INDIAN
POLICE FOUNDATION

MEMORANDUM

TO THE DEPARTMENT RELATED STANDING COMMITTEE OF PARLIAMENT ON MINISTRY OF HOME AFFAIRS

Regarding the Three Criminal Law Bills

Bharatiya Nyaya Sanhita (BNS) Bill, 2023

Bharatiya Nagarik Suraksha Sanhita (BNSS) Bill, 2023

Bharatiya Sakshya Adhiniyam (BSA) Bill, 2023

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MEMORANDUM

TO THE PARLIAMENTARY STANDING COMMITTEE OF THE MINISTRY OF HOME AFFAIRS

Dated: 15th October, 2023

To:

Shri Brij Lal
Hon'ble Member of Parliament & Chairman,
Department-related Parliamentary Standing Committee
On Ministry of Home Affairs
New Delhi

Honourable Chairman,

I write to you on behalf of the Indian Police Foundation (IPF), India's premier independent think tank and policy advocacy platform dedicated to work for improving the professional, ethical, and service delivery standards of the Indian Police. A brief note about the Indian Police Foundation is attached at 'Annexure: A' to this Memorandum.

It is with utmost respect and a profound sense of responsibility that we present this Memorandum to the esteemed Parliamentary Committee. Our purpose here is to earnestly deliberate upon the strengths and weaknesses of the three Criminal Law Bills recently introduced in Parliament namely, the Bharatiya Nyaya Sanhita (BNS) Bill, 2023; the Bharatiya Nagarik Suraksha Sanhita (BNSS) Bill, 2023; and the Bharatiya Sakshya Adhiniyam (BSA) Bill, 2023, that seek to repeal and replace the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act. Our comments have been presented from the point of view of police and policing.

METHODOLOGY FOLLOWED IN PUTTING TOGETHER IPF's COMMENTS

The IPF has undertaken a rigorous and exhaustive study of the Draft Criminal Law Bills and engaged in extensive consultations with police officers from across India. Our objective has been to acquire a thorough understanding of the proposed legislative modifications while also making meticulous and detailed comparisons between the provisions of the existing laws and the proposed legislations.

On September 8, 2023, the IPF convened an online workshop that was attended by nearly 100 distinguished participants, including senior police officers, retired police officers and other law enforcement professionals, legal experts, prosecutors, and academic scholars. This workshop served as a platform for the stakeholders to share their insights and experiences regarding the practical implications of the proposed legislations on field level policing.

During the workshop, a plethora of critical issues emerged, each meticulously documented. Building upon the learnings gleaned from this workshop and the extensive consultations that have transpired, the IPF has listed out separate sets of comments and comprehensive recommendations, which we enumerate in the succeeding pages, for the consideration of the Parliamentary Committee. A number of police officers and retired officers have contributed to the generation of ideas and in writing this memorandum. A list of those who actively participated in drafting these comments, is attached at the end of this document. (Annexure B)

PRESENTING THE IPF'S COMMENTS AND RECOMMENDATIONS

Through this Memorandum, we seek to contribute constructively to the legislative process, furthering the cause of efficient law enforcement in the country, serving the interests of crime control and criminal justice, public order and national security, while always being conscious of the need to uphold the rule of law and citizens' constitutional rights.

It may be mentioned here that the Indian Police Foundation, vide its letters dated August 27, and September 14, 2023 had written to the Chairman of the Parliamentary Standing Committee requesting for an opportunity for a small delegation of the Indian Police Foundation to appear before the Hon'ble Standing Committee and submit our views. Even as we await an opportunity to appear before the Hon'ble Standing Committee, we humbly request the esteemed Committee to consider this Memorandum containing our comments and recommendations.

The specific comments and suggestions of the IPF in respect of each of the three Bills are given in the following pages.

We extend our deepest gratitude for your attention to this vital matter, and we remain at your service for any clarifications or further discussions.

Yours sincerely,

N. Ramachandran
IPS (Retired)
President
Indian Police Foundation

AN EXECUTIVE SUMMARY OF MAJOR RECOMMENDATIONS

GENERAL

1. IPF calls for fundamental changes in the three criminal law statutes; we need much greater imagination and innovation to deal with a deeply flawed criminal justice system ridden with numerous gaps. There is a need for far more consultation and systemic changes to meet the aspirations of an emerging nation.

2. The British colonial administration used the Indian police to suppress the natives, but they never trusted the brown policeman. This inherent distrust of the police was built into the colonial criminal laws. The laws gave the police extensive powers of arrest, detention and use of force, with limited resources and accountability against misuse. In the absence of adequate resources or training, policepersons used crude methods to maintain law and order, investigate crimes and question witnesses and accused. The presumption that police cannot be and should not be trusted, continues to be ingrained in the new criminal law bills BNS, BNSS and BSB and no efforts have been made in them to fundamentally reform India's law enforcement and crime investigation. Below is a gist of IPF's major recommendations:

3. The regressive provisions in the criminal laws continue to undermine police efficiency and the quality of police investigations even 75 years after independence. IPF calls for changes that bring credibility in the investigation process and make the prosecution apparatus more effective.

4. Empower the police, allow them operational freedom to function, but institute strong accountability standards, with zero tolerance against misuse.

5. Bring Clarity and Precision: There are too many errors, ambiguities, inconsistencies and even incomplete sentences. The new codes should provide clear and precise definitions of procedures and legal provisions to minimize ambiguity and variances in interpretation.

6. The legislations should establish clear and realistic timeframes for both investigations and trials, to expedite the criminal justice process and reduce the backlog of cases. This should of course be supported by the provision of essential resources, including personnel, forensic facilities, technology, mobility, communication and other infrastructure for realization of these timelines. Without these foundational resources, the police will struggle to meet the high demands and expectations of citizens.

7. Retain existing Section numbering schemes: Considering that the substantive changes introduced by the proposed legislations are relatively few, with the new bills largely retaining the essence of the prior laws while incorporating a few changes to accommodate the evolving nature of crime and justice, we recommend that the existing section numbering schemes may be retained in all three laws, inserting new legal provisions, and deleting obsolete ones through suitable amendments, to preserve legal continuity and a smoother transition to the new framework.

BHARATIYA NYAYA SANHITA (BNS)

8. Special Acts: To avoid variances in definitions and confusion, we recommend that offences which are already defined under Special laws like the UAPA Act 1967, Juvenile Justice Act 2015, Prevention of Corruption Act 1988, Prevention of Cruelty to Animals Act, 1960, and FSSA Act 2006, should not be repeated in the BNS.

9. Mob lynching: Clause 101 (1) (2) concerning murder or grievous hurt by persons acting in concert on grounds of race, caste, community, etc., should be carefully redrafted to address 'mob lynching'. The term 'acting in concert' needs a precise definition. In the listing of grounds for the offence, 'religion' should be added. Mob lynching is a heinous offence, but Clause 101(2) amounts to dilution of the punishment for murder committed by a group of persons acting in concert, as it could end in a sentence of 7 years whereas for the offence of murder, the punishment is death or life imprisonment.

10. Re-draft BNS Clause 150 regarding acts that endanger the sovereignty, unity, and integrity of India, akin to sedition laws. To prevent its misuse, clear definitions and safeguards must be incorporated into the provision, eliminating vague terms like "subversive activities." These safeguards should require reasonable evidence of acts to excite secession, armed rebellion, separatist activities, violence or public disorder that endangers the sovereignty, unity and integrity of India, before filing FIRs. Also, provide for oversight by senior officers, and establish review mechanisms to prevent arbitrary use, ensuring that the law is not weaponized for political purposes.

11. Similarly, Clause 195 deals with imputations or assertions prejudicial to national integration. A sub-clause (d), that was not in the IPC has been inserted making "false or misleading information jeopardising the sovereignty, unity and integrity or security of India" an offence. We recommend that this clause may be omitted, as mere statements without incitement to violence or clear subversive activities, if criminalised, would be liable to misuse. In any case, these clauses are broadly covered in Clauses 111 and 150.

12. While welcoming new non-incarcerative punishments like Community Service, IPF recommends the implementation of electronic tagging systems for non-violent convicts, by which authorities can effectively monitor and rehabilitate offenders while allowing them to serve their sentences in less restrictive environments, which can help reduce prison congestion.

BHARATIYA NAGRIK SURAKSHA SANHITA (BNSS)

13. Procedural law should empower the police for effective law enforcement, while defending the constitutional rights of citizens.

14. Modernize Arrest Laws, Reduce Unnecessary Arrests and Decongest Prisons: While empowering the police to effectively handle crime, terrorism and violence, serious reform of arrest laws is called for. It is important to introduce legal and administrative safeguards to stop the colonial-era practice of indiscriminate and arbitrary arrests, detention and incarceration.

    a. IPF recommends that the Parliament, while enacting the BNSS, should review and streamline the existing provisions of arrest under Section 41 CrPC, integrating the principles laid down by the Supreme Court of India in Joginder Kumar v. State of UP (AIR 1994 SC 1349), Arnesh Kumar v. State of Bihar (2014) 8 SCC 273, and D K Basu v. State of West Bengal (AIR 1997 SC 610).

    b. Prohibit arbitrary arrests; a person should not be arrested unless absolutely necessary under the law and in the interests of maintenance of peace, crime prevention, investigation and prosecution of crime.

    c. Add a subclause mandating that when an accused person is presented for remand, the Magistrate must review the recorded justifications for arrest. If the justification supports remand, he should make explicit comments to that effect in the remand order; however, if the Magistrate is unconvinced, he may order the release of the accused on bail.

    d. Police should respect the honour and dignity of persons while making arrests, searches, and seizures. While exercising police powers, no deliberate inconvenience, insult or humiliation should be caused.

15. With a view to reducing overcrowding of prisons, especially by reducing the number of Under Trial Prisoners (UTPs), a proviso may be added that no arrest shall be made under offences which are punishable with imprisonment for two years or less, unless the offence is committed in the presence of the police officer and even in such cases, the SHO shall release the accused on bail on his own personal bond.

16. India's criminal laws should adopt the universally accepted and sound principle that statements recorded by police of witnesses as well as suspects have to be truthful. If statements made under oath are found to have been based on deliberate deception and falsehood, there must be consequences like perjury. Enforce accountability for all parties, including police officers, witnesses, and suspects, who practice deception and fabricate statements. Police officers who deliberately fabricate and falsify evidence must be awarded major punishments including removal from service.

17. Separate custody management from police stations. Establish Custody Management Centres / Central Lock-ups at Circle, Sub-division, and District levels, each with dedicated and trained custody officers. The custody centres should have all basic facilities like full CCTV coverage, lock ups, hygienic toilets / bathrooms, arrangements for food and medical attendance where necessary. This will help reduce custodial violence.

18. BNSS should enable modern principles of interviewing witnesses and scientific interrogation of accused and suspected persons. IPF recommends introducing Section 180A in the BNSS, outlining the procedures for interviewing accused or suspects, enabling the recording of such interviews using tamper-proof audio-video devices and allowing for interviews in the presence of a lawyer, with stringent protocols for sealing and submission of the recorded conversation to the magistrate, ensuring transparency and accountability in the investigative process.

19. To ensure the integrity and fairness of the interrogation process, several crucial measures should be established. Firstly, an interrogation room should be linked to the custody centre, allowing for proper and controlled questioning of the accused. A dedicated and well-trained custody officer should be assigned to ensure strict compliance with statutory requirements and the "duty of care" towards individuals in custody.

