

Critical Analysis of the New Criminal Laws and their Detrimental Effects on Civil Liberties

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DOI:10.54741/SSJAR/6.3.2026.376

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In 2024, India enacted three landmark criminal laws. The Bharatiya Nyaya Sanhita 2023, The Bharatiya Nagarik Suraksha Sanhita BNSS 2023 and The Bharatiya Sakshya Adhinyam BSA 2023 to replace the colonial Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act respectively. While aimed at modernizing the criminal justice system through victim centric approaches, technology integration and faster trial processes with reformative ideas, these law laws have sparked critical debate and have become the subject of controversy ever since they were presented as measures in the parliament. As the date of their enforcement finally arrives, the chorus of criticisms only grow louder regarding their adverse impact on civil liberties. It is also pertinent to mentioned that under the 3 new criminal laws registering First Information Report (F.I.R) has no longer become effective as the new law under BNSS may likely result in delay investigation or misuse of power by the police official and most importantly the new laws also raise more concern about arbitrary detention and abuse of power against the innocent denizens infringing their fundamental rights. In 2022, before the Bharatiya Nyaya Sanhita (BNS) was enacted, the Supreme Court had halted ongoing criminal trials and court proceedings under section 124A of the Indian Penal Code (IPC), but under the new BNS, it is also believed that the new sedition law has opened its backdoor under section 152, posing a greater threat to the nation's citizens as a whole. Besides all this concern with the arrival of these 3 new laws it has create more confusion in the syllabus of the school and colleges, the working of the court system, etc. This paper analyses the historical context, the key features of these laws and delve into the landscape of the surge in the criticisms and outlines the civil liberties concerns under the new criminal laws emerging from their implementation

Keywords: FIR. sedition, digitisation, arbitrary arrest, detention, fundamental rights

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Khatter Playson Anal, Research Scholar, School of Legal Studies, Dhanamjuri University, Imphal, Manipur, India. Email: ktplaysonanal34@gmail.com	Anal KP, Raiping P, Critical Analysis of the New Criminal Laws and their Detrimental Effects on Civil Liberties. Soc Sci J Adv Res. 2026;6(3):80-88. Available From https://ssjar.singhpublication.com/index.php/ojs/article/view/376	

Manuscript Received 2026-04-14	Review Round 1 2026-04-29	Review Round 2	Review Round 3	Accepted 2026-05-19
Conflict of Interest None	Funding Nil	Ethical Approval Yes	Plagiarism X-checker 5.56	Note



1. Introduction

The Indian criminal justice system has undergone a significant transformation with the introduction of three criminal laws effective July 1, 2024. These laws seek to overhaul outdated colonial-era legislation, promising faster, transparent and victim-focused justice. However, it is also pertinent to point out that despite all these objectives put forth and laid down in the three new criminal laws it is equally important to balance on the larger side the issue concerning our rights that "will the new criminal laws impact civil liberties or the fundamental rights as laid down in the Indian Constitution (*The Constitution of India, 1950*).

We have witnessed constant attempts to solve current challenges for the past 75 years through a variety of laws and amendments since the Indian Constitution's founding, which promised social, economic, and political fairness for all. The parliament now acknowledges the need to Indianize the criminal justice system while rhetorically preserving our fundamental rights.

To recalled the then Chief Justice of India Dr DY Chandrachud at the conference on India's progressive path in the Administration of Criminal Justice system, he says that the new laws are watershed moment for our society because no laws affect the day-to-day conduct of our society like criminal law. He further stated that the nation is governed by criminal laws, which also have the power to deny citizens their most prized freedoms. Mr. Tushar Mehta, also can also be interpreted as "While maintaining the status quo is simple, altering it calls for bravery and conviction" (Chandrachud, DY, n.d.). As a result, in order to fully comprehend the three new criminal statutes, one must observe the trajectory of the criminal justice system following its introduction.

Just prior to the three newly passed criminal legislation taking effect on July 1, 2024, the Supreme Court has also addressed the Challenges to the new criminal laws by dismissing PILs dated 26.02.2024 and other petitions seeking a stay or challenging their constitutionality while some petitions were disposed of with the liberty to file afresh, some petitions were dismissed due to issues like locus standi or casual filing (*Supreme Court dismissing PIL, 2024*) However, the Court has also acknowledged in good faith the need for public debate and criticisms of the new laws.

