LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

(ISSN: 2583-7753)

Volume 3 | Issue 1

2025

PRESSING NEED FOR REFORMING ARCHAIC LEGAL PROVISIONS OF CRIMINAL LAW AND SPEEDY JUSTICE IN INDIA

Abhay Gupta[1] & Shaiwalini Singh[2]

I. ABSTRACT

The criminal justice system of India operates within the confines of colonial-era statutes that no longer align with contemporary constitutional values. Despite the country's progress, critical criminal laws like the Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act continue to embody outdated principles focused on control rather than rights protection. This paper critically examines the persistence of archaic legal provisions and their contribution to the delay in justice delivery. It evaluates the new legislative attempts through the Bharatiya Nyaya Sanhita, Bharatiya Nagrik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam, highlighting the gaps and opportunities these reforms present. Drawing comparative insights from jurisdictions like the United States, United Kingdom, Canada, Singapore, and Germany, the study identifies best practices that could guide India's reform journey. It argues for systemic changes including statutory timeframes, judicial capacity building, technology integration, forensic upgrades, and stronger victim protection mechanisms. The study concludes that decolonizing criminal law must go beyond symbolic renaming and must aim at achieving substantive fairness, efficiency, and human dignity. Only through comprehensive, sustained, and inclusive reforms can the promise of speedy justice under the Indian Constitution become a reality.

[1] 10th semester, BBA.LLB(H) Student at Amity University Lucknow Campus.
[2] Assistant Professor at Amity University Lucknow campus.

 (ISSN: 2583-7753)

II. KEYWORDS

Archaic Criminal Laws, Speedy Justice, Criminal Law Reform, Judicial Delay, Comparative Criminal Systems.

III. INTRODUCTION

A. Contextual Background and Rationale of the Study

The criminal law system in India traces its roots to the colonial governance of the British Empire, which introduced codified laws not necessarily intended to serve the indigenous populace but rather to protect the ruling interests of the Crown. Laws such as the Indian Penal Code, 1860, the Code of Criminal Procedure, 1898 (later replaced by CrPC, 1973), and the Indian Evidence Act, 1872 were primarily instruments of maintaining law and order under colonial rule rather than safeguarding fundamental rights or ensuring equitable justice.[3] Despite the transformation of India's political identity post-independence, the criminal laws remained largely unchanged in philosophy and structure, leading to systemic challenges in contemporary society.[4]

The reliance on Victorian-era statutes has resulted in a criminal justice system that struggles with delays, procedural complexities, and antiquated notions of crime and punishment. The Indian judiciary has repeatedly flagged the incompatibility of certain penal provisions with the constitutional guarantees under Articles 14, 19, and 21 of the Constitution of India.[5] A glaring example is the erstwhile Section 377 of the Indian Penal Code, which criminalized consensual homosexual acts until it was struck down in *Navtej Singh Johar v. Union of India*.[6] This judgment underscored the urgent necessity for periodic revision and reform of criminal statutes to align them with dynamic societal values and constitutional morality.

[3] 2 DD Basu, Constitution of India 201 (2010).
[4] K.T. Thomas, 'Colonial Hangover in Indian Penal Laws' (2012) 2 SCC J-17.
[5] India Const. art. 14, 19, 21.
[6] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

 (ISSN: 2583-7753)

The archaic nature of criminal law also exacerbates judicial delays. According to the National Judicial Data Grid, as of 2024, over 4.8 crore cases are pending in Indian courts, out of which around 25% relate to criminal matters.[7] Procedural rigidities embedded within the CrPC, such as outdated summons processes, recording of evidence, and trial adjournments, have compounded the delay in the delivery of justice.[8] The maxim "justice delayed is justice denied" finds alarming relevance here, making the quest for speedy justice not merely desirable but constitutionally imperative.

The rationale for this study emerges from a pressing constitutional and human rights concern. Article 21 of the Constitution guarantees the right to life and personal liberty, and this has been interpreted by the Supreme Court to include the right to a fair and speedy trial in *Hussainara Khatoon v. State of Bihar*.[9] The criminal justice system's failure to deliver timely justice often results in prolonged incarceration of undertrial prisoners, leading to a grave violation of fundamental rights. As per the Prison Statistics of India 2022, nearly 76% of the prison population comprises undertrial prisoners, reflecting systemic inertia.[10]

Additionally, the evidentiary standards set out under the Indian Evidence Act, 1872, have not fully kept pace with the advances in forensic science, electronic evidence, and digital documentation. Courts have had to rely extensively on judicial creativity to admit and evaluate new forms of evidence, creating inconsistencies and uncertainties in criminal trials. The legislative response to these challenges, such as the Information Technology Act, 2000, remains fragmentary and insufficient to overhaul the primary structure of criminal evidence laws.[11]

[7] National Judicial Data Grid, https://njdg.ecourts.gov.in/njdgnew/ (last visited Apr. 25, 2025).
[8] Law Commission of India, Report No. 239, Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities (2012).
[9] Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81.
[10] National Crime Records Bureau, Prison Statistics India 2022, Ministry of Home Affairs, Government of India.
[11] Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

The government's recent efforts to replace the Indian Penal Code with the Bharatiya Nyaya Sanhita, the Code of Criminal Procedure with the Bharatiya Nagrik Suraksha Sanhita, and the Indian Evidence Act with the Bharatiya Sakshya Adhiniyam mark a historic move towards decolonizing and modernizing criminal law.[12] However, mere statutory replacement is not sufficient unless backed by structural reforms in policing, investigation, judicial administration, and access to justice frameworks.

Internationally, legal systems undergo periodic revisions to maintain pace with evolving notions of human rights, crime typologies, and technological advancement. The United Kingdom has undertaken extensive criminal law consolidation projects. The United States through the Federal Speedy Trial Act of 1974 mandates specific timeframes within which criminal trials must commence. India, by contrast, continues to grapple with procedural bottlenecks inherited from a colonial past, thereby necessitating a thorough overhaul both in letter and spirit.

B. Historical Evolution of Indian Criminal Laws: From Colonialism to Present Day

The foundation of Indian criminal law was laid during the British colonial rule, aiming more at controlling the native population than securing justice. Before colonial codification, India had diverse legal traditions based on religious laws, customary practices, and regional norms.[13] The British found this plurality inconvenient for governance and introduced a uniform legal framework to ease administrative control.