20. We recommend that the Bar Council of India should establish a code of ethics and guidelines for lawyers assisting clients during police interrogations, ensuring their proper conduct and safeguarding the accused's rights, without defeating the purpose of police investigations.

21. We recommend that a national police interrogation and interview training framework should be recommended to educate police officers in appropriate and scientific interrogation techniques and the respect of individuals' rights. These safeguards would potentially incentivize lawful behaviour among police officers, as lawfully obtained statements would become admissible in court.

22. Statements made by witnesses and recorded in writing by a police officer must be signed by the person making the statement. Redraft Clause 181 of the BNSS which retains the provision from Sec 162 CrPC, prohibiting police officers from obtaining the signature of witnesses on their recorded statements. This is another colonial era legal provision that perpetuates distrust of the police.

23. Re-organise the prosecution system: Prosecution being a state subject, states may be mandated to establish a dedicated cadre of prosecutors. Currently, temporary public prosecutors, often practicing lawyers, handle prosecution in Sessions Courts and High Courts, leading to limited dedication and interest, with unlimited scope for chaos. A dedicated cadre of prosecutors will help develop professionalism and nurture talent.

24. Appoint a police officer of the rank of Director General of Police / ADGP as the Director of Prosecution in consultation with the Advocate General of the State, for better coordination, systemized monitoring and also making appeal and follow up decisions.

25. Multiple FIRs: The evil and often deliberate practice of registering numerous FIR's in multiple police stations in the country, based on contents of various electronic / print / social media needs to be taken note of by the new law, introducing better clarity in the procedural law. The lack of legal clarity has not only become a tool of harassment, but it has also led to the affected persons approaching High Courts and Supreme Court to club them, causing unnecessary work for Constitutional Courts. BNSS should address this.

26. The concept of Preliminary Enquiries by SHOs introduced in BNSS Bill's Clause 173(3) for offences punishable for three to seven years may have justification in certain cases, but is likely to exacerbate burking of crimes, delays in registration and harassment. We recommend that BNSS should incorporate principles laid down in the Lalita Kumari judgment, allowing preliminary inquiries only in rare cases with safeguards against misuse. Stringent penalties should deter false and frivolous FIRs while ensuring that genuine complaints are not ignored.

27. Though supreme court has held that no First Information Report (FIR) is necessary for the police to investigate, it is desirable to write this in the law as a sub-section (1) of Clause 175.

28. Clause 45(3) should address existing ambiguities on the use of handcuffs. It should allow for the use of handcuffs by the police when arresting dangerous persons, habitual and repeat offenders, escapees, or individuals involved in serious crimes like terrorism, organized crimes, crimes against the State, drug offenses, illegal possession of weapons, murder, rape, human trafficking, sexual offenses against children, among others. Currently, this clause limits handcuff usage to specific circumstances. It should be clarified whether handcuffing is permissible when escorting individuals to court or prison.

29. There is no mention of Police Commissionerate system in the new BNSS Bill. Police Commissionerate in major Indian cities have proven to be a highly effective model for streamlining law enforcement and expeditious police service delivery. The system allows the appointment of senior police officers as Police Commissioners, who have extensive experience and expertise in handling the complexities of urban policing, and who can provide the leadership and coordination to address the multifarious and complex law enforcement needs of urban areas. We strongly recommend that suitable enabling clauses be added in Chapter II to establish Police Commissionerate systems wherever required.

30. The new laws should factor in the Crime Criminal Tracking and Networking System (CCTNS) and the Inter-operable Criminal Justice System (ICJS), instead of recognising only manual processes and paper registers.

31. Empower the constabulary: Considering that many well-educated persons are joining the constabulary today, the new laws should enable selected subordinate staff to participate in investigative process, as may be determined by the Superintendent of Police.

BHARATIYA SAKSHYA BILL (BSB)

32. As a first step towards reform, it is recommended to insert an exception to Clause 23 of the Bharatiya Sakshya Bill, together with suitable changes in Clause 148, allowing admissibility of statements and confessions made before the police and recorded by police officers during the course of investigation and following the procedure as prescribed in the BNSS, under strict safeguards such as the use of tamper-

proof audio-video recording, presence of a defence lawyer, sealing and submission to the magistrate, informing the accused of their rights, and the requirement of corroborative evidence.

33. Establish strong accountability standards against any form of misuse or abuse of the process of recording statements / confessions by accused and suspected persons.

34. For the above scheme to succeed, it is important to build / make available the resources and supportive infrastructure like the introduction of body-worn cameras, CCTVs at police stations and Custody Facilities capable of recording the proceedings and produce the artifacts in the trial with the required chain of custody.

35. Considering the inadvertent errors that have crept in as pointed out in the comments on individual Bills, we recommend a clause-by-clause review of all the three Bills. Even if it is time-consuming, this is essential as these enactments will have a lasting impact on our criminal justice system over long years to come.

PART 1

GENERAL REMARKS

i. INTRODUCTION

The Indian Penal Code and the Indian Evidence Act have been in existence for more than 160 years. The original Code of Criminal Procedure too, belonged to that vintage, although it underwent some major changes in the year 1973. Certain provisions of these laws have long become outdated and no longer adequately address the evolving challenges faced by our criminal justice and legal system. Consequently, there has been a long felt need for reform. In an attempt to bring about a significant transformation in the country's criminal laws, the Government of India has recently introduced in Parliament three new bills namely, Bharatiya Nyaya Sanhita (BNS) Bill, 2023; Bharatiya Nagarik Suraksha Sanhita (BNSS) Bill, 2023; and the Bharatiya Sakshya Adhiniyam (BSA) Bill, 2023.

The introduction of these legislations to replace the trio of Criminal Major Acts, had generated considerable excitement, particularly within the law enforcement community. While the three existing Acts have undergone numerous amendments over the years, the decision to completely discard them and introduce entirely new legislations had sparked anticipation of a comprehensive overhaul, raising hopes that the fight against crime will become more streamlined, significantly reducing the number of cases under investigation and pending trial. Thus, the police fraternity as well as other stakeholders in the criminal justice system have been eagerly anticipating a transformative solution, especially because the nature of policing itself has been undergoing rapid transformations, driven by technological and social changes. We therefore, welcome the government's initiative to re-work the Criminal Laws of the Country.

i. DISCARDING A COLONIAL LEGACY AND ENHANCING 'EASE OF LIVING'

In his address to Parliament, the Hon'ble Union Home Minister drew attention to the historical context within which our existing criminal laws were conceived. These laws, rooted in Macaulay's code, were essentially instruments designed to further the imperialist ambitions of the British Empire during the mid-19th century. Over time, certain fundamental concepts of these codes have become contentious, inadequate, or obsolete, necessitating comprehensive reforms. As we stand today, India's criminal justice system grapples with myriad issues, ranging from inadequacies in police investigations to overcrowded prisons and a staggering backlog of cases. Regrettably, our current legal framework has proven inadequate in addressing these challenges, resulting in flawed judgments, and eroding public faith in our justice system.

Outlining the stated objectives and rationale of the Bills, while introducing them, Hon'ble Home Minister stated that the new legislations are aimed at strengthening law and order, simplifying legal procedures, ensuring prompt justice, securing life and liberty, and enhancing the overall 'ease of life' for ordinary citizens. The goals encompass commitments such as expediting investigations within three months, enforcing time-bound trials, and limiting adjournments to just two, all aimed at creating a legal system that is more accessible, efficient, and equitable, ultimately fostering a society where justice is not just a concept but a tangible and attainable reality for all.

The Hon'ble Home Minister noted that the previous laws bore colonial imprints, which have

now been excised from 475 instances. Assuring a comprehensive overhaul of the criminal justice system, he promised expedited justice within three years for all. The proposed bills also aim to prevent potential police misuse of authority, as assured by the Hon'ble Minister, who said that the primary goal of the three new Bills included, bolstering law and order, streamlining the justice process, and fostering "ease of life", while ensuring that the new laws were fully in consonance with the principles enshrined in the Constitution of India.

Even as the Parliament deliberates on these legislations, marking a pivotal juncture in the evolution of our legal framework, it becomes paramount to guarantee that the emerging legal structure maintains a delicate equilibrium, covering the imperatives of crime control, public order and national security, while safeguarding the fundamental rights and freedoms of our citizens. Above all, it is crucial to ensure that the transformation is profound, purposeful, and deeply reflective of the Indian ethos; being ever vigilant against the potential for their misuse and ensuring that the new laws are in full harmony with the core principles enshrined in our constitution.

Bringing about major changes in criminal laws will have an unsettling impact on the existing, long-established legal principles. Certainly, the Government would have weighed the repercussions of the proposed legislations as they would potentially disrupt the long-settled criminal law framework of the country. Over the past 160 years, the words, concepts, phrases, and definitions found in different sections of the IPC/Cr.PC/Evidence Act have undergone comprehensive interpretation and evolution through judicial rulings, ultimately achieving a level of finality within the specific context of those sections. Revisiting and reinterpreting these elements in the context of the newly proposed clauses could unsettle the established law for the foreseeable future, giving rise to some uncertainty. But then, this is a calculated risk that the country needs to take, in the larger interests of reform. Courting some uncertainties would be worth it, provided truly fundamental and comprehensive changes are brought in, in the larger interests of streamlining the criminal justice system.

ii. SEVERAL CRUCIAL, PROGRESSIVE PROVISIONS, BUT THE CORE REMAINS UNCHANGED

A comparative reading of the existing Acts alongside the new Bills, however, has led to some disappointment. It is apparent that the existing and the proposed laws are largely the same, and the new Bills remain relatively similar to the old Acts. Within the Bharatiya Nyaya Sanhita, only 13 clauses contain genuinely new material, with some modifications appearing in 139 clauses when compared to the IPC. Yet, many of these changes are nominal, such as replacing 'unsoundness of mind' with 'mental illness,' accounting for 15 of these amendments. Similarly, amendments are seen in the adjustment of ages, fines, or penalties in various instances. On the contrary, a staggering 204 clauses remain identical to those in the IPC.

Undoubtedly, there are certain new provisions, most of which are commendable and necessary. But these changes would appear to be sporadic, rather than a comprehensive overhaul of the system.

iii. A CALL FOR FUNDAMENTAL CHANGES IN CRIMINAL LAW, RATHER THAN TINKERING

At the outset, IPF would like to re-iterate that the Foundation is in complete agreement with the stated objectives of the Government of India in attempting 'decolonization' of the three major criminal laws, which have held sway since the days of the British Raj. It is high time to replace this archaic, colonial legal regime by laws that reflect the ethos and needs of contemporary Indian society. Our concern, however, is that this attempt at decolonization does not go far enough and therefore, this will become a missed opportunity.

1. Any modern system of criminal justice system will have certain universal features, for example:
    a. Presumption of innocence: An accused is presumed innocent till proven guilty.
    b. Burden of proof: The burden of proof is on the government/prosecution/state.

c) Standard of Proof: Every accused has to be found to be guilty 'beyond reasonable doubt'.

d) Testimonial compulsion: No one can be compelled to depose/share evidence implicating himself or herself.

e) Adequate legal representation: An accused has a right to a full and competent representation by a legal counsel of his or her choice.

