

Debate the code

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Introduction:

Four months after it first introduced three new pieces of legislation to overhaul the criminal justice system, the Centre this week placed revised versions before the Lok Sabha.

What were the bills and their significance?

1. The Bills — Bharatiya Nyaya Sanhita (BNS), 2023, to replace the Indian Penal Code; Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, for CrPC; and Bharatiya Sakshya (BS) Bill, 2023, for the Indian Evidence Act are expected to be passed in this winter session of Parliament.
2. India's severely clogged criminal justice system needs an update and the government's focus on this neglected issue is welcome.
3. However, an overhaul of the three laws that have been the fulcrum of the justice system for over a century for common people is an enormous exercise that cannot be rushed.

How centre has introduced these bills?

1. The Centre first introduced the three sanhitas in August on the last day of the Monsoon Session.
2. They were brought in through the supplementary list of business.
3. Even stakeholder consultations before the introduction have largely been behind closed doors during the pandemic.
4. While the Bills were reviewed by the Parliamentary Standing Committee, several Opposition leaders had flagged concerns that the review was being done in haste and questioned the choice of domain experts consulted.
5. It is telling that according to the Standing Committee reports, it met over 19 experts — at least six have held positions appointed by the government in nine meetings over six days between September and October.
6. Even as the Committee "welcomed the initiative of the government" in broad brushstrokes, it flagged some concerns on crucial issues including the wide scope of organised crime in proposed laws.
7. However, the revised versions make no significant changes from the first version.

Changes in criminal law code and concerns associated with them:

1. The new criminal law code makes some crucial changes.
2. The Bills for the first-time bring terrorism, corruption and organised crime under the ambit of ordinary criminal law.
3. These aspects were reserved for stringent special legislation since they upend the general protections by reversing the burden of proof on the accused to restrict bail.
4. Other changes, like extending the time limit for police custody from 15 to 90 days, raise

concerns about personal liberty and misuse of police powers.

5. The government's narrative of "indigenisation" and "decolonisation" is important, especially in criminal law where an ordinary citizen interacts most with the mighty state.
6. The government told Parliament in August that three provisions in the IPC — sedition, criminalisation of homosexuality and adultery — had been repealed.
7. However, the fine print shows that the offence of sedition, currently rendered inoperable by a Supreme Court order, has merely had a name change from "rajdroh" to "deshdroh".
8. While adultery, which has been declared unconstitutional by the Supreme Court, has not found a place in the BNS - rightly so — the total omission of Section 377 raises concerns.
9. The Supreme Court in 2018 read down the provision as unconstitutional but only to the extent that it decriminalises consensual homosexual relationships.
10. The provision is still helpful to tackle non-consensual acts, especially when rape laws continue to be gendered.

Conclusion:

In the coming days, the Bills must be debated threadbare and fine-tuned to address all concerns. They should not be passed in haste.



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