The drafting of the Indian Penal Code, 1860 under the leadership of Lord Macaulay marked a watershed moment. The Code borrowed heavily from English criminal law, Roman law principles, and French penal codes but was tailored to suit colonial

[12] Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India); Bharatiya Nagrik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India); Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023 (India).
[13] Marc Galanter, 'The Displacement of Traditional Law in Modern India' (1968) 24 Journal of Social Issues 65.

priorities.[14] It introduced standardized definitions of offences and punishments, disregarding local socio-cultural realities. The primary objective remained the protection of the British Empire's authority rather than the promotion of individual rights or restorative justice.[15]

The procedural structure followed with the enactment of the Code of Criminal Procedure, 1898. It systematized investigation, trial, and sentencing but vested disproportionate powers in the police and executive, allowing rampant misuse.[16] Similarly, the Indian Evidence Act, 1872 attempted to bring rationality in the proof of facts but imposed a rigid adversarial system unsuited to Indian conditions. These laws reflected a colonial mindset where subjects were presumed to be inherently suspect.[17]

Post-independence, India chose to retain the existing criminal laws for the sake of continuity and stability. The Constituent Assembly debated but deferred immediate comprehensive reforms. Some modifications were made, notably the replacement of CrPC 1898 with the Code of Criminal Procedure, 1973, incorporating safeguards like bail provisions and speedy trial mandates.[18] However, the core structure of criminal law remained untouched, preserving colonial biases like the emphasis on retribution over rehabilitation.

Judicial intervention played a key role in reshaping criminal jurisprudence. In *Maneka Gandhi v. Union of India*, the Supreme Court broadened the interpretation of Article 21, holding that procedure must be "right, just, and fair," not arbitrary or oppressive.[19] Despite such progressive interpretations, archaic laws like Section 124A IPC (sedition) continued to exist, frequently invoked to suppress dissent.

[14] K.T. Thomas, 'Colonial Hangover in Indian Penal Laws' (2012) 2 SCC J-17.
[15] Upendra Baxi, 'The Colonial Reasoning of Indian Penal Law' (2008) 50(1) Journal of Indian Law Institute 12.
[16] Law Commission of India, 14th Report on Reform of Judicial Administration (1958).
[17] Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).
[18] Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
[19] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

C. Definitional Clarity: Archaic Provisions, Speedy Justice, and Legal Reform

The term "archaic provisions" refers to outdated legal norms embedded in statutes that fail to resonate with modern democratic, constitutional, and societal values. These are laws enacted in a specific historical and colonial context, often retaining obsolete definitions of offences, disproportionate punishments, and narrow procedural constructs.[20] Provisions like Section 124A IPC on sedition, introduced in 1870 to suppress freedom movements, or Section 309 IPC criminalizing suicide attempts, illustrate laws that are disconnected from contemporary human rights jurisprudence.[21] Their continued presence reflects not legislative oversight but a structural inertia within the criminal justice system.

Archaic laws are not only old. They become problematic when they hinder justice, violate constitutional rights, or perpetuate social discrimination. A law may be archaic even if amended, if its core logic reflects colonial ideas of deterrence, not restorative justice. For instance, while procedural laws have evolved, the trial process in many subordinate courts still follows a script written by the colonial state—formalistic, time-consuming, and inaccessible to common citizens.[22]

Speedy justice is not just about fast disposal of cases. It is a constitutional value enshrined under Article 21 of the Constitution. In *Hussainara Khatoon v. State of Bihar*, the Supreme Court held that a speedy trial is part of the right to life and personal liberty.[23] Speed in this context means efficient, fair, and proportionate trial processes. Delay dilutes justice. Victims lose faith. Accused remain stigmatized or incarcerated without adjudication. Society becomes cynical toward law enforcement.

Delay in justice delivery happens when the system is burdened with procedural technicalities. Witnesses often turn hostile due to prolonged trials. Forensic reports arrive

[20] K.T. Thomas, 'Colonial Hangover in Indian Penal Laws' (2012) 2 SCC J-17.
[21] Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).
[22] Law Commission of India, 14th Report on Reform of Judicial Administration (1958).
[23] Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81.

late. Investigations drag on. Courts get adjourned repeatedly. The problem is not only infrastructure or manpower. The problem lies in procedural rules that lack flexibility. Sections requiring mandatory preliminary inquiries or dated summons service systems slow the process.[24]

Legal reform aims at systemic correction. It involves review, amendment, or replacement of laws that no longer serve their purpose. Reforms are required not only in text but in interpretation, implementation, and institutional design. Reform, in criminal law, must focus on balancing retribution, deterrence, rehabilitation, and victim rights. The Malimath Committee Report (2003) recommended shifting from adversarial to inquisitorial elements, improving investigation, and enabling victim participation.[25] However, reforms have largely remained piecemeal.

The introduction of the Bharatiya Nyaya Sanhita, Bharatiya Nagrik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam in 2023 indicates an intent to reform, but terminology alone doesn't assure transformation. If new laws preserve the same outdated frameworks with cosmetic modifications, the reform becomes nominal.[26] Real reform needs substantive change—ensuring laws are humane, modern, and effective.

Definitional clarity is critical for understanding how law impacts justice. Without clearly defining what constitutes "archaic," "reform," or "speedy justice," policymaking becomes vague. Courts, too, interpret these ideas inconsistently. For example, in Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225, the court laid down guidelines on delay but left ambiguity on enforceability of speedy trial rights.[27] A clear legislative vision is missing.

[24] Law Commission of India, Report No. 239, Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities (2012).
[25] Committee on Reforms of Criminal Justice System, Government of India (Malimath Committee Report, 2003).
[26] Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India); Bharatiya Nagrik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India); Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023 (India).
[27] Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225.

D. Research Questions

1. How have archaic criminal laws historically shaped the Indian criminal justice system, and why is their reform essential for safeguarding constitutional rights today?
2. What are the primary reasons for delay in criminal trials in India, and how do these delays impact the fundamental right to speedy justice under Article 21 of the Constitution?
3. What lessons can India adopt from comparative international jurisdictions to modernize its criminal law and judicial processes for achieving timely and substantive justice?

E. Objectives of the Study

1. To critically analyze the impact of archaic criminal laws on justice delivery in India and assess the need for their urgent reform.
2. To examine the causes of delay in the Indian criminal justice system and evaluate how procedural inefficiencies affect the rights of victims and accused persons.
3. To propose reformative measures by drawing comparative insights from international best practices aimed at ensuring speedy, fair, and effective criminal trials in India.

IV. THE ARCHAIC FRAMEWORK OF INDIAN CRIMINAL LAW

The Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872 continue to form the backbone of Indian criminal law. Their structure remains deeply rooted in colonial objectives. These laws were never designed to protect individual freedoms. They aimed at controlling native populations and preserving

imperial order.[28] That legacy continues. Many provisions in these laws reflect punitive overtones, systemic rigidity, and disproportionate state control over personal liberty.

Section 124A of the IPC on sedition was enacted to curb freedom of speech. It criminalizes any speech that may bring the government into hatred or contempt. Courts have narrowed its scope in Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955, but it is still frequently misused.[29] Even as demands for its repeal grew, the state has used it against journalists, students, and political dissenters. Its persistence indicates how deeply archaic colonial laws are embedded in the legal framework.

Another example is Section 309 of the IPC, which criminalized attempted suicide. It presumed that a person who failed to kill themselves deserved penal punishment. This Victorian logic was criticized as insensitive to mental health realities. Though the Mental Healthcare Act, 2017 has effectively decriminalized it, Section 309 still exists in statute books, symbolizing outdated moral judgments.[30] Mere non-enforcement cannot justify the retention of such provisions.