2. We give these illustrative examples to argue that no matter how we replace or re-write major criminal laws in a country, its essential framework will follow the same universal jurisprudential principles. So, there are limits to what can be the scope of any attempt at "decolonization". Any re-writing will only be a modification of the existing laws rather than an entirely new document. New laws cannot be enacted in violation of essential universal features of a modern system of criminal justice. India has a written constitution that protects fundamental rights, we are a signatory to Universal Declaration of Human Rights (UDHR) and other international covenants and the Indian Courts liberally use common law precedents in interpreting our laws. So, there are obvious limits to any re-writing and this is hardly a debatable point. We state them only to explain what decolonization does not or cannot mean in this context.

3. Then what should decolonization mean? In our understanding it should mean that we are now in a position to make laws for ourselves that our erstwhile colonial masters denied to us. A second aspect would be that India should be able to adopt systems and procedures that the British followed or follow in their own country while in a hypocritic and discriminatory manner denying them to colonies. The time has come for the India society to reject these British machinations based on colonial mindset, prevalent claims of racial superiority or/and cultural prejudice. The British colonial administrators kept claiming that Indian society is different and cannot handle ways of sophisticated Western societies. They believed that Indian people are not truthful by nature and cannot be trusted to behave in lawful ways. Such a distorted understanding of our culture and values led to discriminatory laws being introduced in India. The following examples are given to illustrate this point:

a. Around the world a statement before the Police by a suspect/accused is admissible in evidence, not in India. The British did not trust that the Indian Police can truthfully record statements of accused. They believed that accused will be coerced into giving confessional statements and therefore they made specific provisions (Section 25 of the Evidence Act) that a statement recorded by the Police is not admissible in evidence. The proposed laws, unfortunately, retain this colonial and racial bias and makes no efforts to consider how other free countries/ societies have been able to devise a system in which statements before the police is admissible in evidence. The demonstration that the power to record confessional statements can lead to miscarriage of justice came out rather vividly in the United Kingdom in cases such as the Guilford Four (1975-76) and Birmingham Six (1974) where people were wrongly convicted relying on false confessions. This led to a complete re-think and the legislation of the 'Police and Criminal Evidence Act, 1984', also called the Human Rights Act that provided elaborate safeguards to prevent misuse of powers of recording statements of the accused. These included: recording of confessional statements in tamper-proof electronic formats, mandatory presence of counsel, separating investigation from custody and providing that Court can reject the evidence if the statement when heard by the Court indicates that Police Officer had used repressive means, blackmail, threats, shouting or other intimidatory tactics. Any attempt at decolonization and modernization should/must delve deep into the subject rather than getting hamstrung by our colonial legacy and its perpetuation.

b. Statements recorded by the Police of witnesses as well as suspects have to be truthful. If they are found to have been based on deliberate deception and falsehood, then there must be consequences for makers of such fabricated statements. There must be accountability. This sound legal principle was denied in the Indian criminal justice system by our colonial masters. The brown Indian police could not be trusted. Any decolonization would require a fresh look at introducing sanction against false testimony. Statements have to be made under oath and with safeguards and at a risk of perjury. Making a statement to the police and then retracting from it has become a routine in the Indian criminal justice system. The modalities to introduce consequence for false testimony during police investigation would require elaborate discussion. This principle has been in use in other democracies for more than a century. There is no reason why we should be stuck with a principle that originated during colonial times and then come up with a new law in 2023 retaining these features, thereby extending the life period of these grossly outdated and colonial laws.

c. One of the essential principles that is followed around the world is effective prosecution of offences in the court of law. This needs the most competent lawyers to be used by the State/Government to prosecute offences, so that justice is done. Secondly, the prosecutors should be in a position to use various strategies to match the legal strategies of the defence. Under the Indian system, we allow defence to play many games and prosecution to remain disinterested. The new laws leave India's broken system of prosecution completely intact, as if these problems do not exist or they do not need fixing.

4. There are at least three clear models of prosecution in the free world and all these three were denied to India, to us, by our colonial masters. We have to look at practices in other countries while using our creativity and understanding of our ground realities in proposing a new system. What is proposed in the BNSS is hardly useful or innovative. We need to examine these three models and then devise our own model fixing the broken prosecution system.

a. The UK system where the prosecution is organized under a Director of Public Prosecution, who is a King's (Queen's Counsel) or in our terms a designated Senior Counsel, who is appointed for a period of five years. The Crown prosecution Service consists of a regular cadre of public prosecutors posted up to the Police Station level. These prosecutors vet investigative decisions relating to forwarding of accused to court (police can arrest, but forwarding to court needs evidence to be vetted), submission of charge sheet and they take accountability for proper and effective prosecution of offences. On the other hand, India has a highly disorganized system of prosecution and it is well known that the prosecution is not able to avail the best talent in presenting its case in courts. Most of the persecutors are political appointees and remain unaccountable. Documents presented to courts are drafted exclusively by Police Officers without the guidance of prosecutors and then during trial all these are subjected to microscopic scrutiny to destroy the entire prosecution case. Increasingly, police and society find our criminal justice system unworkable and this has led to extra-legal solutions gaining legitimacy.

b. The American system provides the prosecutors with enormous powers in prosecuting offenders. They guide investigation from the very inception and take cases to their logical end. In fact, the system is too strong and dreaded. The prosecutors have powers to enter into various deals with suspects, grant immunity from prosecution/sentence in order to get co-operation and are able to fiercely protect the regime of law enforcement. Such is the quality of the legal work undertaken

by the prosecutors that large numbers of offenders (more than 90% when it comes to federal indictment) prefer to enter in to plea bargain rather than risk trial that can lead to longer sentences and more severe consequences. Very few cases brought in by Federal prosecutors go for trial. In India, defence prefers trial because they know that acquittal is guaranteed in nearly 90 % of the cases. In fact, out of the few cases ending in conviction, many are because of ineffective legal representation or because of favourable conviction-minded Judges.

c. The European system of prosecution is mainly handled by Investigating Magistrates, who are judicial officers, as they have an inquisitorial system of criminal justice. This system also ensures that criminal trial do not lose potency by the focus on procedural infirmities during investigation by the police and the very unreliability or un-trustworthiness of the Investigating Officers.

5. In case of India, which has accusatorial system, the U.K. or U.S. system would be preferable, but then this requires considerable amount of thinking and adaptation to Indian realities. There is no reason why we should be stuck with systems given to us by our colonial masters. The new CrPC of 1973 only got rid of Police prosecutors in non-sessions cases (Sessions cases were not prosecuted by Police Officers even before the new CrPC). Unless investigation becomes credible and prosecution effective, we will be caught in a procedural quagmire. The proposed BNSS will not be able to eradicate these difficulties.

6. The new bills replacing Indian Penal Code and the Indian Evidence Act can be passed with minor modifications, but the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) needs complete rewriting. In particular, the following parts of BNSS require complete revision with new and innovative solutions that improves criminal justice administration in India:

   a. Organization and function of the prosecution (Section 19 and 20 of BNSS)

   b. Arrest, Custody Management and recording of statements of accused/suspects.

   c. Chapter XXIII of BNSS relating to plea bargain.

   d. Recording of Statements by the Police during investigation Section 180 and 181, 182,183 of BNSS.

7. Long back David Bayley had written that Criminal investigation in India is hampered by the inability or unwillingness of witnesses to depose to the satisfaction of the courts. Unfortunately over the years, many police officers have resorted to shortcuts, in which evidence is fabricated and confessions are obtained, if necessary, by coercion. Once these tendencies are known Courts go to endless lengths to find acts of impropriety on the part of the police. Finally, the entire system ends in a vicious cycle of suspicion, recrimination, and obduracy. There is nothing in the BNSS that tries to remedy this core malady of police investigation and criminal trial. Police remains a suspect at end of the day, no safeguards are introduced to change the situation. The entry of educated persons into the constabulary is not even acknowledged by the BNSS Bill and all powers of investigation is given to 'Officers' once again and none to the constabulary. The BNSS does not consider the progress made through the Crime Criminal Tracking and Networking System (CCTNS) and the Inter-operable Criminal Justice System (ICJS) and proposes, for examples introduces 'registers' at many places much after registers were abolished. Police Officers and Court administrators many not have been provided with an opportunity to brief the Drafting Committee on these changes.

8. The Indian Police Foundation (IPF) would like to bring to the kind notice of the House Committee examining the bills that the stated intent of the new laws, i.e., decolonization will not be achieved by the three drafts in their

present form replacing the old laws. From a policing point of view, we would like to underline that the purpose of investigation is to collect admissible evidence. We want the law makers to prescribe an investigative procedure that leads to evidence collected by the police becoming admissible. The Indian Police would be willing to accept the safeguards that are required to make this possible. These safeguards exist in all countries and our police officers are not opposed to their introduction in a free India. But to prescribe a set of investigative processes and then not accept the output as 'evidence' will perpetuate the current chaos in the system relating to investigation and trial. We need much greater imagination and innovation to deal with a broken system ridden with many loopholes. There is a need for far more consultation and radical changes to meet the aspirations of an emerging nation.

iv. A CASE TO RETAIN THE EXISTING SECTION NUMBERING SCHEME

Considering that the substantive changes introduced by the proposed legislations are relatively few, with the new bills largely retaining the essence of the prior laws while incorporating a few changes to accommodate the evolving nature of crime and justice, the question arises whether retaining the original Act and making suitable amendments might have been a more prudent approach, rather than introducing an entirely new legal framework without much changes in its core. There is a strong argument that the same objectives could have been achieved by a process of amending the existing laws.

The drastic re-ordering of the chapters and re-numbering of the sections in the proposed legislations will generate difficulties for police officers, lawyers, judicial officers, and even law students who will need to acquaint themselves with the new Sections. Even in cases where the provisions remain identical, they must adapt to the revised section numbering. For example, 'culpable homicide,' previously Sec 299 IPC, is now Sec 98 BNS, and 'rape,' previously covered under Sec 376 IPC, is now Section 63 in BNS. Similarly, the familiar Section 27 of the Evidence Act is now part of the proviso to Section 23(2) of the Bharatiya Sakshya Adhiniyam.

Essentially, in the case of the Bharatiya Nyay Sanhita, the existing law has been replaced by a new one, primarily in the arrangement and numbering of sections. Police officers and practitioners of criminal law cannot simply unlearn the old Acts and Sections, as they will still apply to cases registered before the introduction of these new Acts that are still pending. This becomes particularly daunting, considering the volume of changes – the old Acts comprise 1059 sections, while the new Acts introduce 1160 sections, resulting in a total of 2219 sections to grapple with. Moreover, they must also discern the distinctions between the definition of a 'terrorist act' in the Bharatiya Nyaya Sanhita and that in the Special Act, namely the Unlawful Activities Prevention Act. Similar complexities arise in provisions relating to Organized Crime.

The question arises as to whether all this effort is justifiable, especially when the changes are not revolutionary or comprehensive. This question is particularly relevant when it is seen that drafting of the clauses leaves much to be desired.

Distinguished legal scholars, have devoted three years to these reform efforts. There are many crucial, positive, progressive features, in the Bills. This substantial body of work represents a valuable resource that cannot go in vain. One solution will be to incorporate the proposed changes in the form of amendments to the existing laws rather than having new enactments. Ideally, this task could be entrusted to the Law Commission, with a well-defined timeframe, to rectify discrepancies, inaccuracies, and any less-than-ideal language in the existing Acts. While it is acknowledged that consultations with the states took place, there remains room to involve a broader spectrum of stakeholders. This presents an opportunity to address this issue as well. Considering that both the IPC and the Evidence Act have endured for over a century and a half, any revisions made now should be designed to withstand the test of time. It

is incumbent upon us to demonstrate that our legal intellect is more incisive and enduring than that of Macaulay and his contemporaries.

