



Time: 10 min

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Revamping the Criminal Justice System to Fit the Bill

Syllabus: GS2/ Government Policies & Interventions

In Context

- There needs to be proper parliamentary scrutiny of the new Bills replacing the IPC, the CrPC and the IEA to ensure a fair, just and efficient criminal justice system.

About the recent Revamping of the criminal justice system

- The Government has introduced three Bills to replace the core laws, i.e., the Indian Penal Code (IPC), 1860, the Code of Criminal Procedure (CrPC), 1973, and the Indian Evidence Act (IEA), 1872, which form the basis of the criminal justice system.
 - The Bharatiya Nyaya Sanhita Bill will replace the IPC;
 - The Bharatiya Nagarik Suraksha Sanhita Bill will be in place of the CrPC, and
 - The Bharatiya Sakshya Bill will replace the IEA (Indian Evidence Act, 1872).
- **Significance:** As these Bills replace the entire Acts — and are not merely Amendment Bills to fix some gaps — they provide an opportunity for an overhaul of the laws underlying the criminal justice system.

The Bharatiya Nyaya Sanhita Bill

- **IPC Section 420: Cheating**
 - IPC Section 420 deals with Cheating and dishonestly inducing delivery of property.
 - In proposed Bill, 2023: There is no Section 420 and the offense of cheating is covered under Section 316.
- **IPC Section 124A: Sedition**
 - IPC Section 124A deals with Sedition.
 - In proposed Bill, 2023: Section 124 in the proposed Sanhita relates to the offense of wrongful restraint.
 - The word sedition does not exist in the proposed Sanhita. Offenses of the nature described as “sedition” in the IPC are

covered in Section 150 of the proposed Sanhita, as “Acts endangering sovereignty, unity and integrity of India”. It is a more detailed provision than IPC Section 124A.

- **IPC Section 302: Murder**
- **IPC Section 307: Attempt to murder**
- **IPC Sections 375 and 376: Rape**
- **IPC Section 120B: Criminal conspiracy, etc.**

The Bharatiya Nagarik Suraksha Sanhita Bill

- **Greater use of technology:** Trials, appeal proceedings, recording of depositions including those of public servants and police officers, may be held in electronic mode. The statement of the accused too can be recorded through video- conferencing. Summons, warrants, documents, police reports, statements of evidence can be done in electronic form.
- **Communication devices:** The Bill adds electronic communication including “communication devices” to the provision on summons to produce a document. On the directions of a court or police officer, a person is required to produce any document — and now devices — that is likely to contain digital evidence for the purpose of an inquiry.
- **Mercy petitions:** There is a provision on procedures for the timeframe to file mercy petitions in death sentence cases. After being informed by jail authorities about the disposal of the petition of a convict sentenced to death, he, or his legal heir or relative can submit a mercy petition within 30 days to the Governor.
 - If rejected, the person can petition the President within 60 days. No appeal against the order of the President shall lie in any court.
- **Sanction to prosecute:** A decision to grant or reject sanction to prosecute a public servant must be reached by the government within 120 days of receiving a request. If the government fails to do so, the sanction will be deemed to have been accorded. No sanction is required in cases including sexual offenses, trafficking, etc.

The Bharatiya Sakshya Bill

- The bill makes electronic or digital records admissible as evidence, thereby they will have the same legal effect as paper documents.
- It repeals five existing provisions of the Evidence Act, modifies 23 provisions, and adds one new provision.

- The bill proposes amendments to 23 Sections and contains 170 Sections in total.
- In the bill, the scope of expansion for secondary evidence to include copies made from the original by mechanical processes, counterparts of documents, and oral accounts of document contents has been done.
- Through the bill, the government is aiming to introduce precise and uniform rules for dealing with evidence during the trial of cases.

Issues & challenges

- **Intersecting laws:**
 - Usually, criminal law deals with issues that are seen as an offence against the broader society or state while civil law deals with loss to a person.
 - However, the CrPC includes provisions for maintenance of wife and children after divorce. It also allows compounding of some offences by the affected person, which means the accused person is acquitted.
 - The question is whether such matters should be dealt with under the civil code. The new Bills retain these provisions.
- **Creation of a reformatory system rather than a punitive system:**
 - There is a move towards this by making community service as a form of punishment.
 - However, several minor offences (such as keeping an unauthorised lottery office, which carries a maximum penalty of six months imprisonment) are not compoundable, which means they will go through the process of trial and conviction.
- **Maintenance of public order and the process of criminal prosecution in the same law:**
 - The CrPC has provisions charting out the process of arrest and trial as well as items such as Section 144 that empower the district magistrate to impose various restrictions. The new Bill retains this structure.
- **Codification of SC's directions:**
 - Experts are questioning whether various directions of the Supreme Court of India have been codified in these proposed laws.
 - The Bill codifies the procedure for mercy petitions. However, there is no codification of various directions related to arrests and bail.
- **Question over updation of gender related offences:**
 - The Bill is in line with the Supreme Court judgment which struck down the offence of adultery.
 - Section 377 of the IPC, which was read down by the Court to decriminalise same sex intercourse between consenting adults has

been dropped; consequently, the parts retained by that judgment including rape of a male adult and bestiality have also been removed.

- **Overlap with special laws:**

- The IPC was enacted in 1860 as the principal law specifying offences and penalties.
- Since then, several laws have been enacted to deal with specific offences.
- However, the IPC and the Bill to replace it continue to specify some of these offences and the applicable penalties.
- This leads to duplication as well as inconsistency across these laws.
- In some cases, the penalties are different; also, a person may face prosecution under different laws for the same action.

Way ahead

- These Bills will become the basis of the criminal justice system.
- The envisioned criminal law reforms must be made in a manner that fosters the rule of law and fortifies the pursuit of justice for aeons to come.

Daily Mains Question

[Q] What is the significance of revamping the criminal justice system in India? What are the issues & challenges? Suggest the way out of it.