Procedural aspects are equally rigid. The Code of Criminal Procedure follows a formal, hierarchical process that often works against the marginalized. Investigation delays, poor police training, and outdated summons systems cause inefficiency. Undertrial prisoners suffer the most. According to Prison Statistics India 2022, more than 76% of inmates in Indian jails are undertrials.[31] They are imprisoned for years without trial, not because they are guilty but because the system is slow and structurally flawed.

Witness protection is absent in many regions. Courts often depend on oral testimonies without safeguards. Witnesses turn hostile due to fear or inducement. The Indian Evidence Act has no comprehensive provisions for digital or forensic evidence. The

[28] K.T. Thomas, 'Colonial Hangover in Indian Penal Laws' (2012) 2 SCC J-17.
[29] Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.
[30] Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India); Mental Healthcare Act, 2017, No. 10, Acts of Parliament, 2017 (India).
[31] National Crime Records Bureau, Prison Statistics India 2022, Ministry of Home Affairs, Government of India.

absence of modern evidentiary standards creates loopholes for acquittals. In *State of Karnataka v. M. Devendrappa*, the court noted that procedural lapses often defeat substantial justice.[32]

The definition of crimes itself needs reconsideration. Offences like adultery and homosexuality were long criminalized. They reflected colonial morality, not constitutional values. It took decades for courts to strike them down. In *Joseph Shine v. Union of India*, adultery was decriminalized. In *Navtej Singh Johar v. Union of India*, the court upheld the rights of the LGBTQ+ community.[33] These changes did not come from legislative reform. They came from judicial activism that sought to remove outdated notions from the law.

Preventive detention laws continue to exist without effective judicial oversight. They provide the state wide powers to detain individuals without trial. These provisions undermine basic constitutional safeguards. In *A.K. Gopalan v. State of Madras*, the Supreme Court upheld preventive detention as constitutional. Later, in *Maneka Gandhi v. Union of India*, the court overturned the Gopalan doctrine and broadened Article 21. Yet preventive detention remains a tool of executive overreach.[34]

Bail laws reflect a similar colonial design. The default response to arrest is detention. The burden of proving bail-worthiness lies with the accused. This contradicts the presumption of innocence. The Supreme Court in *Satender Kumar Antil v. CBI*, observed that the excessive pretrial detention violates Article 21 and that bail should be the norm, not jail.[35] Despite such pronouncements, courts and police continue to deny bail mechanically.

The language of these laws is another issue. It is complex, archaic, and filled with legal jargon. This makes criminal law inaccessible to ordinary people. The poor and illiterate

[32] State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89.
[33] Joseph Shine v. Union of India, (2019) 3 SCC 39; Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[34] A.K. Gopalan v. State of Madras, AIR 1950 SC 27; Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[35] Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.

often cannot understand the charges against them. Legal aid remains patchy. This violates the principle of fair trial. Justice becomes a privilege, not a right.

V. THE MODERNIZATION INITIATIVE: REPLACING OLD CODES

A. Bharatiya Nyaya Sanhita, 2023: Replacing the IPC, 1860

Indian Penal Code, 1860 was drafted in colonial times. It was aimed at controlling a colonised population, not empowering citizens. It carried British notions of morality, order, and imperial interest. Over 160 years later, the socio-political fabric of India changed but the penal code remained the same in spirit. That disconnect led to mounting pressure for reform. The Bharatiya Nyaya Sanhita, 2023 (BNS) replaced the IPC to reflect constitutional values, Indian realities, and contemporary criminal challenges.[36]

The BNS is not a mere rearrangement or renumbering of the IPC. It is a rewritten code. New definitions, terms, and offences appear. Old colonial expressions vanish. It embodies the idea of justice in the language of rights, responsibility, and security. The Preamble of the Act states it aims to consolidate and amend the law relating to offences in India.[37]

The sedition law, which was under judicial and academic scrutiny, is removed. Instead, the Sanhita introduces a modern clause under Section 150 — penalising acts that endanger the sovereignty, unity, and integrity of India. This clause is framed in constitutional language. It ensures freedom of speech is not arbitrarily restricted. At the same time, it penalises attempts to incite secession or armed rebellion.[38]

Offences like terrorism and organised crime, which had no comprehensive home in the IPC, are now included. Section 113 of BNS defines organised crime. Section 111 defines terrorist acts. These were long-awaited inclusions. The absence of such provisions earlier

[36] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, Statement of Objects and Reasons.
[37] Ibid, Preamble and s. 1.
[38] Ibid, s. 150.

led to fragmented prosecutions under special laws like UAPA and MCOCA. The BNS brings them under mainstream criminal law.[39]

Mob lynching is criminalised. Murder by a group based on caste, religion, or ethnicity is specifically covered under Section 103. The IPC did not acknowledge these group-based hate killings directly. BNS does. It reflects the post-2010 rise in communal and identity-based violence. It also aligns with the constitutional mandate of fraternity.[40]

New offences addressing gender-based crimes have been introduced. For instance, sexual offences using technology or committed in cyberspace are addressed. The immunity to marital rape is narrowed. Intercourse with a minor wife is now an offence. This aligns the Sanhita with the Protection of Children from Sexual Offences Act, 2012. The code retains the core definitions from IPC Section 375, but adds clarity and precision in the language of consent and harm.[41]

Community service has been introduced as a punishment for minor offences. This reflects a shift towards restorative justice. It recognises that not every offence requires incarceration. It also acknowledges the problem of overcrowded prisons and the need to integrate offenders into society through constructive participation.[42]

Jurisdiction has been broadened. BNS applies to Indian citizens outside India, and to offences committed on Indian ships or aircrafts. It also extends to cybercrimes where the effect is felt within India. Section 4 elaborates on the extra-territorial jurisdiction of the Sanhita.[43] The repeal clause under Section 356 formally repeals the IPC, 1860. However, offences and procedures pending under IPC continue to be governed by it unless specified otherwise. This ensures continuity and avoids procedural vacuum during transition.[44]

[39] Ibid, ss. 111, 113.
[40] Ibid, s. 103.
[41] Ibid, ss. 64–68.
[42] Ibid, s. 4(f); see also Chapter II on punishments.
[43] Ibid, s. 4.
[44] Ibid, s. 356.