In view of the reasons narrated above, it is the considered recommendation of the Indian Police Foundation that the existing structure of the chapters and section numbers may be retained, inserting new and progressive elements of the law that the government wants to introduce, and deleting obsolete ones through suitable amendments. This way, a majority of the Section numbers can be retained, resulting in fewer disruptions.

PRESENTING IPF'S COMMENTS AND RECOMMENDATIONS

The specific comments and recommendations of the IPF in respect of each of the three Bills are given in the following pages.

PART 2

BHARATIYA NYAYA SANHITA BILL 2023

Comments and Recommendations by the Indian Police Foundation

I. SEQUENCE AND NUMBERING OF SECTIONS

The Bharatiya Nyaya Sanhita (BNS) Bill is a near-verbatim replication of the Indian Penal Code of 1860 with some modifications, introducing 13 new clauses and omitting 16 IPC sections. However, many of these changes are nominal, while as many as 204 clauses in the Sanhita are the same as in the IPC. The drastic re-ordering and re-numbering of sections in the BNS will create confusion and difficulties for various stakeholders, including police officers, lawyers, and judicial officers who must navigate both the old and new Acts. The changes will also require extensive re-working of the existing software systems like the CCTNS and ICJS. Given these challenges and the fact that the changes introduced are not very fundamental, the Indian Police Foundation recommends retaining the existing structures of chapters and section numbers while inserting the new elements and removing obsolete ones through suitable amendments, thus preserving legal continuity and stability.

This approach would facilitate a smoother transition to the new framework while minimizing disruptions and ensuring that the legal structure remains coherent and easily navigable for all stakeholders involved in the criminal justice system.

II. AVOID UNNECESSARY CONSOLIDATIONS AND CLUBBING TOGETHER OF UNRELATED PROVISIONS

The first chapter of the Indian Penal Code 1860, consisting of five distinct sections addressing aspects like the title, commencement, and territorial jurisdiction, has been bundled into a single clause in the BNS Bill. Proper legislative drafting requires that sub-clauses within a clause should relate closely to the primary theme of that clause. Given that these five sections from the IPC reflect fundamental, yet diverse concepts, their consolidation into a single clause may diminish their clarity and significance. To ensure clarity and importance, it would be preferable to maintain these sub-clauses as separate clauses/sections, as in the IPC.

Sections 6 to 52A, contained in Chapter II of the Indian Penal Code, titled as 'General Explanations' give insight into very important concepts, phrases, definitions words and other group of words which need unambiguous interpretations in the context of the law; treating them on par with definitions in any other statute and clubbing them under one heading of 'definitions' would not be justified. Each one of these concepts/definitions/words/phrases etc. has been examined by the Apex Court and their interpretations evolved over the years. No useful purpose appears to have been served by clubbing them in one section.

III. MAJOR OMISSIONS

There are four provisions in the IPC whose omission was inescapable because of decisions of the Supreme Court.

a) IPC Section 124(A): known commonly as the sedition law, penalizing the spread of hatred, contempt or disaffection towards the Government, by means of words spoken or written or signs or visible representations. This provision has been criticised as a colonial legacy, vulnerable to misuse. Finding that this section is not in tune with the current social milieu and was intended for a time when India was under the colonial regime, the Supreme Court put it on hold in May 2022, and apart from ordering that no fresh cases should be registered under this section, it directed all pending case to be kept in abeyance, pending re-consideration of the law. A year later, the Law Commission of India released a report recommending the retention of the section and even suggesting the penalty be made stiffer. It, however, suggested that the action must have a tendency to incite violence or create public disorder if it is to be punished. The Commission does not view this as suppression of freedom of speech, since reasonable restrictions can be placed on the exercise of this right. It has also expressed concern for those accused of this offence that the repeal of the sedition section may expose them to the more stringent provisions of laws like the Unlawful Activities (Prevention) Act. However, it is unlikely that the Supreme Court will resuscitate the provision. Either the Unlawful Activities (Prevention) Act or the new insertion as Cl. 150 of this Sanhita (with suitable safeguards as suggested later) may fill the vacuum.

b) Section 497 adultery provided that a husband, who finds his wife is having an extra marital relationship with another man, can seek to prosecute that man. On the other hand, if a wife finds her husband having an extra marital relationship with another woman, she has no recourse to remedy under the IPC. The Supreme Court declared this section unconstitutional in 2018 pointing out that the section was based on the archaic and paternalistic notion of the husband as the wife's monarch and the wife as chattel thereby infringing on her autonomy and dignity. It was further observed that while adultery could be a civil wrong, the State could not criminalize actions occurring within the private realm of marriage

c) Section 309 IPC which criminalizes attempt to commit suicide has had a chequered history, being declared unconstitutional by the Supreme Court in 1994, the decision being reversed in two years and a suggestion made to the government in 2011 to delete it. Although the section continued to be in force, its application has been restricted by the Mental Health Act 2017, which said, "Any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished." BNS finally drops this provision relating to attempt to commit suicide. However, it provides vide Cl. 224 that attempt to commit suicide in order to force the hands of a public servant discharging his duty will be punishable.

d) Section 377 of the IPC criminalized unnatural offences. The Supreme Court ruled that consensual relationship between two persons of the same sex could not be treated as an offence. This provision has been altogether scrapped in the BNS. While this is as it should be, forcible sexual acts of this nature have also got omitted. This would mean that a person who is guilty of non-consensual and forcible sexual intercourse of this nature would go scot-free. A provision must be incorporated to address this issue.

Another significant omission is Section 153 AA which provides for punishment for knowingly carrying arms in any procession or organising, or holding or taking part in any mass drill or mass training with arms. The logic may be that this section penalised violation of a prohibitory order issued under Section 144 A of CrPC has itself been omitted. But the logic behind omitting 144A of CrPC itself is not clear. If it is decided to retain 144 A of CrPC, this IPC provision will also have to be

retained. Our clear recommendation is that both 144A of CrPC as well as Section 153 AA of IPC may be restored in the new BNSS and BNS respectively.

The omission of the offence of 'Thuggee' as described in section 310 IPC needs reconsideration. Thugs are still operating in many parts of the country. Deletion of the offence as described in section 310 IPC, as made punishable in section 311, is unwarranted. This section provides stringent punishment for highway robbers indulging in killings and for those stealing children from the hospitals etc.

iv. NEW, PROGRESSIVE PROVISIONS INCLUDED

Among the new, welcome provisions which were not there in IPC, the following are significant ones:

a) We welcome non-incarcerative punishments like Community Service which is a welcome addition to the types punishment in BNS. What form it can take needs to be spelt out. Other forms of punishment like probation, parole, restitution, mandatory counselling, or treatment (for substance abuse and behavioural aspects) and asset confiscation, may also be considered to reduce the burden on the prison system.

   In addition, IPF recommends the implementation of electronic tagging systems for non-violent convicts, which offers a promising solution to reduce prison congestion. By utilizing these tags, authorities can effectively monitor and rehabilitate offenders while allowing them to serve their sentences in less restrictive environments, ultimately contributing to the alleviation of overcrowding in prisons.

b) BNS provides for gender neutrality removing any distinction between boys and girls in the matter of being treated as victims of offences such as kidnapping from lawful guardianship.

v. OFFENCES DEALT WITH UNDER SPECIAL ACTS

1.BNS Bill, as in the case of IPC, proposes general penal law, codifying general offences, to be investigated by general procedures, mentioned in CrPC. The Special Laws deal with 'Special Crimes' requiring special procedures for investigation, prosecution and trial as in the cases of the Juvenile Justice Act,2015, UA(P)A, 1967, NDPS Act, 1985, Prevention of Corruption Act,1988 etc. However, a number of such offences relating to special crimes have been included in the proposed Sanhita. When the same offence is dealt with in two different laws, there are bound to be contradictions which could be used by the defence to their advantage. Such duplications will cause confusion among police, prosecutors and judicial officers. Moreover, Supreme Court has already laid down that provisions of Special Law on the subject will prevail over General Law.

For example, Clause 111 of BNS provides detailed definitions and punishment of 'terrorist act', 'terrorism', 'terrorist organisation' etc. There are material differences in the definitions provided here when compared with corresponding offences defined in the Unlawful Activities (Prevention) Act, (UAPA) 1967. Even the punishments prescribed in the two laws have variances. This variance in definitions is bound to create confusion.

Hence IPF recommends the deletion of following offences from Sanhita:

(i) Clauses 91,93,94,96, 97 relating to offences against children, as already covered in Juvenile Justice act 2015.

(ii) Clauses 248, 249, and 250 (accepting gifts by public servants) as these are covered under Prevention of Corruption Act, 1988.

(iii) Clauses 289 and 323 relating to ill treatment of animals as same is covered in Prevention of Cruelty to Animals Act, 1960.

(iv) Clauses 272 and 273, relating to food adulteration, are already covered in FSSA Act, 2006.

(v) Clauses 109, 110 relating to organised crime should be removed from the Sanhita. Many States have Special Laws to tackle Organized Crime. It would be desirable to have a separate law on Organised Crime (on the lines of MCCOCA), that may be enacted for the entire country.

(vi) Clause 111 that provides a definition and punishment of 'terrorist act'. Terrorist acts have been defined in Unlawful Activities (Prevention) Act, (UAPA) 1967.

It would be desirable to have a separate law on Organised Crime (on the lines of MCCOCA), that may be enacted for the entire country.

Similarly, given that Human Trafficking is recognized as a distinct transnational crime under the United Nations Convention against Transnational Organized Crime (UNTOC), which India has ratified, it is advisable to enact a specialized, comprehensive, and all-encompassing legislation specifically aimed at Preventing and Combating Human Trafficking. The existing legislations such as the Immoral Traffic (Prevention) Act, 1956, the Bonded Labour Abolition Act, and relevant sections of the Indian Penal Code (IPC), such as Sections 370 and 370A, should be integrated into such a new law. This consolidation would eliminate the existing provisions scattered across various laws and streamline efforts to combat human trafficking effectively.

vi. ANOMALIES, DISCREPANCIES AND INCONSISTENCIES THAT REQUIRE CORRECTION

There are quite a few inconsistencies, errors and inaccuracies in the drafting of some clauses.

1. Types of punishment

Are listed out in Clause 4 of BNS. 4(b) reads 'imprisonment for life, that is imprisonment for the remainder of a person's natural life'. It seems to categorically say imprisonment for life means for the remainder of one's life. But the term 'imprisonment for life' is used in some clauses like 101 whereas the term 'imprisonment for life which shall mean the remainder of that person's natural life' is seen in Clause 102 and some others. This provides room for ambiguity.

2. Courts of Justice

Clause 2(4) corresponds to section 20 of the IPC. The latter defines the phrase 'Court of Justice'. In the BNS, this phrase has been replaced with the word 'Court'. The phrase 'Court of Justice' has been replaced in all the 43 places where it occurs in the IPC. It is not readily apparent why this change has been effected.

3. General Exceptions Covering Children

Clause 20 deals with acts done by a child under 7 years while Cl 21deals with children above 7 and below 12. A child exactly 7 will be covered by neither. Cl.21 may be modified as 'children under 12 but not under 7 years of age'.

4. Wrong Clauses in the Definition of 'Offence'

Cl. 24 (b) seeks to define what the word offence occurring in Cl. 183,205,206, 232, 233, 243, 247, 323. Except in Cl 247, in the other seven clauses in this list, the word 'offence' does not occur. On a comparison with IPC, it would seem the correct clauses in this list should be187,209,210,236,237, 247,251 and 327. A similar mapping has to be done in respect of the clauses enumerated in Cl. 24(a).