One of the India's most highly regarded Senior Advocate and former Additional solicitor General of India Indra Jaising has also said that if the three new criminal statutes come into force on 1st July 2024, which is what the Union Government intends, we will have "a legal and judicial mess" adding specifically that "Life and liberty" could be in danger (Thapar, 2024). This also proves that with the arrival of new criminal laws it has created more controversy and criticisms.

Now, the bigger question is that when the 3 new criminal laws come into effect and its implementation "Will the people of this country really be happy or will the new laws court more controversy after its enforcement keeping in view the fundamental rights guaranteed under the Constitution of India.

2. Historical Background

India criminal laws, largely inherited from British colonial rule, have long been criticized for being outdated, overly punitive, and structurally biased against marginalized communities. The Mohamedan Criminal legislation became the dominant legal system in medieval India following the Muslim-established legislation. With the passage of the Regulation Act of 1773, the British rulers established a supreme court in Calcutta, followed by those in Madras and Bombay. British procedural law was to be applied by the Supreme Court for resolving cases involving crown subjects.

Following the uprising in 1857, the crown assumed control of India's governance. The British parliament passed the Indian Penal Code in 1860. The CrPC was created for the first time ever in 1882 and then amended in 1898, then accordingly the 41st Law commission report was submitted in 1969 recommending revisions to the Code of Criminal Procedure (CrPC) replacing the 1898 version in 1973 (Law Commission of India, 1969).

All the 3 laws were made during the British rule, and it is up to the individuals or citizens of this country to approved whether it's a good law or not based on certain parameters. There are 3 basic things as stated above to determine whether it's a good/bad law.

- i) Whether people get timely justice.
- ii) Whether there was a fair trial or not and
- iii) Whether adequate compensation was given or not.

The definition of crime and the penalty for offenses are covered in the Indian Penal Code (IPC) 1860. It offers the tools necessary to investigate crimes, apprehend suspected offenders, gather evidence, determine an accused person's guilt or innocence, and determine the appropriate penalty for those found guilty (*The Indian Penal Code, 1860*).

The Code of Criminal Procedure (CRPC) deals with the procedure such as arrest, investigation, bail, & trial procedure and the said objectives of the Code of Criminal Procedure (CRPC) are interwoven throughout the code, particularly in the preamble and the introductory section of the code. The preamble of the Code of Criminal Procedure (CRPC) indicates the broad objective of streamlining and improving the existing criminal justice system and the introductory section (Section 1 to 5) outline the scope and application of the Code of Criminal Procedure (CRPC) and clarify its application to all the offences unless otherwise specified and further highlight the importance of fair trial and the application of natural justice principles (*The Code of Criminal Procedure, 1973*). And lastly, Evidence Act deals with admissibility of evidence, burden of proof and expert opinion (*The Indian Evidence Act, 1872*).

As time moves on and keeping in view the increase crime rates, the question comes to the mind of the people Whether amendment is required or not, And if so. How?

So, the main question is what was the need to amend this new 3 bills. For that reason, we need to go back to the past. During the British period. The first legislation commission was led by Thomas Babington Macaulay and 3 other members, who made some important laws in India which focused on shaping the criminal justice system through modification, reforms and recommendations for improvement followed by second law commission emphasizing the need for uniform civil laws and personal laws and the third law commission mainly suggesting ways to eliminate delays, simplify procedures and improve standards. Thus, looking at the situation at that point in time, they had a huge contribution in Indian laws as they have also contributed the same for Indian contract act, transfer of property act, etc.

3. The Three New Criminal Laws

In the updated BNS (IPC) out of the 511 provisions originally in the IPC, only twenty-four sections have been eliminated and twenty three new sections have been introduced, additionally 95 percent of the CrPC has been cut, copied and pasted as the new BNSS(CrPC). So, the question is if the majority of the provisions are to be the same, why was there a need for the so-called complete overhaul.

Secondly, the Code of Criminal Procedure Code (CrPC) is replaced by Bharatiya Nagarik Suraksha Sanhita (BNSS). Earlier there were 484 sections but now it have been replaced with 531 sections wherein 9 new provisions have been added and 14 sections have been repealed.

Thirdly, in place of Evidence Act it has been replaced by Bharatiya Sakshya bill 2023. Originally the act has 167 sections but now it has 170 sections. 5 sections have been removed from the Act and added a new section has been added.