B. Bharatiya Nagrik Suraksha Sanhita, 2023: Replacing the CrPC, 1973

Criminal Procedure Code, 1973 was procedural in design but colonial in character. It focused more on sovereign control than individual liberty. It dragged cases in loops. Witnesses suffered. Victims were sidelined. Speed of trials was a myth. In contrast, Bharatiya Nagrik Suraksha Sanhita, 2023 promises procedural justice with efficiency. It replaces the CrPC with an India-specific, digital-first, citizen-centred code.[45]

The very name reflects change. 'Nagrik Suraksha' means citizen protection. Not imperial policing. It flips the legacy model. The citizen now is central to investigation and prosecution. The state is made accountable through timelines, digital tracking, and structured police oversight.[46]

First reform — timeline enforcement. Section 193 mandates that chargesheets be filed within 90 days, extendable only by magistrate's reasons. Delay beyond 180 days can nullify the proceeding. No such urgency existed under CrPC. This change forces discipline on police.[47]

Second — e-filing and electronic mode. Section 530 mandates all police stations to digitise FIRs, chargesheets, and case diaries. Digital signatures are valid. Summonses can be served by encrypted electronic means. The process becomes accessible. Paper trails are replaced with audit trails.[48]

Third — victims empowered. The right to receive updates, the right to assist prosecution, and the right to claim compensation is codified. Witnesses are to be protected under an express Witness Protection Scheme in Chapter XXIX. Compensation mechanisms are streamlined. No longer are victims forgotten after the FIR.[49]

[45] Bharatiya Nagrik Suraksha Sanhita, 2023, No. 46 of 2023, Preamble.
[46] Ibid, Chapter I, s. 1.
[47] Ibid, s. 193.
[48] Ibid, s. 530.
[49] Ibid, Chapter XXIX, ss. 474–480.

Fourth — timelines for trials. Section 346 and 350 lay down specific periods for concluding evidence and delivering judgments. Adjournments must be justified. The Court is to record reasons for delay. Trial courts are placed under High Court superintendence, with power to monitor delay. Speed becomes enforceable not ideal.[50]

Fifth — plea bargaining is expanded. Chapter XXIII allows for pre-trial resolution with consent. It avoids unnecessary incarceration. Court retains discretion to ensure fairness. Sentence reduction is permitted. This was optional under CrPC, now structured under BNSS.[51]

Sixth — arrest reforms. Section 35 makes arrest subject to proportionality. No arrest in offences punishable below 3 years unless justified. Reasons must be recorded. DSP level officer must approve arrest of aged or infirm persons. Section 36 bars unnecessary restraint. Custodial rights like access to lawyer, medical check, and intimation to relatives are enforced. India's custodial jurisprudence now has statutory support.[52]

Seventh — forensic mandate. Section 176 requires forensic examination in all offences punishable over 7 years. Videography of search and seizure is mandatory. Section 315 insists medical examination of rape victims be completed immediately. The code shifts reliance from oral evidence to scientific proof.[53]

Eighth — trial in absentia. Chapter XXVI provides for trial of proclaimed offenders even when they abscond. This ensures justice is not stalled due to fugitive conduct. However, safeguards exist including legal aid and publication notices.[54]

Ninth — adjournments are regulated. Section 346 provides maximum number of adjournments unless exceptional reasons exist. Section 530 requires reasoned orders for

[50] Ibid, ss. 346, 350.
[51] Ibid, Chapter XXIII, ss. 289–298.
[52] Ibid, ss. 35, 36.
[53] Ibid, ss. 176, 315.
[54] Ibid, Chapter XXVI, ss. 353–357.

 (ISSN: 2583-7753)

delay. This curbs abuse of process by habitual delay-seekers. Courts become accountable for time.

Tenth — digital evidence is institutionalised. Section 2(1)(g) and related provisions clarify that electronic records, recordings, messages, and video content are admissible without extensive certification. This aligns with Bharat's increasing reliance on digital platforms. Virtual hearings, summons, and evidence submissions become standardised.

Police reforms are embedded. Chapter II creates the Directorate of Prosecution. Police officers are monitored. For serious crimes, DSP rank officer must supervise. Duty to record reasons for not arresting is mandatory. Procedural discretion becomes structured power. Section 53 demands entry of arrest reasons in police diaries. Restorative justice makes a comeback. Courts may order community service under Section 20. Minor offences need not result in imprisonment. It restores the offender to community without stigma. This supports prison reform and reduces overcrowding.[55]

C. Bharatiya Sakshya Adhiniyam, 2023: Replacing the Indian Evidence Act, 1872

Indian Evidence Act, 1872 was a colonial instrument. Crafted to assist colonial courts in enforcing imperial laws. It reflected 19th-century standards of truth and admissibility. Its language was verbose. Its scope, outdated. It lacked clarity on digital evidence. And remained inert to advancements in forensic and technological domains. Bharatiya Sakshya Adhiniyam, 2023 replaces this legacy with a new statutory framework that is leaner, sharper, and future-oriented.[56]

Total sections reduced to 170. Old structure re-codified. Definitions made precise. Language refined to plain, constitutional English. Preamble removed. Instead, functional

[55] Ibid, s. 20.
[56] Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, Preamble.

clarity emphasized throughout the provisions. The structure is logical, moving from relevancy to admissibility and burden.[57]

Electronic evidence is central now. Section 2 and Section 61 define electronic and digital records as primary evidence. No longer secondary or fragile proof. Certificates under Section 65B of the repealed Evidence Act are simplified. Now, chain of custody and hash values are deemed sufficient. Section 63 provides for admissibility of information stored in digital form even if accessed remotely or stored in the cloud.[58] Presumption clauses made more rational. Courts may now presume authenticity of secure electronic records under Section 66. Digital signatures and secure communication enjoy statutory presumptions. It balances technological trust with procedural safeguards. The law now embraces how people communicate, store, and transact.[59]

Oral evidence rules are retained but clarified. Section 57 affirms that oral evidence must be direct. However, courts may allow voice and video evidence through remote testimony. This facilitates victim-friendly processes, especially in sensitive cases. Section 59 recognizes statements recorded over secure digital platforms.[60]

Admissions and confessions are re-structured. Section 15 to 25 deals comprehensively with when confessions are valid. It codifies principles from key Supreme Court rulings. Confessions obtained under coercion or threat are inadmissible. Confessions made to police officers remain excluded unless recorded by a Magistrate. But confessions recorded electronically in the presence of legal counsel gain recognition under new procedural safeguards.[61] Presumptions under customs and official acts are retained but tightened. The court must weigh digital footprint and documentary integrity before presuming authenticity. Mere production is not enough. The party must show probative

[57] Ibid, s. 1–3.
[58] Ibid, ss. 2(1)(d), 61, 63.
[59] Ibid, ss. 66–67.
[60] Ibid, ss. 57, 59.
[61] Ibid, ss. 15–25.

reliability. Section 115 modifies the approach to official records. Section 118 simplifies burden in commercial communications.[62]

Burden of proof restructured under Sections 104–117. Accused's burden remains minimal. Prosecution must prove beyond reasonable doubt. But rebuttable presumptions are clearer now. Especially in cases involving sexual assault, dowry death, and cybercrimes. Section 113 permits reverse burden in economic offences if statutory requirements are met.[63] Expert opinion under Section 45 of the old Act is now clarified. Section 50 to 55 expand the list of scientific experts. Forensic experts, handwriting experts, audio-visual analysts, and cyber specialists are expressly included. Courts may summon state-verified experts on their own motion. No longer limited to party-supplied reports.[64]

Judicial notice widened. Section 56 lists what facts courts must or may take notice of. Includes international treaties, public domain statistics, and government notifications in digital gazettes. Reduces need for formal proof of well-known facts.[65] Hearsay exceptions are redefined. Dying declarations, res gestae, and business entries are retained with clearer language. Sections 24–31 create clarity around when multiple statements may be admitted without primary deponent. This enhances reliability in cases with untraceable or vulnerable witnesses.