5. Clause 23: Provided vs Unless

One of the most glaring errors is to be seen in Clause 23:. Section 85 IPC reads: Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: **provided** that the thing which intoxicated him was administered

to him without his knowledge or against his will. The corresponding provision in BNS is Clause 23 which says: Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; **unless** that the thing which intoxicated him was administered to him without his knowledge or against his will. This means that if a person is administered an intoxicant and if he commits an offence under its influence, he will be guilty- which is the very opposite of what was intended or what should have been intended. The meaning has been distorted by changing the word 'provided' to 'unless'.This has to be corrected.

6. Clause 63: Marital Rape

IPC and BNS both say it is rape if a man has sexual intercourse with a woman below 18 years of age with or without her consent. IPC provides an exception: Sexual intercourse by a man with his own wife, the wife not being under 15 years, is not rape. Clause 63 of BNS also provides an exception: Sexual intercourse by a man with his own wife, the wife not being under 18 years, is not rape. When sexual intercourse with consent with any woman not below 18 is not an offence, this exception in respect of the wife does not serve any purpose.

7. Clause 70(1) and (2) - Gang Rape

Clause 70(1) deals with gang rape. The sub-clause 70(2) is identical except that it refers to a woman under eighteen years of age and incorporates a more severe punishment. This sub-clause can be omitted and a simple proviso added to the main clause to refer to cases in which the victim is under 18 years of age. This will save about 100 unnecessary words and ensure conciseness.

8. Employing a child to commit an offence

Clause 93: "Whoever hires, employs or engages any person below the age of eighteen years to commit an offence shall be punished with imprisonment of either description or fine provided for that offence as if the offence has been committed by such person himself. Explanation.—Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section."This provision is about hiring or employing a child to commit an offence. How will using a child for sexual exploitation or pornography be covered within the meaning of this section? Those acts will be offences committed by the hirer himself, not by the child hired. The explanation fails to serve its ostensible purpose. It may be omitted.

9. Inconsistency

Section 93 uses the term 'any person below the age of 18 years'. Section 94 uses the term 'any child below the age of 18 years'. Consistency should be ensured.

10. Murder or grievous hurt by persons acting in concert – Mob lynching

Clause 101(1) prescribes death or imprisonment for life for anyone committing murder. Cl.101(2) creates a new offence seemingly aimed at mob lynching, without mentioning the term 'mob lynching'. This clause deals with murder committed by five or more persons acting in concert on ground of race, caste, community etc. Each person in the group is liable to be punished with death or imprisonment for life or imprisonment for a term that may extend to 7 years. There are several problems with this:

- The phrase 'acting in concert' is not defined. Does the act require common intention as defined in Cl. 3(5) or similar intention as defined in Cl. 3(6)?
- If this sub clause is not there, each member would be liable to be punished as if the murder was committed by him alone, if the principle of common or similar intention as defined in Cl. 3 (5) or 3(6) is applied.
- Does not 101(2) amount to dilution of the punishment for a murder committed by a group of persons acting in concert, as it could

end in a sentence of 7 years whereas for simple murder, the punishment is death or life imprisonment?

- In the listing of grounds for the offence, 'religion' is missing. It could be argued that the word 'community' which figures in the Clause would take care of religion. But Cl.194 makes separate mention of both religion and community, which would indicate that they are not synonymous.
- It could be argued that the phrase 'or any other ground' could possibly include religion too. But then when the omnibus clause 'any other ground' is there, one wonders why mention some specific grounds selectively?

This clause needs to be redrafted. Mob lynching is a heinous offence. The punishment needs to be higher but, unfortunately, the only way this can be done is by making death penalty the only punishment.

11. Mob lynching causing grievous hurt

Section 115(4) has similar provisions in respect of grievous hurt. This does not mention acting in concert and even omits the word 'community' that is there is Sec 101(2). Again, the punishment prescribed is not higher than that for grievous hurt caused by a single person, raising a question about the need for this provision at all. Possibly, it can raise the punishment, or lay down a minimum period of imprisonment. This clause needs to be redrafted.

12. Clauses 105 & 106 - abetment of suicide

These clauses provide punishment for abetment of suicide. The law relating to abetment of suicide has been frequently misused. Currently, mere allegations against someone can lead to their prosecution for supposedly encouraging the act of suicide. There are instances where an individual, feeling trapped due to their own wrongdoings, takes their own life. Although they themselves might be the cause of their despair, they might leave behind a note, or their family might claim, that someone was tormenting them. Examples include an unruly employee facing dismissal, or a suspect choosing to end their life when the police close in for arrest. Therefore, it is suggested that adequate provisions and illustrations may be added to prevent the misuse of these clauses.

13. Attempt to commit suicide

Has been rightly, de-criminalised. However, the Cl. 224. Says: "Whoever attempts to commit suicide with the intent to compel or restrain any public servant from discharging his official duty shall be punished with simple imprisonment for a term which may extend to one year or with fine or with both or with community service." In our view, this clause needs to be redrafted. It does not say compel to do what. May be revised as follows: 'compel any public servant to do any act he is not legally bound to do, or restrain him from discharging his official duty'. Possibly, threat to commit suicide may also be included.

14. Commutation and remission

Clause 5 provides for remission, Commutation etc of punishments. As Bharatiya Nagarik Suraksha Sanhita Bill's Clauses 474 to 478 deal with this subject in a complete and self-contained manner, this clause maybe omitted in BNS

15. Enhanced punishment

Cl. 301(2) which deals with punishment for theft provides that "in case of second or subsequent conviction of any person under this section, he shall be punished with rigorous imprisonment for a term which shall not be less than one year but which may extend to five years and with fine". This is at variance with Cl.13 (similar to Sec 75 or IPC) which provides for enhanced punishment of imprisonment for life or imprisonment for 10 years for every subsequent conviction under Chapters X (Counterfeiting)

and XVII (Property offences). The provision for enhanced punishment as in Cl. 301(2) seems unnecessary.

16. Incomplete sentence

The Explanation under Cl. 150 is incomplete: Explanation. Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section. It should be modified by adopting the same Explanation found in the corresponding provision in the IPC: Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

17. Imputations and assertions prejudicial to national integration

Cl. 195 deals with imputations or assertions prejudicial to national integration. A sub-clause (d), that was not in the IPC has been inserted making "false or misleading information jeopardising the sovereignty, unity and integrity or security of India" an offence. This has been inserted in Cl.195 failing to distinguish that national integration is different from integrity. We recommend that this clause may be omitted, as mere statements without incitement to violence or clear subversive activities, if criminalised, would be liable to misuse. In any case, these clauses are broadly covered in Cl .111 and 150.

18. Clause 302: Snatching

Clause 302 reads: "Theft is "snatching" if, in order to commit theft, the offender suddenly or quickly or forcibly seizes or secures or grabs or takes away from any person or from his possession any moveable property." This is defined as a separate offence but the punishment is the same as for theft. The definition itself sounds vague. How are terms like suddenly or quickly to be interpreted? This may possibly be refined by drawing upon Clause 132 that deals with assault or use of criminal force in attempt to commit theft: "Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both." Snatching of chain or a wallet or a mobile phone will invariably involve the effects of force or criminal force or assault as defined in Cl. 126 etc. Snatching may, therefore, defined as: "Whoever assaults or uses criminal force to any person in order to committing theft on any property which that person is then wearing or carrying shall be punished with....". The punishment may, of course, be kept higher than that for theft.

19. Right of private defence for snatching

Although snatching is defined as a distinct offence, it is not mentioned in the clauses on right to private defence which include theft and robbery. Snatching has to be incorporated wherever right of private defence against property offences is described.

vii. OF PUNISHMENTS

IPF chooses not to delve into discussions concerning the quantum or extent of punishments or penalties outlined in the Bharatiya Nyaya Sanhita. Although we staunchly advocate for the integration of contemporary penal concepts, we withhold from making particular recommendations in this context. Our focus remains on addressing facets of the BNS directly influencing policing and law enforcement, upholding law and order, and overseeing crime deterrence, investigation, and prosecution. Nevertheless, we emphasize the need for coherence in drafting these laws, ensuring that graver offences entail more severe consequences.

At the same time, it is crucial to ensure that persons convicted of heinous crimes, repeat offenders, or

those involved in organised crime cannot exploit legal loopholes to secure their release. This is vital to avoid the risk of such offenders committing similar acts against the community again. In the same vein, penalties, including fines, should be substantial enough to serve as an effective deterrent. Similarly, the fines should not be ridiculously low, which lack punitive and preventive impact.

viii. SENTENCING GUIDELINES

Vast discretion is vested in judicial officers in imposing a sentence of imprisonment. If there is a provision for imprisonment that may extend to, say, 10 years, the judge is at liberty to award any period up to 10 years, without any guidelines on when a lower punishment or a higher punishment will be in order.

The Committee for Reforms in Criminal Justice system headed by Justice VS Malimath (the Malimath Committee Report) also considered this issue. Its report in Para 14.4.1 says: "The Judge has wide discretion in awarding the sentence within the statutory limits. There is now no guidance to the Judge in regard to selecting the most appropriate sentence given the circumstances of the case. Therefore, each Judge exercises discretion according to his own judgment. There is therefore no uniformity. Some Judges are lenient and some Judges are harsh. Exercise of unguided discretion is not good even if it is the Judge that exercises the discretion. In some countries guidance regarding sentencing option is given in the penal code and sentencing guideline laws. There is need for such law in our country to minimise uncertainty to the matter of awarding sentence".

The Second Administrative Reforms Commission (2ndARC) in its fifth report (Public Order), has also recommended that (i) The Law Commission may lay down 'Guidelines' on sentencing for the Trial Courts in India so that sentencing across the country for similar offences becomes broadly uniform, and that (ii) Simultaneously, the training for trial court judges should be strengthened to bring about greater uniformity in sentencing.

Countries like U.S and U.K have detailed sentencing guide lines. The Sentencing Act 2020 of the UK specifies the circumstances under which such orders can be passed: viz. the murder of two or more persons involving premeditation or planning, the murder of a police officer in the course of his duty and a murder done for the purpose of advancing a political, religious, racial or ideological cause. Judges would surely welcome such guidelines as they do not have to agonize over when such a punishment would be appropriate.

We recommend that India should enact a separate legislation providing sentencing guidelines that account for the type and nature of the offence, severity or brutality of execution, mental state of the accused, provocative/ mitigating circumstances, offenders' ability to do time in a prison etc. Such a legislation can govern sentences not only under BNS but also under other laws.

Above all, we welcome the introduction of new forms of punishments in the BNS as alternatives to imprisonment.

ix. OF OFFENCES AGAINST WOMEN

1. Clause 79- Dowry death: - This is another widely misused legal provision. At the same time, sadly, dowry harassment continues to be a social curse in many parts of India. The Supreme Court of India, as well as other courts, have on multiple occasions, expressed concern about the misuse of these provisions. But it must be recognised that courts cannot rectify loopholes in legislation. Time has come for the legislature to discuss and come out with an appropriate legislation, balancing these social realities.
2. The reasons for a married female to commit suicide maybe many, dowry harassment being only one of them. It is important that the BNS takes note of the social reality and comes out with appropriate changes in this law to deal with the social realities of the day.
3. Clause 84 - Husband or relative of husband of a woman subjecting her to cruelty: At present

in the IPC, so also in proposed Sanhita, no time limit is prescribed for this offence. Therefore, an appropriate timeframe may be prescribed. Also, it is desirable to define the term 'relatives' to prevent an open ended misuse of the section.

x. OF OFFENCES AGAINST THE STATE

1. Clause 150: Acts endangering sovereignty, unity and integrity of India: It is a welcome move that Section 124 A of the IPC has been omitted in the BNS. Historically, sedition laws have been misused to stifle political dissent and the freedom of speech even after independence and this has been the touted reason for omission of this offence in the BNS.