The Main Features of the Bharatiya Nyay Sanhita Bill, 2023?

- a. The bill defines terrorism and crimes that were previously covered under separate legal categories, including separatist, armed insurrection against the government, and contesting national sovereignty.
- b. It does away with the crime of sedition, which was largely viewed as a remnant of colonialism that stifled criticism and free expression.
- c. It establishes the death penalty as the harshest punishment for mob lynching, which has become a threat in recent years.
- d. It suggests a 10-year prison sentence for having sex with a woman under false pretense of marriage, which is a prevalent kind of deceit and exploitation.
- e. The bill proposes community service as a way to penalize some offenses, which may aid in the reformation of criminals and lessen jail overcrowding.
- f. The measure sets a 180-day limitation for filing a charge sheet, which helps expedite the trial process and avoid unending delays (*The Bharatiya Nagarik Suraksha Sanhita, 2023*).

The Main Features of the Bhartiya Nagrik Suraksha Sanhita Bill, 2023:

- a. It encourages the use of technology for deposition recording, trials, and appeals, enabling video conferencing for proceedings.

b. The bill requires survivors of sexual assault to have their statements videotaped, which can preserve evidence and stop coercion or manipulation.

c. Enhancing accountability and openness, the measure requires police to provide information on the status of a complaint within ninety days.

d. Section 35 will be the new number for Section 41A of the CrPC. This modification adds a protection by stating that no arrest may be undertaken without the prior consent of an officer at least the level of Deputy Superintendent of Police (DSP), particularly for offenses carrying a sentence of less than three years or for those over sixty.

e. To guarantee that justice is neither obstructed or denied, the measure mandates that police must confer with the victim prior to dismissing a case that carries a sentence of seven years or more.

f. It allows absconding criminals to be tried in-absentia by court and sentenced too, which can deter fugitives from escaping justice.

g. It empowers magistrates to take cognizance of offenses based on electronic records such as emails, SMSs, WhatsApp messages etc., which can facilitate evidence collection and verification.

g. Mercy petitions in death sentence cases to be filed within 30 days to the Governor and within 60 days to the president and No appeal shall lie against the President's decision in any court (*The Bharatiya Nagarik Suraksha Sanhita, 2023*).

Main Features of Bharatiya Sakshya Adhinyam Bill, 2023:

a. The bill defines electronic evidence as any information generated or transmitted by any device or system that is capable of being stored or retrieved by any means.

b. It lays down specific criteria for admissibility of electronic evidence such as authenticity, integrity, reliability etc., which can prevent misuse or tampering of digital data.

c. It provides for special provisions for admissibility of DNA evidence such as consent, chain of custody etc., which can enhance accuracy and reliability of biological evidence.

d. It recognises expert opinion as a form of evidence such as medical opinion, handwriting analysis etc., which can assist in establishing facts or circumstances relevant to a case.

e. It introduces the presumption of innocence as fundamental principle of criminal justice system,

which means that every person accused of an offence is presumed to be innocent until proven guilty beyond reasonable doubt (*The Bharatiya Sakshya Adhinyam, 2023*).

4. Criticism

The concerns over the vague and broad language and broad language of certain provisions fostering arbitrary enforcement. For example, section 152 of the Bharatiya Nyay Sanhita 2023 criminalizes 'Acts endangering sovereignty' risk misuse akin to previous sedition law (*Kedar Nath Singh v. State of Bihar, 1962*). The expansion of police powers without proportional safeguards can lead increased instances of wrongful arrests and custodial abuses, echoing prior judgements criticizing excessive state overreach (*D.K Basu v. State of West Bengal, 1997*). The DMK leader R.S Bharathi also filed 3 PIL petitions before the Madras High Court to declare the 3 new laws as unconstitutional. he opposition also equally accused the government of engaging in "Hindi Imposition" and failing to meet the constitutional requirements leading to a huge uproar in the parliament. However, the government justified and the defended the move as a reflection of Indian culture and legacy despite the mandate of the people in the present government was for diversity, equality and federal principle as laid in the Constitution.

The new law as a whole talk about Digitalization, better forensic, strict timeline for chargesheet under Bhartiya Nagrik Suraksha Sanhita (BNSS) and statement recording through video. But the problem is will they have enough infrastructure to make all these effective. And with the arrival of these 3 new laws some of the common problems in the legal system are;

- All school and colleges will have to change their syllabus
- The working of the court system will have to change
- All the lawyers have read again the sections.