D. Comparative Study: Key Changes Introduced and Their Impact

Sedition is repealed. Section 124A of IPC is gone. Replaced by a constitutional clause under Bharatiya Nyaya Sanhita penalising acts that endanger India's unity and sovereignty. Intent-based threshold is introduced. Freedom of speech remains safeguarded. Blanket suppression is avoided.[66] Mob lynching now a standalone offence. Earlier, lynching had to be prosecuted under general murder provisions. Section 103 of

[62] Ibid, ss. 115–118.
[63] Ibid, ss. 104–117.
[64] Ibid, ss. 50–55.
[65] Ibid, s. 56.
[66] Bharatiya Nyaya Sanhita, 2023, s. 150.

BNS criminalises targeted mob violence based on identity. This addresses communal incidents which went under-reported. Specificity ensures focused deterrence.[67]

Organised crime and terrorism brought under core penal law. IPC had no direct provisions. BNS includes Section 111 and Section 113 for terrorist acts and syndicate crimes. These shift dependence away from ad hoc state laws. Uniformity is achieved. Jurisdictional ambiguity reduced.[68] Marital rape of minor is now an offence. IPC Exception 2 to Section 375 allowed sexual intercourse with minor wife above 15. This anomaly is corrected. Bharatiya Nyaya Sanhita aligns with POCSO and constitutional child protection mandates. Marriage no longer grants immunity to rape of minors.[69] Community service introduced. A novel punishment in Indian criminal law. Reflects restorative justice. Helps reintegrate minor offenders. Decongests prisons. Also adds value to public spaces and welfare projects.[70]

Police arrest powers are rationalised. Under BNSS, arrests for crimes below three years require justification. Arrest is no longer the default. Mandatory recording of reasons introduced. This aligns with Supreme Court jurisprudence on personal liberty. Arbitrary arrests are now subject to judicial review.[71] Forensic investigation made mandatory in serious crimes. BNSS provides clear instructions for forensic collection and recording. Digital audio-video capture of search and seizure made compulsory. This strengthens credibility of investigations. Reduces reliance on oral testimony.[72]

Charge sheets to be filed within 90 days. Extension allowed only with reasons recorded by magistrate. BNSS enforces procedural timelines. CrPC had scope for unlimited delay. Accused often languished in undertrial custody. New timelines uphold Article 21 rights.[73] Victim-centric reforms introduced. Compensation mechanism streamlined.

[67] Ibid, s. 103.
[68] Ibid, ss. 111, 113.
[69] Ibid, s. 64; also see POCSO Act, 2012.
[70] Ibid, s. 4(f), s. 20.
[71] Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 35, 36.
[72] Ibid, ss. 176, 85.
[73] Ibid, s. 193.

Right to assist prosecution codified. Witness protection added as a statutory chapter. Victims are no longer passive observers. They gain recognition as procedural stakeholders.[74]

Electronic summonses and trials institutionalised. Under BNSS and BSA, courts and police must adopt digital service methods. Digital evidence is now primary not secondary. Electronic records enjoy statutory presumption of reliability if integrity is proven. This simplifies cybercrime and online fraud prosecution.[75] Plea bargaining extended. Earlier underutilised. Now structured and encouraged. Sentence discount permitted where confession is voluntary and victim is compensated. Helps reduce pendency in trial courts. Also avoids unnecessary incarceration. Trial in absentia allowed for proclaimed offenders. Under BNSS, if accused absconds despite notice, trial can proceed. Safeguards such as legal aid and public notice maintained. This curbs deliberate stalling tactics. Long-pending economic offences benefit.

E. Stakeholder Responses: Judiciary, Legal Fraternity, and Civil Society

The judiciary responded to the new criminal codes with cautious optimism. Several judges acknowledged that a legislative overhaul was overdue. Senior judges from the Supreme Court remarked during legal conferences that replacing colonial-era laws was a positive step in principle. But many judges also flagged concerns about implementation timelines, training deficits, and clarity in procedural language. In various high courts, judges expressed unease over the sudden repeal of familiar provisions without robust transitional mechanisms.[76] Judicial hesitation is less about opposition and more about uncertainty in applying a novel system without enough preparatory infrastructure.

Some retired judges went further. They criticized the Bharatiya Nyaya Sanhita, 2023, for reproducing colonial ideas in new language. Justice Madan B. Lokur, for example,

[74] Ibid, Chapter XXIX, ss. 474–480.
[75] Bharatiya Sakshya Adhiniyam, 2023, ss. 61–66.
[76] Bar & Bench, 'Judges Flag Lack of Clarity in New Criminal Codes' (2023), https://www.barandbench.com (last visited Apr. 25, 2025).

publicly stated that many "reforms" were superficial and lacked substantive transformation of justice philosophy.[77] The judiciary's core concern is not the renaming of laws but whether the new codes truly shift away from punishment-focused jurisprudence toward restorative justice. Without institutional restructuring, mere code replacement may not bring desired results.

The legal fraternity's reaction has been sharply divided. Senior advocates welcomed the consolidation of provisions and efforts to introduce victim-centric language. But many criminal law practitioners raised alarms over ambiguous terminologies and procedural gaps in the new statutes. Bar councils of several states passed resolutions urging the government to defer implementation until lawyers receive training and awareness programs. Trial lawyers were particularly worried about the strain on subordinate courts already struggling with case backlogs. They pointed out that the new procedural sections, while well-intentioned, could result in more adjournments due to confusion.[78]

Legal academics were more critical. Many pointed out that the new codes retained most of the old structure. They argued that provisions like sedition, now framed as "acts endangering sovereignty," are just cosmetic edits with chilling implications on dissent. Scholars from National Law Universities published articles dissecting provisions such as community service penalties and digital trial mechanisms. Their conclusion was that the legislative changes lack constitutional imagination and procedural innovation.[79]

Civil society reactions were varied, layered, and issue-specific. Human rights organisations issued joint statements warning that the new laws may expand state surveillance powers. The Internet Freedom Foundation flagged concerns over digital search and seizure clauses in the Bharatiya Nagrik Suraksha Sanhita, arguing these allow

[77] The Hindu, 'Justice Lokur Calls Criminal Law Reform Cosmetic' (2023), https://www.thehindu.com (last visited Apr. 25, 2025).
[78] Live Law, 'Bar Councils Seek Postponement of Criminal Law Implementation' (2024), https://www.livelaw.in (last visited Apr. 25, 2025).
[79] NUJS Law Review Editorial Board, 'The Bharatiya Codes: Reform or Rebranding?' (2023) 16 NUJS L. Rev. 33.

unchecked police access to private devices without proper judicial safeguards.[80] Feminist legal collectives questioned the framing of gender-based offences and the continued heteronormative language of sexual offences. LGBTQIA+ advocacy groups pointed out that criminal codes remain silent on hate crimes based on sexual orientation or identity.[81]

VI. DELAY IN CRIMINAL JUSTICE SYSTEM: CAUSES AND EFFECTS

Case pendency in India's criminal courts has reached alarming levels. As per the National Judicial Data Grid, over 4.8 crore cases were pending across courts in 2024. Of these, criminal cases accounted for more than 70% in the subordinate judiciary.[82] The delay is systemic, not incidental. Procedural rigidity, outdated investigation methods, manpower shortages, and inefficient case management mechanisms all contribute to this paralysis.

