

Revamping the criminal justice system to fit the bill

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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.

Introduction:

1. 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.
2. These Bills are being examined by the Parliamentary Standing Committee on Home Affairs. (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.)

Questions raised by the Bills:

1. 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.
2. This raises the following questions — Do they update the law to reflect the concepts of modern jurisprudence? How do these Bills relate to various special laws? Do they help unclog the criminal justice system? Are various definitions and provisions drafted well without ambiguity?

Issues related to modernising jurisprudence:

1. First, whether these Bills exclude civil law. 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.
2. Second, whether these Bills create 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.
3. Third, whether maintenance of public order and the process of criminal prosecution should be 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.

4. Fourth, 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.
5. Fifth, whether the Bills try to ensure consistency of implementation. Typically, penalties for offences specify a range, with the judge expected to specify the sentence within the range based on the circumstances of each case.
6. Sixth, whether the age provisions have been updated for modern norms. The IPC specifies that a child below the age of seven years cannot be accused of an offence. It provides such exemption until 12 years of age, if the child is found not to have attained the ability to understand the nature and consequences of his conduct.
7. Seventh, whether gender related offences have been updated. 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.

Duplication as well as inconsistency across the laws:

1. 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.
2. In some cases, this has been addressed. For example, the Legal Metrology Act, 2009 states that provisions of the IPC related to weights and measures will not apply; the Bill removes these provisions.
3. However, the Bill (like the IPC) overlaps with several other Acts such as those related to food adulteration, sale of adulterated drugs, bonded labour, and rash driving. Abortion continues to be an offence though it is permitted under certain conditions under the Medical Termination of Pregnancy Act, 1971. The Bill replacing CrPC retains the provision requiring maintenance of a parent though a special Act was passed in 2007 regarding this.

Definitions and Drafting:

1. The Bill replacing the IPC provides a person suffering from mental illness as a general exception from being an offender (this was called unsound mind earlier).
2. The definition of mental illness is the same as in the Mental Healthcare Act, 2017.
3. That Act aims to provide medical treatment to persons suffering from mental illness, and, therefore, excludes mental retardation or incomplete development; it also includes abuse of alcohol or drugs. Consequently, the new Bill will provide full exemption to someone who is addicted to alcohol or drugs but not to a person who is unable to understand the consequences of their actions due to mental retardation.
4. The three laws had a number of illustrations from daily life to clarify their provisions. Some of these illustrations have become obsolete but have still been retained. These include people riding chariots, firing cannons and being carried on palanquins. It may be useful to update these illustrations to events from modern life.

Conclusion:

These Bills will become the basis of the criminal justice system. Parliament should examine them with great care so that they create a fair, just and efficient criminal justice system.

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