So before deciding anything it's important to know all this impact as well.

Under the new Laws, the harsher punishments and broadened offences disproportionately expose marginalized communities to state repression,

undermining procedural fairness and presumption of innocence the lack of corresponding institutional reforms in police, prosecution and judiciary further complicates achieving timely and impartial justice.

Sedition Law Makes its Backdoor Entry: Though the Home Minister claims sedition law is dead, but its replacement is more fearsome than the colonial law ever was as they have removed the word sedition and replaced it with more stringent one (*Home Minister Amit Shah Says Sedition Is Dead, 2023*). Section 152 of the new BNS dealt with "Act endangering sovereignty, unity and integrity of India while the earlier law made no reference to the sovereignty and integrity of India. Therefore, with the new rules in place an ordinary riot can be elevated to the level of an attack and sovereignty and integrity of India which directly curbs the freedom of speech and expression and impact the right to dissent. In *Balwant Singh v/s State of Punjab* in relation to Khalistan movement, where the court held that slogans do not constitute sedition if there is no enough evidence of incitement to disorder or violence which added to the growing concerns of misuse of section 124A IPC. This prompted the government to add more draconian law replacing sedition under section 152 (*Balwant Singh v. State of Punjab, 1995; S. G. Vombatkere v. Union of India, 2021*).

In 2022, the Supreme Court held that Section 124 A IPC will be temporarily suspended from operation in *SG Vombatkere v/s Union of India* and further directed the government to refrain from registering FIRs under the said law and make new provisions challenging the section's criticism though the 279th Law commission report recommended to retain the sedition law in statutes.

Enhancement of Police Powers: Specifically, Section 187 of the BNSS increases the maximum police custody duration from 15 days to either 60 or 90 days. This represents a substantial extension compared to the limits set under previous laws like the Unlawful Activities (Prevention) Act 1967 etc which automatically make it even more harder for the alleged accused person to obtain bail in criminal cases and further introduces special offenses such as terrorism and organised crime which is already covered by special laws like the Unlawful Activities (Prevention) Act 1967 without accompanying any safeguards creating vague definition for its misuse.

Trials in Absentia: Under the *Bhartiya Nagarik Suraksha Sanhita (BNSS)* allows for the prosecution and adjudication of trials against proclaimed offenders in their absence, which severely restricts the accused's right to defend themselves.

Ambiguity in Transitional Provisions: Section 358 of the BNS states that the IPC will continue to apply to offenses under the IPC, but it remains unclear if this only pertains to offenses committed before 1st July 2024 or also to ongoing proceedings, investigations, or remedies related to IPC offenses as of that date. This lack of clarity could lead to legal confusion and inconsistent application in transitional cases.

Handling of Ongoing Legal Proceedings: Sections 531 of the BNSS and 170 of the BSA clarify that ongoing appeals, applications, trials, inquiries, or investigations at the time the new legislation takes effect will be governed by the old laws (CrPC or IEA). This provision is crucial for ensuring continuity and fairness in ongoing cases but also introduces potential for interpretative challenges among different courts and jurisdictions, given the major legal shift. It can also be mentioned that there can arise a dispute in every case whether I should be tried by the procedure of the old procedural law or the new procedural law. One can say that the new law is prejudicial to me, so the courts have to deal with both the new and old law. The supreme court in *Kedar Nath v. State of Bengal* protects individual from facing punitive measures for actions committed prior to the establishment of the relevant legal provisions, thereby upholding the fundamental principles of justice and fairness integral to the constitutional framework (*Kedar Nath Bajoria and Another v. State of West Bengal, 1954*). In *Ratan Lal V/s State of Punjab* held that ex-post facto law i.e. a law enacted after the offence was committed can be applied to reduce the punishment for an offender. However, with the addition of new substantive law with their prescribed punishment it is going to give more confusion to the Court (*Rattan Lal v. State of Punjab, 1965*).

We say that the Indian penal code is more than a century and half old and so is the criminal code, though it was amended in 1973. It has received judicial interpretation at the hands of Supreme Court of India, and therefore there is a certainty about the laws in relation to the old Indian Penal Code (IPC) and Criminal Procedure Code (CrPC).

To achieve that level of certainty for the new law, it's going to take another 50 years. So, in the meantime the magistrate won't know what to do till the supreme court takes a call on a particular provision of law in India, every magistrate can interpret the law differently as and when the particular provision of the law comes into question before their Court which is likely to give different opinions by the sub ordinate Courts.