One primary cause is the outdated Code of Criminal Procedure, 1973. Its provisions reflect an era of manual processes, not digital efficiency. Summons and warrants still require physical delivery. Adjournments are frequent and poorly regulated. Trials stall when witnesses are not produced. The process of framing charges and examining evidence lacks timeliness. Section 309 allows for indefinite adjournments. This loophole leads to years-long trials, especially in sessions courts.[83]

Investigation delays add to the problem. Police departments lack trained personnel, forensic equipment, and time-bound procedures. First Information Reports (FIRs) are not registered promptly. Charge sheets are filed late. Forensic reports are delayed. Even basic collection of evidence like CCTV footage or mobile data suffers from bureaucratic red

[80] Internet Freedom Foundation, 'Analysis of Digital Surveillance Provisions in BNSS' (2023), https://www.internetfreedom.in (last visited Apr. 25, 2025).
[81] Lawyers Collective, 'Missing the Mark: Gender & Queer Concerns in Criminal Law Reform' (2024), https://www.lawyerscollective.org (last visited Apr. 25, 2025).
[82] National Judicial Data Grid, https://njdg.ecourts.gov.in/njdgnew/ (last visited Apr. 25, 2025).
[83] Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

tape. In cases of sexual offences, the delay in collecting medical evidence drastically weakens prosecution.[84]

Judicial vacancies remain another chronic issue. According to data released by the Ministry of Law and Justice, over 30% of posts in lower courts remain unfilled in several states. High Courts also function with nearly 40% sanctioned strength vacant in some regions.[85] Fewer judges lead to heavier dockets. Judicial fatigue sets in. Hearings get pushed. Important rulings are reserved for months. In rural districts, one judge may be handling both civil and criminal lists simultaneously. This structural burden kills urgency.

The lack of courtroom infrastructure exacerbates delay. Several district courts function without basic recording systems. Trial proceedings are handwritten. Courts lack audio-video facilities for evidence presentation. Witnesses must physically appear in court, often from distant places. Virtual hearings are rare in criminal trials. Hybrid models exist but are limited to urban metros. The absence of technological integration keeps the process slow and cumbersome.[86]

Bail hearings suffer from inconsistency. Magistrates frequently deny bail without assigning reasons. Undertrial prisoners stay in jail due to procedural defaults. In Satender Kumar Antil v. CBI, (2022) 10 SCC 51, the Supreme Court laid down detailed guidelines for bail under various stages of criminal proceedings, yet implementation remains weak. Delay in bail decisions causes unjust incarceration. It hits the poor disproportionately.[87]

Hostile witnesses delay trials even further. In many cases, witnesses retract or turn silent. Lack of a nationwide witness protection scheme discourages cooperation. The Supreme Court in *Mahender Chawla v. Union of India*, emphasized that delay and lack of security

[84] Law Commission of India, 239th Report on Expeditious Investigation and Trial (2012).
[85] Ministry of Law and Justice, Annual Report 2023, Government of India.
[86] Vidhi Centre for Legal Policy, 'Infrastructure Gap in Indian District Courts' (2022).
[87] Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.

are key reasons why witnesses back out. This collapse of prosecution narratives causes multiple re-hearings and retrials.[88]

Prosecutorial accountability remains minimal. Public prosecutors are often overburdened or poorly prepared. Their lack of case-specific diligence results in unnecessary adjournments. In sessions trials, prosecutors may appear without files or supporting officers. Courts have noted such inefficiency in multiple judgments. In *Zahira Habibullah Sheikh v. State of Gujarat*, the Supreme Court condemned the failure of the state machinery to ensure a fair and expeditious trial.[89]

Victims too face procedural marginalization. They are rarely kept informed. They do not have legal representation unless they approach the court themselves. Compensation schemes under Section 357A of CrPC are under-utilised. Many victims drop out or lose interest due to long trials. In criminal cases involving personal injuries or sexual assault, the psychological toll of repetitive appearances prolongs trauma.[90]

The effect of delay is multidimensional. Justice delivery gets compromised. Accused persons suffer reputational and economic loss. Innocents languish in jail while guilty ones walk free on technicalities. Victims lose trust. Society sees the law as sluggish. The legitimacy of the judiciary itself comes into question. When delay becomes the norm, deterrence collapses.

VII. COMPARATIVE PERSPECTIVES AND BEST PRACTICES

The United Kingdom underwent substantial criminal law reforms in the late twentieth century. The Criminal Procedure and Investigations Act 1996 introduced a duty upon prosecution and defense to disclose evidence early. Disclosure obligations reduced trial ambushes. It improved pre-trial clarity. Courts became stricter about setting deadlines for stages of criminal trials. The Woolf Reforms, through the Access to Justice Reports,

[88] Mahender Chawla v. Union of India, (2019) 14 SCC 615.
[89] Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374.
[90] Code of Criminal Procedure, 1973, § 357A, No. 2, Acts of Parliament, 1974 (India).

emphasized case management by judges, curtailing unnecessary adjournments.[91] Active judicial control reduced trial duration considerably in criminal as well as civil matters.

The United States implemented the Speedy Trial Act 1974 to enforce time-bound trials. The Act mandates that the trial must commence within seventy days from the filing of the information or indictment. Courts routinely dismiss cases with prejudice if prosecutors fail to comply. In *Barker v. Wingo*, the U.S. Supreme Court emphasized the need to balance four factors: length of delay, reason for delay, defendant's assertion of the right, and prejudice to defendant.[92] This multi-factor test offered an analytical framework to assess violations of speedy trial rights. Judicial tolerance for delay decreased sharply thereafter.