2. However, it would appear that Clause 150 has been introduced as a new provision in place Sec 124A of the IPC. Considering that different parts of the country has been experiencing terrorism and secessionist activities including armed rebellion, adequate legal provisions to deal with acts that endanger India's sovereignty are required. One view is that 'unlawful activity' as provided in the Unlawful Activities (Prevention) Act, 1967 (UAPA) includes cession, secession and endangering sovereignty and integrity and that offences of this nature can be addressed under the Unlawful Activities (Prevention) Act, 1967, eliminating the need for a separate provision in the BNS.

3. However, if Parliament is in favour of including Clause 150 in the BNS, it would be crucial to ensure adequate safeguards to prevent its misuse. To prevent the potential misuse of Clause 150, it is essential to ensure clear and precise definitions of offenses within the provision, eliminating vague terms like "subversive activities", to avoid vague and overbroad interpretations. Parliament may also consider inserting provisions to ensure suitable safeguards, while protecting citizens' right to free speech and expression. The police should require reasonable evidence of acts to excite secession, armed rebellion, separatist activities, violence or public disorder that endangers the sovereignty, unity and integrity of India, before filing FIRs. Adequate provision for oversight by senior officers and review mechanisms should be of help, to act as a check against the arbitrary or biased use of this provision, and to ensure that the law is not abused or weaponised for political or oppressive purposes. Ultimately, the demonstration of courage, integrity and ethical leadership from senior officers is crucial for combating the misuse of laws.

xi. OF OFFENCES BY, OR RELATING TO PUBLIC SERVANTS

Clause 203 - Wearing garb or carrying token used by public servant with fraudulent intent: - For this offence, the punishment provided is imprisonment up to three months or fine or both. This is grossly inadequate. Impersonating a public servant by wearing his uniform, is a frequently occurring crime these days. To adequately punish this crime, it is suggested that the punishment prescribed may be made adequately deterrent.

xii. OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS

Clauses 269 to 278 cover offences affecting public health. These include adulteration of food and medicines and fouling of the environment using substances noxious to the health. Punishment provided is a fine of rupees one thousand in clause 278, imprisonment up to six months in six clauses, two years in one clause and one year in one clause.

1. It is pertinent to mention that several states have amended the Indian Penal Code in its application to the state, providing stiff jail terms extending up to life term. Country wide, it is felt that to control the dangerous evil of adulteration, manufacture and sale of fake medicines etc, severe punishments are required.

2. Therefore, it is suggested that a minimum of three years and up to ten years imprisonment and fine be provided as punishment for offences defined in these clauses. Manufacture and sale of spurious medicines and drugs should attract more severe terms of imprisonment.

3. Clauses 280 to 290 are crucial Provisions in respect of public safety. The prevailing atmosphere in the country indicates a severe disregard for safety obligations and concerns. Incidents like food poisonings, boat or steamer mishaps, fires caused by negligence, building and bridge collapses occur with unsettling frequency. The toll on human life is both alarming and deeply distressing. In any civilized society, the value of human life should be paramount.

4. Furthermore, there is often a noticeable indifference exhibited by some public servants tasked with inspections and ensuring compliance with safety regulations. The lax and sometimes corrupt behaviour of these officials needs to be addressed with appropriately deterrent punitive measures.

xiii. OF OFFENCES AGAINST PROPERTY

1. Extortion, Robbery and Dacoity: Clause 306 - Extortion: : Extortion is not only a serious crime, it has become a favourite with 'organised crime syndicates', gangsters and terrorists. These offences need to be dealt with in the manner they deserve, prescribing much higher punishments.

2. Clauses 307 to 311 - Robbery and Dacoities: Five offences under Dacoities have been clubbed in one clause (preparation, attempt, dacoity, dacoity with murder, belonging to gang of dacoits) This will create difficulties before police in registration and investigation. It will also be complicated for the judge at the time of 'framing of the charge'. Therefore, it is suggested that the five types of dacoity crimes put as different sub-clauses of clause 308, be allotted separate clause numbers.

3. Clause 315 - Stolen property: - Receivers of stolen property are the promoters and abettors of the crimes of theft, robbery and Dacoity. Therefore, to make an effective dent in these crimes, strict punishment should be meted out to the receivers of the stolen property. It is therefore suggested that punishment should be enhanced for these offences.

4. Clauses 316 to 321- Offences of Cheating and Frauds: - Now a days, aided by modern information and communication technology (ICT), cheating and frauds have become very common. There are professional gangs operating full-time engaged in this crime. Therefore, it is suggested that appropriate provisions defining these offences be included and punishments prescribed.

xiv. OF CRIMINAL INTIMIDATION, INSULT, ANNOYANCE AND DEFAMATION

1. Clause 353 - Misconduct in public by a drunken person: - This offence has a significant and direct bearing on order in public places. Nuisance and misbehaviour by intoxicated persons moving on foot or motor vehicles is frequent occurrence. Often bikers and motorists under influence of liquor or other intoxicants create panic in public places or even enter private property. Such behaviour also leads to accidents causing death or injuries to people, including the offenders themselves. Therefore, it is suggested that suitably deterrent punishments may be prescribed for offences under clause 3.

PART 3

THE BHARATIYA NAGRIK SURAKSHA SANHITA BILL, 2023

Comments and Recommendations of the Indian Police Foundation

Procedural law plays a vital role in ensuring the maintenance of law and order, crime control, investigation and prosecution of crime, protection of societal safety and security, upholding the rule of law, and safeguarding the rights, dignity, and honour of citizens. This means that in a free democracy, the procedural law should not only discharge its purpose efficiently, it must also be just, reasonable and fair. In other words, procedural law must act as a beacon of Justice that aligns with societal and ethical standards; should be based on reason, grounded in logical and justifiable action, and fairness, that guarantees an impartial, independent, and equitable playing ground to all. This is the essence of Article 21 of our Constitution. Further, the law should be articulated clearly and specifically to minimize the potential for misuse or misinterpretation. It is of paramount importance that the Bharatiya Nagrik Surksha Sanhita (BNSS), which seeks to replace the Criminal Procedure Code, is in harmony with the principles and values of a free society and democracy that India is.

PROCEDURAL LAW SHOULD EMPOWER THE POLICE FOR EFFECTIVE LAW ENFORCEMENT WHILE DEFENDING CONSTITUTIONAL RIGHTS OF CITIZENS

The Indian Police Foundation (IPF) believes that a well-crafted criminal procedure code is at the heart of an efficient law enforcement system, while ensuring both effective policing and the protection of citizens' rights. Most police officers of the country across the rank and file, aspire to have a criminal procedure code that enables effective crime control, public order maintenance, and counterterrorism efforts, strictly following the tenets of lawful policing and safeguarding citizens' rights. Balancing the need for robust and effective laws to combat criminals, gangsters and terrorists with inherent mechanisms against their potential misuse is paramount. IPF believes that a fair and well-constructed procedural law can help achieve this equilibrium by incorporating the following salient features:

- Clarity and Precision: The new code should provide clear and precise definitions of procedures, and legal provisions to minimize ambiguity and variances in interpretation.
- The law should provide clear and achievable deadlines for investigations as well as trials, to expedite the criminal justice process and reduce the backlog of cases. This should of course be supported by the availability of the manpower and other resources, forensics, mobility, communication and other infrastructure necessary for realizing such deadlines.
- The law should empower the police to leverage technology for efficient case management, evidence collection, their forensic analysis, and court proceedings to expedite trials while maintaining privacy and data security safeguards.

- The Law should provide adequate provisions and procedures to effectively handle terrorism, modern forms of borderless crimes, trafficking and organized crime, while ensuring safeguards to ensure human rights on the one hand and protect the police against wrongful accusations on the other.
- The procedural code should integrate and align with constitutional and human rights standards.
- The law should incorporate measures to protect witnesses and whistleblowers, encouraging them to come forward without fear of retaliation.

Thus, it is important that the procedural law should be able to strike the critical balance necessary to control crime, ensure citizens' safety, safeguard democracy and uphold the rule of law. Only if our legislative and enforcement actions are rooted in these objectives, we can move away from the vestiges of colonial subjugation or attitudes of dominance.

Once Shri NV Ramana, the Chief Justice of India had raised the concern that the process itself was becoming the punishment. Re-enacting our procedural law is an opportunity for the Parliament to ensure that the legal process is not misused or normalized as a form of harassment. It is necessary to ensure that the acquisition of authority does not lead to repression by the authorities. We need to envision a procedural law that effectively protects the rights and freedoms of citizens, strictly adhering to due process at the same time providing effective tools to deal with disorder, crime, gangsterism and terror.

A fair procedural law can help police to strike this critical Balance. In a society transitioning from political subjugation and social inequalities to democracy and social justice, conflicting demands on the system are inevitable. This calls for special efforts by social and political reformers as well as the police as enforcers of the law, to facilitate this transition.

A majority of police officers of the country today, are in favour of progressive changes in the procedural law and they are willing to subject themselves to new standards of accountability. The IPF believes that a fair criminal procedure law should meet the following tests:

- Police should respect the honour and dignity of persons while making arrests, searches, and seizures.
- While exercising police powers, no deliberate inconvenience or insult or humiliation should be caused. This is the philosophy behind the concept of 'policing by consensus'.
- The procedure prescribed for investigation including arrest, bail and trial must provide level playing field to complainant and accused both.
- Arbitrary arrests should be strictly avoided. A person should not be arrested unless absolutely necessary in the interest of justice.
- Criminal trials, appeals etc. should be disposed of expeditiously. Speedy trial is part of fundamental right to life and personal liberty under article 21 of the constitution.
- Pre-sentencing detention shouldn't be used as a prejudged punishment.
- Pre-sentencing detention should not be used as preventive detention, bypassing the requirements of Article 22 of the Constitution of India.

IPF believes that these principles should guide the criminal procedural code of a modern India. The new legislation presents an opportunity. The comments and suggestions given below are guided by these principles. While articulating our comments and suggestions, we have also attempted to incorporate supervening court rulings and outcomes of penological research. These suggestions may seem drastic, but they are necessary to support a modern philosophy of policing, that efficiently responds to the needs of the society, while ensuring that the law is aligned with the principles of justice and fair play.

Our comments are given in 4 parts:

(1) Some Primary Concerns and Recommendations

(2) The progressive and welcome provisions in the BNSS

(3) Provisions that require clarifications and

(4) Suggestions for Improvement and Correction of Errors.

i) SOME PRIMARY CONCERNS AND RECOMMENDATIONS

(i) Retain the existing Section numbering scheme under the CrPC:

For reasons explained earlier in this memorandum, we strongly recommend that the existing section numbers in the CrPC may be retained in the new legislation to avoid potential confusion among police, lawyers and judiciary. It is worth mentioning here that the existing CrPC was thoroughly revised in independent India in 1973, dispelling the notion of colonial-era origins.