The BNS add new provision under section 152 criminalizing "Acts endangering the sovereignty, unity and integrity of India" which in fact is more severe than the old sedition law thereby violating the very nomenclature of the Act "Nyaya" (Justice) by imposing stringent punishment.

The BSA allows the admissibility of electronic records as evidence in the absence of Robust data protection law and given the documented misuse of electronic evidence as evident in the Bhema Koregaon case. Hence, the new law leaves room for abuse. ²¹ From the aforementioned points, it is evident that the three new criminal laws despite aiming to modernize the legal system are being popularly criticized for potentially expanding the police powers and restricting the civil liberties.

5. Impact on Civil Liberties

What we are seeing today with the implementation of the 3 new criminal law is a concentrated attack on Article 19, 21 and 22 of the Indian constitution thereby grossly affecting the civil liberties of the citizens of this country (Prof. Mohan Gopal, 2024). The Bhartiya Nagrik Suraksha Sanhita Bill, of 2023 (BNSS) has dramatically expands police authority, sparking serious concern about the balance between law enforcement powers and civil liberties. One of the most concerning modifications is the increase in police custody duration i.e from the current 15 days limit under the CrPC to 60 or 90 days, depending on the offence. This unprecedented extension vastly raises the risk of police excesses, with detainees being more vulnerable to coerced confessions, torture, and fabricated evidence. The longer a person is held in police custody, the greater the threat of abuse, violating fundamental rights under Article 21 of the Constitution. Filing of First Information Report (FIR) will not become mandatory and effective under the new law as the power of registering First Information Report (FIR) lies in the domain of police and not the victim under the new law.

The police have also usurped the power of judiciary under the new law as the police officer has been given the power of enquiry besides the investigation power. The police officer before registering any First Information Report (FIR) can enquire into the commission or omission of any offences and thereafter under his discretion can exercise his power to register an FIR. It is also pertinent to mentioned that a complaint made instantly before the police officer does not becomes First Information Report in its true sense unless registered it instantly because First Information Report is the report given at that point in time and not after the expiry of two or three days after the incident or commission of an offence, if the complaint is made after the commission of an offence after a gap of two or three days there is a high possibility of tempering the facts and evidence as it will amount to miscarriage of justice. Unlike special laws' like Unlawful Activities (Prevention) Act (UAPA) under the Code of Criminal Procedure (CrPC) where investigations are handled by Officers holding the position of Superintendent of Police or higher rank but under the new Bhartiya Nagrik Suraksha Sanhita (BNSS) even a Station House Officer (SHO) can look into serious offenses, including charges relating to terrorism. The dilution of oversight heightens the risk of misuse and undermines accountability. In essence, BNSS shifts the balance heavily in favour of the police, eroding key safeguards which is meant to protect the citizens from abuse thereby heavily impacting upon civil liberties of the citizens of our country.

The Bhartiya Nagrik Suraksha Sanhita has also become systematic silence in the new laws. Torture is something that a colonial regime inflicts on its subjects to control and put fear in them. National Human Rights Commission's (NHRC) reports have been annually recording multiple cases of torture across the Country however there is absolute silence in codifying it even in the new law. Although the Indian state signed the convention against torture at the UN in 1977 and said it will enact a separate Law. In 2005, an Amendment was made in the criminal procedure code that if any person dies, disappears or is raped in police custody or police action, there will be a judicial magistrate enquiry. The Bhartiya Nagrik Suraksha Sanhita has a very interesting provision wherein now the magistrate can be an executive magistrate. To expect a District magistrate or SDM to conduct an enquiry to probe is something very disturbing.