Singapore reformed its criminal procedure system by simplifying pre-trial processes. The Criminal Procedure Code 2010 introduced case conferences between prosecution and defense before the trial. Minor offences are diverted through community-based sentencing models like Short Detention Orders and Day Reporting Orders. The courts adopted strict adjournment policies. Judges intervene early to ensure that parties are trial-ready. Trials often conclude within months. The judiciary's commitment to time efficiency in Singapore has been studied as a model across jurisdictions.[93]

Germany follows a principle of judicial management of proceedings under Section 257 of its Code of Criminal Procedure. The court controls the entire flow of trial, limiting irrelevant evidence and discouraging repetition. The use of plea bargaining is codified for specific offences, ensuring quicker disposal while maintaining transparency. In 2013, Germany's Federal Constitutional Court in the Judgment of 19 March 2013 – 2 BvR 2628/10, underlined the need to safeguard the accused's procedural rights while

[91] The Right Honourable Lord Woolf, Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales (1996).
[92] Barker v. Wingo, 407 U.S. 514 (1972).
[93] Criminal Procedure Code 2010 (Singapore); Singapore Ministry of Law, Criminal Procedure Reform Reports (2010).

allowing efficiency reforms.[94] Germany balances due process and timeliness through active court oversight.

France's inquisitorial model under the Code de Procédure Pénale grants investigating magistrates sweeping powers during the pre-trial phase. It speeds up fact collection and curtails delays before trials. Judicial police collaborate closely with magistrates. Though the inquisitorial model has its critics, France demonstrates how early judicial involvement can reduce case pendency without necessarily diluting procedural fairness.[95]

Canada has developed structured delay management mechanisms post-*R. v. Jordan*. The Supreme Court established clear ceilings: eighteen months for cases in provincial courts and thirty months for cases in superior courts. Cases exceeding these ceilings are presumed prejudicial and are usually stayed unless exceptional circumstances exist. The Jordan decision significantly reshaped the judicial culture around delay in Canada.[96]

Australia's approach relies heavily on integrated court technology. The Evidence Act 1995 simplified admissibility standards for electronic evidence. Courts adopted electronic filing, video-link testimonies, and e-trials long before the pandemic. Initiatives like the Court Technology Enhancement Program transformed court administration. Pre-trial management techniques under the Criminal Procedure Acts of various states ensure that preliminary hearings screen weak cases early.[97]

South Africa, emerging from apartheid-era procedural oppression, reformed its criminal laws post-1994. The Constitution of South Africa, 1996, under Section 35(3)(d), guarantees the right to a trial to begin and conclude without unreasonable delay. The National Prosecuting Authority established specialized units to fast-track serious crime cases.

[94] Federal Constitutional Court, Judgment of 19 March 2013 – 2 BvR 2628/10 (Germany).
[95] Code de Procédure Pénale (France); Jacques Buisson, 'Judicial Management in French Criminal Procedure' (2014) 23 Criminal Law Forum 197.
[96] R. v. Jordan, 2016 SCC 27 (Canada).
[97] Evidence Act 1995 (Australia); New South Wales Law Reform Commission, Court Technology Enhancement Program Reports (2015).

Community courts were introduced to deal with minor offences promptly, emphasizing restorative justice over retribution.[98]

VI. RECOMMENDATIONS FOR REFORM AND SPEEDY JUSTICE

The first recommendation is to introduce statutory timeframes for investigation and trial completion. Drawing from the Speedy Trial Act, 1974 (USA) and the *R. v. Jordan*, India must legally mandate investigation to conclude within ninety days for minor offences and one hundred and eighty days for serious offences. Trials must commence within three months of charge framing. Statutory caps must be enforceable with dismissal sanctions if violated.[99]

Second, procedural laws must be further simplified. The Code of Criminal Procedure, 1973 should be restructured to remove obsolete procedural rituals. Section 309 CrPC should be amended to strictly prohibit adjournments except for rare unavoidable reasons. Adjournment orders must be reasoned in writing. Pre-trial case management hearings should become mandatory to ensure readiness of parties before trial starts.[100]

Third, massive judicial capacity expansion is crucial. The sanctioned strength of judicial officers must be increased by at least fifty percent over the next five years. Vacancies must be filled within three months of arising. The 120th Law Commission Report had already recommended judge-to-population ratio of 50 per million people, but India lags far behind at present with around 21 judges per million.[101]

Fourth, police investigation must be professionalized. Investigation wings should be separated from law and order duties, as recommended by the Second Administrative Reforms Commission. Specialized investigation units must be created in every district

[98] Constitution of the Republic of South Africa, 1996, § 35(3)(d).
[99] Speedy Trial Act of 1974, 18 U.S.C. §§ 3161–3174 (United States).
[100] Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
[101] Law Commission of India, 120th Report on Manpower Planning in Judiciary: A Blueprint (1987).

police headquarters. Training in cyber forensics, financial crimes, and scientific evidence gathering must be mandatory for all investigating officers.[102]

Fifth, forensic infrastructure must be strengthened. Every district must have a forensic laboratory within two years. Mobile forensic vans must be deployed for on-spot evidence collection. Forensic reports must be delivered within thirty days of sample submission. Delay in forensic reporting must entail administrative consequences for officials.[103]

Sixth, robust witness protection mechanisms are needed. The Witness Protection Scheme, 2018 must be given statutory backing. Special courts should anonymize sensitive witnesses. Protection measures like relocation, identity change, and in-camera trials must become mandatory in vulnerable cases. Witness attrition causes more delays than procedural defects.[104]

Seventh, technology must become integral to trial processes. All criminal courts must have video conferencing facilities. Examination of witnesses through remote links must be allowed routinely. E-filing of charge sheets, electronic issuance of summons, and online evidence presentation must be enforced. Lessons can be drawn from Singapore's technology-driven judiciary.[105]

Eighth, alternative dispute resolution must be encouraged for compoundable offences. Plea bargaining under Chapter XXIA of CrPC must be liberalized and popularized. Community service orders must be made available for petty offences. Courts must incentivize settlement mechanisms to decongest the trial docket.[106]

Ninth, bail reforms are overdue. Bail must be the norm, jail the exception, following the principles in *Satender Kumar Antil v. CBI*. Standardized bail conditions must be framed

[102] Second Administrative Reforms Commission, Fifth Report: Public Order (2007).
[103] National Crime Records Bureau, 'Crime in India 2022', Ministry of Home Affairs, Government of India.
[104] Witness Protection Scheme, 2018, Ministry of Home Affairs, Government of India.
[105] Singapore Judiciary, 'Technology Framework and Transformation Reports' (2021).
[106] Code of Criminal Procedure, 1973, Chapter XXIA, No. 2, Acts of Parliament, 1974 (India).

for different classes of offences. Surety requirements must be relaxed for economically weaker sections. Magistrates must record detailed reasons when denying bail.[107]

Tenth, trial monitoring units must be created at the High Court level. Every pending criminal case must be assigned a target disposal date. Special benches must be created to monitor compliance. Annual audits of pendency reduction must be published. Judicial accountability mechanisms must link promotion and performance appraisal with disposal rates.[108]

VII. CONCLUSION

The criminal justice system in India continues to operate on legal infrastructure built in the colonial era. The Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act were designed not for protecting rights but for maintaining control. Their foundational philosophies remain anchored in deterrence, hierarchy, and rigidity.[109] Even today, procedural entanglements, outdated offence definitions, and evidentiary limitations hamper justice.

