminary inquiries or investigations and granting police discretion to conduct preliminary inquiries before filing an FIR—directly contradicts these Supreme Court directives. The implications of such a mechanism are manifold. The BNSS delineates around 100 different offences with imprisonment terms ranging from three to seven years, thereby bestowing upon investigating officers unchecked discretion to determine whether a *prima facie* case exists warranting immediate FIR registration. These offences encompass theft, cheating, criminal breach of trust, dishonestly receiving stolen property, rioting with a deadly weapon, and exploitation of trafficked persons, among others. Previously, it was the exclusive domain of the criminal Courts to ascertain the existence of a *prima facie* case after reviewing all material evidence. By empowering police officers to make this determination at such an early stage—merely upon receiving information—the risk of power abuse becomes evident. This alteration threatens to revive previous challenges faced by complainants in seeking redress, heightening the potential for misuse of authority.

Furthermore, the aforementioned provision has detrimental effects on individuals accused of an offence as well. The requirement for a preliminary inquiry prior to the registration of an FIR creates confusion for potential accused individuals, who are not even aware whether they are an accused or not. It is a fundamental tenet of criminal law that investigations only begin following the registration of an FIR. Under the new criminal laws, individuals can be summoned to respond to police notices without even being aware of the specific allegations against them. Since no FIR exists at the time of the preliminary inquiry, there is no obligation to provide a copy of it to such individuals, which undermines the safeguards established by the Supreme Court in Youth Bar Association of India vs. Union of India and Others, which mandates that a copy of the FIR must be provided even before the stage of Section 207 of the CrPC. This new preliminary inquiry requirement resembles a key aspect of the Prevention of Money Laundering Act, 2002, regarding the status of the individual receiving notices or summons: is the individual being summoned as an accused or as a witness? This situation may compel individuals to provide information without being confronted with the incriminating evidence against them, which raises significant constitutional concerns, particularly the right against self-incrimination enshrined in Article 20(3) of the Constitution.

Similarly, the BNSS has introduced an apparently troubling new provision in Section 356, which pertains to the ‘inquiry, trial, or judgment in absentia of proclaimed offender.’ This section allows for the trial of individuals declared as

‘proclaimed offenders’—those who have absconded to evade trial—when there is no immediate prospect of their arrest. Under this provision, the absence of the accused is considered a waiver of their right to be present during the trial, enabling the Court to proceed as if the individual were present and to deliver a judgment accordingly. This provision represents a significant violation of fundamental principles of criminal justice, particularly the principle of ‘*audi alteram partem*,’ which asserts that no one should be punished without having the opportunity to be heard. Particularly concerning is the proviso to Section 356(7), which stipulates that no appeal against a conviction shall be entertained after the lapse of three years from the date of the judgment, if the accused was tried in absentia. This raises a grave question: What if a death sentence or imprisonment for life has been imposed, and the accused voluntarily appears before the Court after the three-year period? Such an individual would be deprived of any opportunity to present their version of events or prove their innocence by mounting a defence—something that only the accused individual can do effectively.

Another key issue is with the mandatory Zero FIR registration- filing of complaints regardless of jurisdiction- which leads to procedural ambiguity; particularly regarding actions after an FIR is filed. While Zero FIRs enable victims to file complaints outside jurisdictional limits, potential misuse could arise, such as complainants filing FIRs in distant locations to harass the accused, allowing unwarranted enquiry by out-of-jurisdiction police, etc. Moreover, the law is unclear about the time frame for transferring such cases to the appropriate jurisdiction, potentially leading to delays and miscarriages of justice.

Furthermore, these laws have faced criticism for undermining India’s federal structure. Section 477 of the BNSS, which grants the State Government the authority to remit or commute sentences for certain types of offences or investigation by central agencies under other central Acts, has undergone a subtle yet significant change that challenges the core principles of federalism enshrined in the Indian Constitution. Section 477 of the BNSS is almost a verbatim reproduction of Section 435 of the repealed CrPC, with one notable alteration - the original provision in CrPC allowed the State Governments to exercise those powers after “consultation with the Central Government,” which has now been changed to “concurrence with the Central Government” This shift from ‘consultation’ to ‘concurrence’ fundamentally undermines the federal principles inherent in the Indian Constitution. This change is not merely cosmetic; it reflects a broader pattern in the BNSS aimed at centralizing authority within the police and concentrating power with the Central Government. Criminal law falls under the Concurrent List, which permits both the Union and the States to legislate. However, the centralized nature of these new laws restricts the States' ability to tailor criminal laws to their unique contexts and challenges.

Similarly, Section 226 of the Bharatiya Nyaya Sanhita addresses "attempt to commit suicide to compel or restrain exercise of lawful power" - introducing a new provision in India’s penal law. This provision has the potential to effectively criminalize even those individuals who engage in hunger strikes as a form of civic protest, imposing penalties of up to one year of simple imprisonment. From the era of Mahatma Gandhi and the Satyagraha Movement, hunger strikes have been recognized as a legitimate, non-violent method for articulating democratic demands. Historically, non-violent and democratic forms of protest have been viewed as valid expressions of dissent in India. However, Section 226 now criminalizes this

essential aspect of democratic protest, framing it as a criminal act. This shift is likely to deter citizens from exercising their fundamental rights to organize, express dissent, and challenge government schemes and policies.

The Bharatiya Nyaya Sanhita has entirely omitted Section 377 of the Indian Penal Code, which pertains to "unnatural sex." It is important to note that the Supreme Court had earlier read down Section 377 IPC in the landmark case of Navtej Singh Johar vs. Union of India (2018), decriminalizing consensual same-sex relations between adults. However, the Court maintained that Section 377 could still be invoked in cases of non-consensual sexual activity involving adults, acts of bestiality (sexual intercourse with animals), etc. The complete removal of Section 377 IPC from the BNS creates a legal void concerning the protection of adults and animals from unnatural sexual violence.

The gravity of these issues cannot be overstated. They also pose a significant threat to the delicate balance between state authority and individual freedom. The changes introduced by the new Criminal Acts undermine crucial legal protections, erode accountability mechanisms, and curtail legitimate forms of dissent and protest, among others. As lawmakers, we have a profound responsibility to respond to these pressing concerns. The proposed Bill seeks to address these critical issues by repealing the new criminal laws and reinstating the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Indian Evidence Act. This restoration is essential not only for safeguarding the rights of individuals but also for preserving the foundational principles of justice and equity that underpin our legal system. We have to reaffirm our commitment to a just and humane society where the rule of law prevails over arbitrary authority.

Hence, this Bill.

JOHN BRITTAS

RAJYA SABHA

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BILL

to repeal the Bharatiya Nyaya Sanhita, 2023; the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023.

(Dr. John Brittas, M.P.)

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