In a classic example of extrajudicial killings, euphemistically called encounters in this country. There was a death of a farmer in police firing in Haryana (in February 2024) The Haryana police said the farmer didn't die because of their bullet. There is a controversy over the facts. How will it be resolved? If the law was there to adhered to, there should have been a judicial magistrate inquiry into that matter. But the judicial magistrate has been removed and the magistrate has been brought back. So, this proves that we have actually move back to colonial power rather than moving forward. Hence, it adheres to regressive path and not progressive path. When the cardinal principle of Indian criminal jurisprudence clearly include: the prosecution's burden to prove the guilt beyond a reasonable doubt and the presumption of innocence of the accused until proven guilty and this was observed in *Ranjan Sharma Versus State of H.P (2023)* that, "the presumption of innocent is still available to NDPS accused as the bail cannot be rejected as a matter of punishment. Pre-trial punishment is prohibited under the law [*Ranjan Sharma v. State of H.P., 2023; Firoz Khan v. State (NCT of Delhi), 2020*]. The Hon'ble High Court in *Firoz Khan V/State (NCT of Delhi) 2020* also held that prison is primary for punishing convicts not for detaining undertrials. The remit of the Court is to dispense justice in accordance with the Law, and not to send wrong messages to society that undertrials are left with the inevitable impression that they are being punished even before trial and treated unfairly by the system". This demonstrates unequivocally that justice is served not only by acquittal following a trial but also by granting the accused bail pending conviction. In *Mohammad Sajjid Versus. State of Kerela (2023)* Justice PV Kunhi Krishnan made an observation on section 187 (3) stating that while interpreting section 187 (3) under the Bhartiya Nagrik Suraksha Sanhita, the interpretation which will favour the accused liberty should be adopted by the Court of law and a similar importance and observation was also given in *State of Karnataka Kavoor police station v. Kalandar Shafi* that competition of investigation which is upto 10 years is 60 days and rest of the offences, be it death, life imprisonment of ten years or more, would be 90 days. However, it is pertinent to point out that section 187 does not apply on special laws like NDPS Act, the said provision is bar by 36A (4) NDPS Act (*Mohammed Sajjid v. State of Kerala, 2023; State of Karnataka v. Kalandar Shafi, 2024*).

The bigger question is, when the whole provision of the BNSS law is applied under NDPS Act from the commencement of the trial and from the date of registration of an F.I.R against the accused till conviction why specifically bar section 187 under 36A (4) of Narcotic Drugs and Psychotropic Substances NDPS Act. it is against the rule of equality and the principle of parity. It is also pertinent to mentioned that the Special law will remain vague/ ambiguous unless the whole Narcotic Drugs and Psychotropic Substances Act., 1985 is amended for its application despite its Gazette notification dated 16th July, 2024 Ministry of Law and Justice (Legislative department) (Gazette notification, 2024). According to a Bharat Chugh, a former judge at Delhi's criminal courts and Supreme court, also once opined that courts are generally reluctant to grant bail when there is a possibility of police custody. This legal amendment could make it harder to obtain bail under the new law as enormous power is given to the police which might easily persuade the Court from time to time and detained the innocent behind the bar restricting the liberties of the innocent citizen. Hence, the Court must be more lenient while deciding the liberty of a person keeping in view the intent and spirit of fundamental right enshrined under the constitution.

6. Conclusion

While the new criminal laws in India embody a forward-looking attempt to reform the justice system, their vague terminology expanded police powers, and stringent punishments impose significant risks to civil liberties. Without holistic institutional reforms and robust procedural safeguards, these laws may perpetuate the very injustices they claim to eliminate. The challenges lie in balancing effective crime control with protecting the constitutional rights of all citizens to ensure justice that is not only swift but also fair and equitable. All that is needed to determine whether the three new criminal laws are advantageous or damaging to the general public is to calculate the total amount of pleasure or misery that people have endured. Therefore, to mitigate the detrimental effects of the new criminal laws, it is imperative to implement robust procedural safeguards and institutional reforms. The ambiguous and vague provisions criminalizing speech and conduct must be precisely define to prevent arbitrary and discriminatory enforcement.

Judicial scrutiny should be intensified to ensure that police powers, such as extended custody and arrest provisions, are exercised with due regard for constitutional rights, with regular oversight mechanisms.

The judicial discretion must be preserved, especially regarding sentencing, to balance deterrence with fairness and individual circumstances. Establishing independent bodies for accountability and to prevent abuse of power and custodial violations. Comprehensive training of police, prosecutors and judiciary on human rights standards to foster more sensitive and equitable administration of justice. Expansion and effective implementation of victim-centric and technology assisted procedures should be consistently monitored to enhance access to justice without compromising fairness and lastly, there should be an inclusive and transparent mechanism for continuous review and reform of these laws, involving legal scholars, civil society, and affected communities to align the statutes with constitutional safeguards and international human rights norms. Only through balance reforms that protect public safety while upholding civil liberties can the criminal justice system fulfil its constitutional promise.

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