Clarity is also required whether the trial of approximately 3 crore cases pending in various courts will be under existing CrPC or the new BNSS. Similar clarifications will also be required for 40-50 lakh cases pending investigation, with police and other investigating agencies.

ii. What comes first, trust or trustworthiness?

From colonial times, the Indian Police is not trusted by the system, and often for the right reasons. This vicious cycle of distrust by the system and frequent untrustworthy behaviour on the part of the police should not be allowed to go on indefinitely. Enactment of the new criminal laws offers an opportunity to modernize the law together with strong accountability standards. Unfortunately, the proposed laws still hold on to a colonial-era bias and distrust of the police. In contrast, most developed countries have developed their systems, with safeguards like tamper-proof electronic recording, mandatory legal representation, and a separation of investigation from custody-management, to prevent abuse. To embrace decolonization and modernization fully, India must thoroughly address this issue. Moreover, there's a pressing need to enforce accountability not only on the part of the police, but also on the part of witnesses and suspects. Those who fabricate statements, including police officers, witnesses or suspects, should be made accountable, attracting punishments and penalties for false testimony. Adopting such well-established practices that exist in many parts of the world needs to be considered at this stage, when India is on the throes of modernizing its criminal laws.

If we are to truly discard the colonial legacies and modernise our criminal justice system, the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) Bill will need some substantial rewriting. By 2047, India will have completed 100 years of independence. This opportunity and the existence of a clear political will for bringing about transformation, should not be missed by introducing a hurried legislation that almost fully retains all the laws introduced by the colonial masters.

Our recommendation: In particular, the following parts of BNSS require complete revision with new and innovative solutions that improves criminal justice administration in India.

a. Organization and function of the prosecution (Section 19 and 20 of BNSS)

b. Arrest, Custody Management and recording of statements of accused/suspects.

c. Chapter XXIII of BNSS relating to plea bargain.

d. Recording of Statements by the Police during investigation Section 180 and 181, 182,183 of BNSS.

iii. Modernize Arrest Laws, Reduce Unnecessary Arrests and Decongest Prisons:

During the course of their day-to-day practical police work, police officers are required to assert authority and exercise their powers to enforce the law. In this extremely complex and sensitive terrain, police officers exercise tremendous powers of discretion to arrest or not to arrest persons. While arrest of violent criminals, habitual offenders and those accused of heinous crimes may be necessary, as ordained under the law, experience shows that many arrests maybe unnecessary or unjustified. At

the same time, instances of arrests based on false, fabricated or motivated charges or arrests without prima facie evidence has been resulting in serious miscarriage of justice and violation of human rights. Indiscriminate arrests by police not only result in curtailing the liberty and freedom of individuals, they also place huge pressures on police station work, while clogging courts and prisons. They also place a burden on the exchequer, as the expenses on food, accommodation and health inside jails are to be borne by the State. Above all, there are huge social and personal costs for the arrestee, who is often the breadwinner, with his/her family being required to face financial hardships as well as social stigma.

India grapples with severe prison overcrowding, even as Under Trial Prisoners (UTPs) account for three fourths of the inmates. To modernize the criminal justice system and decongest our prisons, it is imperative that the law clearly discourages unnecessary arrests, striking a balance between public safety and reducing unnecessary arrests, ultimately leading to a more efficient and equitable criminal justice system.

The new criminal law legislation is the right opportunity to reform and modernize our arrest laws, decongest India's prisons, address the root causes of crime and help reduce recidivism.

The NCRB's Crime in India 2021 Report reveals that out of 44,24,852 individuals arrested for IPC Offences in 2020, 90% of the arrests related to offenses carrying sentences of 7 years or less. The top 10 offences for which arrests were made were offences such as disobeying a public servant's order, simple hurt, rash and negligent driving, and unlawful assembly. In contrast, fewer than 4 lakh arrests were made for grave crimes like murder, rape, dacoity, and robbery. Under Special and Local laws, 23,89,762 arrests were made, with 92% of these cases having punishments of 7 years or less. The data highlights the need for reform in arrest procedures, especially for minor and bailable offenses, as arrests continue unabated despite legal amendments designed to curtail unnecessary detentions. It is clear from the above data that large number of arrests are being made by police in a routine fashion even in minor, bailable cases.

The Law commission of India in its successive reports has pointed out that that the power of arrest is often wrongly and illegally exercised in large number of cases. The Law Commission had proposed amendments to sec 41 CRPC in its 152nd report (1994) and again in 177th report (2001) to prevent unnecessary arrests and custodial crimes by police. These amendments in CrPC were brought in 2008 and became effective from Nov. 2010. However, the amendment to section 41 CrPC in 2008 which came into effect in 2010, whereby it was stipulated that arrest is not mandatory in all cases, and that the IO has to justify the need for arrest in all cases with punishment of 7 years or less imprisonment, had very little impact on the number of arrests in the country.

Many of the unwarranted arrests occur due to a prevailing mindset and legal perception that all accused persons have to be arrested in cognisable cases, regardless of the nature and severity of the offence, or without ascertaining the necessity of the arrest thorough a police investigation. In certain situations, arrests are also carried out to appease or project an image of efficiency to various constituents including victims and complainants, and the media. Many arrests result from vested interests, such as personal vendetta, resolving of civil disputes, corrupt practices, political pressures, and other external factors.

While the IPF is fully in favour of empowerment of the police to exercise the powers of arrest to effectively handle riotous situations, deal with criminals, gangsters and terrorists, we strongly advocate that there should be adequate legal and administrative checks and balances to prevent the misuse of such powers. In the Arnesh Kumar case, the Supreme Court said that the existence of power to arrest is one thing and the justification for the exercise of such power is quite another.

The culture of indiscriminate arrests and incarceration is one of the biggest vestiges of the pre-independence era. Even as we prepare to celebrate the 100th anniversary of India's independence, we cannot afford to continue with this colonial practice. The criminal law legislations offer an opportunity and it should not be missed.

Chapter V of BNSS deals with arrest of persons. It is a matter of satisfaction that the BNSS Bill Clauses 35 and some other provisions contained in the chapter have incorporated some of the principles laid down by the Supreme Court of India in recent years, carrying forward, the 2008 amended provisions of arrest law under the CrPC. However, considering that the culture of unnecessary arrests have not stopped even after the elaborate amendments of Section 41 CrPC in 2008, it is necessary to include clear provisions in the proposed BNSS to prevent them. It would be desirable that the Parliament, while enacting the BNSS, should review and streamline the existing provisions of arrest under Section 41 CrPC, integrating the principles laid down by the Supreme Court of India in the in Joginder Kumar v. State of UP (AIR 1994 SC 1349), Arnesh Kumar v. State of Bihar (2014) 8 SCC 273, and D K Basu v. State of West Bengal (AIR 1997 SC 610). The point that we make is that the law should also incorporate built in provisions to ensure its efficacy.

For example, BNSS Clause 35(1)(b) - CrPC Sec 41(1)(b) lays down that in cases where the imprisonment is for 7 years or less, an arrest without a warrant can be effected only if the police officer i) has reason to believe that the person has committed the offence, and ii) is satisfied that the arrest is necessary iii) to prevent further offences, iv) for further investigation, v) to prevent tampering with evidence, vi) to prevent tampering with witnesses or vii) because his presence in the Court whenever required cannot be ensured otherwise. These reasons are required to be recorded in writing while making the arrest. In practice, it is possible that either such recording is not done or a routine record is made without real justification.

IPF recommends that a subclause may be added, making it mandatory that when the accused is produced before a Magistrate seeking remand, the Magistrate shall verify the need for arrest as recorded, if it provides enough justification for remand, and if so, he shall specifically comment on this in the remand order, and that if the Magistrate is not so satisfied, he may order the accused to be released on bail.

Another practical matter is that many offences which attract punishment of 7 years are quite serious and a police officer may be inclined to make the arrest and, therefore, may tend to find some plausible reason to effect an arrest. However offences punishable for two years or less need not be clubbed with the more serious forms of offences. A proviso may be made that no arrest shall be made in offences which are punishable with imprisonment for two years or less or with fine unless the offence is committed in the presence of the police officer and even in such cases, the SHO shall release the accused on bail on his own personal bond.

As a corollary, Clause 39 sub-section (2), the release of the person should be on personal bond only, as non-cognisable offence is not arrestable in normal course.

Our submission is that in cases which are not heinous, every opportunity to avoid arrests and to enlarge arrested persons on bail should be made use of, in the larger interests of preserving human rights, reducing incarcerations and de-congesting prisons, especially reducing the population of UTPs in our prisons.

iv. Recording of Statement of Witnesses by a police officer.

Clause 181 retains the provision contained in Sec 162 CrPC that a statement of a witness recorded by a police officer shall not be got signed. The bar on asking witnesses to sign their statement has dangerous consequences. More often than not, the witness is not aware of what is recorded in his name. Any of us who have been examined as witnesses will be able to vouch the truth of this. Sometimes, I.O.s resort to this in order to avoid contradictions between statements of different witnesses which may be fatal to the case. But this is an issue to be addressed separately that Courts should not expect parrot-like repetition from witnesses in the name of corroboration. There are studies to show that we cannot expect narration of witnesses to an incident to be identical. A crooked police officer could use this loophole by manufacturing a false statement in the name of X as if he saw Y commit an offence,

and a few such statements could be enough to lay a charge sheet against Y, and if X disowns any such statement during trial, he is liable to be cross examined as a hostile witness.

This section might have had meaning in the 19th century when most people were illiterate and could not make out what was written in their name. The situation is vastly different now. If a person is asked to sign a statement, he has an opportunity to go through it and protest if there is anything there which is contrary to what he actually said. Of course, there could be a fear that witnesses may be coerced to sign or that signatures may be taken on blank paper and statements recorded later. Such things may happen but that will not be the norm. Further, the witness may speak about any such aberration during trial. Another safeguard will be to ensure that the witness is given a copy of the statement recorded from him and signed by him. A witness who finds that he is compelled to testify according to a statement written behind his back will have far less respect for the police than one who finds that his statement has been faithfully recorded. The time has come to amend this provision.

Our recommendation: The statement of witnesses recorded by the police officer should also be signed by the person making the statement and a copy of the signed statement should be given to him/her.

As regards admissibility of statements recorded by police, we have commented under the Bharatiya Sakshya Bill, 2023.

v. Custody Management

The implementation of a Custody Management scheme, somewhat similar to the system in the United Kingdom, could be highly beneficial in India's law enforcement. Establishing Central Lock-Ups at Circle, Sub-division, and District levels, each with dedicated custody officers, could serve as a significant step towards reducing instances of custodial violence and preventing false allegations against the police. This system ensures that custody is with an officer who has no interest in the success of the case while the officer who investigates the case and has a stake in the outcome of the case does not have control over the custody. This approach not only ensures a more accountable and humane handling of detainees but also aligns with international standards for safeguarding the rights and well-being of individuals in police custody.

Remember Pandemic Policing Days? Custody Management was practised successfully in many Districts in India, for a different reason: for reducing the chances of spread of infection.

Our recommendation: Establish custody management centres / Central Lock-ups at Circle, Sub-division, and District levels, each with dedicated and trained custody officers. The custody centres should have all basic facilities like full CCTV coverage, lock ups, hygienic toilets / bathrooms, arrangements for food, medical attendance where necessary.

vi. Scientific Interrogation of Accused and Suspects

Scientific interrogation of accused or suspected persons is a critical aspect of a fair and thorough investigation. Presently however, the interrogation practised is often perfunctory, lacking in proper scientific methods and, in some cases, involves the use of third-degree torture. This lackadaisical culture has done tremendous harm to India's policing and criminal justice.