Reform efforts have been episodic and often reactive. Most changes were cosmetic. Sections were renamed, penalties increased, but the structural dysfunction remained. The introduction of Bharatiya Nyaya Sanhita, Bharatiya Nagrik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam in 2023 may symbolically decolonize criminal law. Yet, these must not become exercises in rebranding. The codes must reflect democratic values, not repackage imperial tools.[110]

Delays in criminal trials have become a constitutional crisis. A system that imprisons undertrials for years without verdicts is unjust. Bail is routinely denied for petty offences. Courts function with inadequate staff. Police investigation is slow, under-equipped, and

[107] Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.
[108] Ministry of Law and Justice, Annual Report 2023, Government of India.
[109] K.T. Thomas, 'Colonial Hangover in Indian Penal Laws' (2012) 2 SCC J-17.
[110] Bharatiya Nyaya Sanhita, 2023, No. 45; Bharatiya Nagrik Suraksha Sanhita, 2023, No. 46; Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023 (India).

sometimes compromised. Prosecutors lack training and case-load balance. Judicial decisions are often delayed for want of clarity or coordination.[111] The cumulative result is erosion of faith in the rule of law.

Judicial precedents have pushed for reform. From *Maneka Gandhi v. Union of India*, to *Satender Kumar Antil v. CBI*, courts have stressed fairness, procedural equity, and the right to speedy trial. But judicial efforts alone cannot compensate for legislative inertia. The judiciary cannot re-write laws. It can only interpret. The onus lies on the legislature and executive to redesign the system with the urgency it deserves.[112]

Comparative legal systems show that speed, fairness, and reform can co-exist. Singapore's digitized trial model, Canada's statutory ceilings, and Germany's active judicial case management all offer templates. India can adapt them to its socio-legal context. Technology can reduce paperwork and adjournments. Judicial training can eliminate inconsistency. Institutional accountability must be tied to pendency reduction.[113]

Criminal law must stop functioning like an instrument of fear. It must become a mechanism of balance. One that protects victims, respects the accused, and maintains public order. A truly reformed system cannot prioritise punishment over rehabilitation. It must protect fundamental rights during every stage of proceedings—from FIR to sentencing.[114] Criminal laws must not mirror power structures. They must challenge them.

Reform must be continuous, not one-time. Law Commissions must be empowered to function regularly. Parliamentary Standing Committees must hold public consultations on all major legal changes. Victim impact, police reform, forensic capacity, legal aid

[111] Ministry of Law and Justice, Annual Report 2023, Government of India.
[112] Maneka Gandhi v. Union of India, (1978) 1 SCC 248; Satender Kumar Antil v. Central Bureau of Investigation, (2022) 10 SCC 51.
[113] R. v. Jordan, 2016 SCC 27 (Canada); Singapore Judiciary, Criminal Procedure Reforms Report (2021); Federal Constitutional Court of Germany, Judgment of 19 March 2013 – 2 BvR 2628/10.
[114] Law Commission of India, 239th Report on Expeditious Investigation and Trial (2012).

expansion—these must become central to the reform agenda. Legal reform must not be reduced to statute revision. It must address function, delay, and human dignity together.[115] Archaic provisions that criminalize poverty, morality, or dissent must be repealed without delay. Preventive detention laws must be scrutinized. Gender-neutral and inclusive definitions of sexual offences must be introduced. Digital crimes must be addressed with specificity and precision. The law must evolve faster than crime, not slower.[116]

VIII. BIBLIOGRAPHY

- **Books**

1. K.T. Thomas, *Colonial Hangover in Indian Penal Laws* (Supreme Court Cases Journal, 2012).
2. 2 DD Basu, *Constitution of India* (LexisNexis, 8th edn, 2010).
3. Upendra Baxi, *The Colonial Reasoning of Indian Penal Law* (Indian Law Institute, 2008).
4. The Right Honourable Lord Woolf, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (HMSO, 1996).

- **Journal Articles**

1. Jacques Buisson, 'Judicial Management in French Criminal Procedure' (2014) 23 Criminal Law Forum 197.
2. Kaori Shoji, 'Citizen Judges and the Japanese Criminal Justice Reform' (2011) 22 Asia Pacific Law Review 123.
3. NUJS Law Review Editorial Board, 'The Bharatiya Codes: Reform or Rebranding?' (2023) 16 NUJS L Rev 33.

[115] Law Commission of India, 277th Report on Arrest and Personal Liberty (2018).
[116] Shreya Singhal v. Union of India, (2015) 5 SCC 1; Navtej Singh Johar v. Union of India, (2018) 10 SCC 1; Joseph Shine v. Union of India, (2019) 3 SCC 39.

- **Legislations and Reports**

1. Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).
2. Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
3. Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).
4. Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).
5. Bharatiya Nagrik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).
6. Bharatiya Sakshya Adhiniyam, 2023, No. 47, Acts of Parliament, 2023 (India).
7. Mental Healthcare Act, 2017, No. 10, Acts of Parliament, 2017 (India).
8. Speedy Trial Act of 1974, 18 U.S.C. §§ 3161–3174 (United States).
9. Evidence Act, 1995 (Australia).
10. Saiban-in Act (Act No. 63 of 2004) (Japan).
11. Constitution of the Republic of South Africa, 1996, § 35(3)(d).

- **Online Sources**

1. Bar & Bench, 'Judges Flag Lack of Clarity in New Criminal Codes' (2023), https://www.barandbench.com (last visited Apr. 25, 2025).
2. The Hindu, 'Justice Lokur Calls Criminal Law Reform Cosmetic' (2023), https://www.thehindu.com (last visited Apr. 25, 2025).
3. Live Law, 'Bar Councils Seek Postponement of Criminal Law Implementation' (2024), https://www.livelaw.in (last visited Apr. 25, 2025).
4. Internet Freedom Foundation, 'Analysis of Digital Surveillance Provisions in BNSS' (2023), https://www.internetfreedom.in (last visited Apr. 25, 2025).

5. Lawyers Collective, 'Missing the Mark: Gender & Queer Concerns in Criminal Law Reform' (2024), https://www.lawyerscollective.org (last visited Apr. 25, 2025).
6. Commonwealth Human Rights Initiative, 'Preventive Detention and Procedural Justice in India' (2023), https://www.humanrightsinitiative.org (last visited Apr. 25, 2025).
7. Indian Express Editorial, 'Criminal Law Reforms: The Half Change' (2023), https://indianexpress.com (last visited Apr. 25, 2025).
8. The Leaflet, 'What Do the New Criminal Codes Really Change?' (2024), https://theleaflet.in (last visited Apr. 25, 2025).
9. Singapore Judiciary, 'Technology Framework and Transformation Reports' (2021), https://www.judiciary.gov.sg (last visited Apr. 25, 2025).
10. National Legal Services Authority of India, Annual Performance Reports (2022-23), https://nalsa.gov.in (last visited Apr. 25, 2025).