IPF would like to draw attention of the Hon'ble Parliamentary Committee to the United Kingdom's Police And Criminal Evidence Act 1984 (PACE), a seminal legislation that governs the arrest, detention, interrogation, and evidence-gathering procedures by law enforcement agencies in the UK. The PACE Act is known for introducing robust safeguards, including the recording of interviews, the right to remain silent, and legal representation during police questioning, ensuring a fair and transparent process in criminal investigations. It serves as a model for modernizing interrogation methods and upholding the rights of individuals in police custody.

The IPF recommends that an appropriate section on scientific interrogation / interview of accused persons / suspects, be introduced in the BNSS immediately after Section 180, on the lines outlined below:

Section 180A - Interviewing of Accused or Suspects

(1) The interview, which constitutes the conversation between the investigating officer and their team and the accused person or suspects, may be recorded using audio-video devices.

(2) The Superintendent of Police may decide that the interview mentioned in subsection (1) with the accused or suspect can be conducted in the presence of their lawyer.

(3) If it is determined to interview the suspect or accused under subsection (2), the accused or suspect should be informed of this decision and provided with a prescribed number of hours before being asked to make a statement before the Investigating Officer or answer any questions.

(4) During the recording of the interview as mentioned in subsection (3), the accused or suspect must be cautioned in a language they understand.

(5) A copy shall be made of the record of conversation and the media in which conversation is recorded shall be sealed in original and signed by the investigation officer, accused or suspect as the case may be and his lawyer, and shall be forthwith sent to the magistrate.

(6) The copy of the conversation made from original under sub-section (6) shall be used by the investigation officer for the purpose of investigation and production before the Court as record of the conversation.

(7) The Court may on its own motion or, if the contents of the record as produced by the Prosecution are disputed by the defence, open the seal and see or hear the conversation in presence of both parties in order to compare any assertion made by defence or prosecution.

(8) if the accused or suspect relies on anything in his defence which he knowingly failed to mention at the time of, interview, the court shall presume that such fact or circumstance either did not exist or if these exist shall be inadmissible in defence and such omissions shall be taken to be of probative value in proving the guilt of the accused.

It would be necessary to design a set of standardised questionnaire as well as a standard sheet of information indicating the rights of the accused / suspect, the pros and cons. IPF strongly recommend the insertion of a clause as above, which could be a game changer in investigation, prosecution and policing itself.

To safeguard against any potential misuse of the law by the police, some essential measures and safeguards should be prescribed. These should include establishment of appropriate custody facilities and interview protocols that meet standards including CCTV coverage, access to medical, legal and family consultations. One custody centre may serve multiple police stations.

An interrogation room should be linked to the custody area, allowing for proper and controlled questioning of the accused. A dedicated and well-trained custody officer should be appointed to ensure compliance with statutory requirements and to uphold the "duty of care" for individuals in custody. All interrogations should be audio / video recorded in a tamper-proof format. Video recording should be mandatory for cases where the potential punishment is death or life imprisonment. No interrogation should take place without the presence of a lawyer. Custody officers should ensure that the investigating officer cannot engage with the arrested person without the presence of a lawyer. Police officers should wait for the lawyer to arrive, with the exception of terrorism cases where immediate interrogation may be necessary to prevent loss of life.

The Bar Council of India should formulate a code of ethics and guidelines for lawyers assisting clients during police interrogations to ensure their proper conduct and protection of the accused's rights.

It is also recommended that a national police interrogation and interview training framework should be developed to train police officers in

proper interrogation techniques and the respect of individuals' rights.

Implementing these safeguards should create positive incentives for lawful behaviour on the part of police officers, as statements lawfully obtained become admissible in court.

vii. Prosecution

The prosecution system in India requires comprehensive reform to ensure and enhance Its effectiveness. Currently, public prosecutors appointed temporarily from practicing lawyers handle prosecution in Sessions Courts and High Courts, often with limited dedication and interest. On the contrary, it has been observed that states with a dedicated cadre of prosecutors tend to demonstrate significantly better success rates, especially in lower courts. These reforms are critical to enhance the overall quality and coordination of prosecution services in the country.

Justice Malimath Committee on Reforms of Criminal Justice System has considered the issue of prosecution in depth. This committee had emphasized that proper coordination between the prosecutor and the Investigating Officer is critical to the success of prosecution. It has recommended that a police officer of the rank of Director General of Police should be appointed as the Director of Prosecution in consultation with the Advocate General.

Our Recommendations:

- Recognizing that prosecution is primarily a state government responsibility, it is recommended that the BNSS should mandate the states to organize prosecution services effectively. An organised cadre of prosecutors will help develop and nurture talent.
- IPF strongly suggest that the BNSS may mandate all States to create and nurture a robust cadre of public prosecutors for the long term professional management of prosecution.
- To ensure commitment and drive for successful prosecution, it is suggested that Additional Public Prosecutors and Public Prosecutors for Sessions Courts and High Courts be appointed from the regular cadre of prosecutors.
- Establish a Directorate of Prosecution at the state level, consisting of a Director General of Prosecution and other suitable officers, to monitor and expedite cases and provide opinions on filing of appeals.

viii. Recording of FIRs

The welcome changes in the Bill provide that (i) the FIR can be filed in any police station, irrespective of the area where the offence is committed and (ii) may be given orally or by electronic communication.

The information recorded in accordance with section 173(1) is judicially called the First Information Report or the FIR. There is a mass of supreme court rulings on the subject of first information report. Therefore, it is necessary to give this term a legal legislative sanctity. The phrase FIR does not occur in 173(1).

Recommendation: Clause 173(1) (ii) may be suitably revised as: "the substance thereof of such information, shall be entered as the First Information Report in a book to be kept by such officer in such form as the State Government may prescribe in this behalf". This will be followed by: "173(2). A copy of the first information report or the FIR as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant or the victim".

ix. Multiple FIRs:

One fallout of the advent of the electronic media has been the evil and often deliberate practice of registering numerous FIR's in multiple police stations based on contents of media or virtual media. This has led to the affected persons approaching High Courts and Supreme Court to club them, causing unnecessary work for Constitutional Courts. It has, therefore, become necessary to ensure that even if registration of FIRs happens to be done at multiple police stations, the investigation into such cases should be only with the police station having jurisdiction. Determination of the place of jurisdiction could present some challenges. The lack of clarity in the law has practically become a tool for harassment.

Recommendation: To ensure clarity and consistency in handling cases relating to media publications, we suggest that the BNSS should establish a well-defined procedure for managing multiple police complaints, providing clear guidance on how such complaints should be handled, ensuring fairness and preventing abuse of the legal system.

x. Preliminary Enquiry:

Clause 173(3) of BNSS Bill provides that if the offence is punishable for three years or more but less than seven years, SHO may conduct a preliminary enquiry, within a period of fourteen days, to ascertain whether there exists a prima facie case, or proceed with investigation when there exists a prima facie case. While there may be some justification to allow the concept of preliminary enquiry in certain cases, there could be serious, unintended outcomes.

A significant source of complaints against the police arises from the failure to register FIRs when citizens approach them with their complaints. There could be no justification for failure to record an FIR when the contents of the complaint reveal the commission of a cognizable case. But there will be occasions when the complaint is of non-cognizable nature or when there is ambiguity whether a cognizable offence is involved. In such cases where there is a doubt whether it is a cognizable case, a preliminary enquiry will be helpful. Under the circumstances, there is a pressing need to lay down precise legal provisions that govern the registration of FIRs. The Supreme Court, in the Lalita Kumari v. State of U.P. case, has laid down that:

i) Registration of FIR is mandatory under Section 154 of the CrPC, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

While the law as laid down in the above case is clear, the challenge lies in the selective application of this provision by some police officers, resulting in what is commonly known as 'concealment and minimization' of crime or 'Burking' of crime.

Unfortunately, the proposed provision in the Bharatiya Nagrik Surksha Sanhita (BNSS) allowing the SHO to conduct a preliminary enquiry before registration of cases, is likely to further aggravate this problem, which may result in further delays in registration of FIRs. We are of the view that the BNSS should incorporate the Lalita Kumari judgment. The provision for preliminary enquiry should be invoked only in rare cases, with adequate safeguards against its misuse. At the same time, the law should establish stringent penalties for lodging false and frivolous FIRs to deter misuse of the criminal investigative process, while ensuring that genuine complaints are not ignored.

Our Recommendations:

(1) IPF recommends that BNSS should clearly incorporate the principles laid down in the Lalita Kumari judgment,

(2) IPF recommends that restricting preliminary enquiry to offences attracting any specified term of imprisonment (3 years to less than 7 years) may be dispensed with. The stipulation of getting permission of the DySP for proceeding with preliminary enquiry or proceeding with investigation will result only in delay. For example, if a person appears with visible injuries likely to have been caused by use of dangerous weapons (an offence punishable for 3 years imprisonment under clause 116 of BNS), and if he has to wait till permission of the DySP is obtained for starting the investigation or till a

preliminary enquiry is completed, faith in the criminal justice system will be shaken.

(3) We recommend that in place of the proposed sub-section (3), the following sub-section maybe inserted:

"173(3). If the information given to the police is such that the officer in charge of the police station feels that the commission of a cognizable offence cannot be ruled out but a preliminary enquiry will be necessary to establish it, he shall record such information in the general diary of the police station and

i) proceed to conduct a preliminary enquiry to ascertain if any offence has been committed and complete it expeditiously and at any rate within 14 days,

ii) proceed in accordance with cl. 173(1) if preliminary enquiry reveals the commission of a cognizable offence, or

iii) if a cognizable offence is not established, record the substance of the preliminary enquiry in the general diary, and also inform the complainant.

Provided that the scope of preliminary inquiry is confined only to ascertaining whether the information reveals any cognizable offence or not, and not expanded to verify the veracity or otherwise of the information received."

The IPF also recommends that adequate safeguards may be built in, to prevent the misuse of this provision.

Clause 175. - Though supreme court has held that no First Information Report is necessary for the police to investigate, there is always a scope for misuse and confusion. This section itself doesn't make an FIR necessary for investigation, yet it would be proper if a legislative backing is given to it. Therefore, it is suggested that following proviso should be added to sub-section (1) of section 175-

"Provided further that it shall not be necessary for the purpose of police investigation of a case, that there should be a first information report recorded in accordance with sub-section (1) of section 174."

xi. Police Commissionerates

There is no mention of Police Commissionerate system in the new BNSS Bill. Police Commissionerates in major Indian cities have proven to be a highly effective model for streamlining law enforcement and expeditious police service delivery. The system allows the appointment of senior police officers as Police Commissioners, who have extensive experience and expertise in handling the complexities of urban policing, and who can provide the leadership and coordination to address the unique and complex law enforcement needs of urban areas. We strongly recommend that suitable enabling clauses be added to Chapter II to establish Police Commissionerate systems wherever required.

ii. THE PROGRESSIVE AND WELCOME PROVISIONS IN THE BNSS

But some of them still require refinement.

Many new and progressive additions are there in the BNSS Bill and these will be of help, from a policing point of view. Some of them are listed below:

1. Audio-video electronic devices and electronic communication as defined in Cl. 2(1)(a) and (f) have been allowed to be used in searches (95), identification process (54) , issue of summons (63(2) and 94(1)) and even in trials(265).

2. Use of **electronic means for communication** of
   a. summons -clause 63(ii) and 64(ii)
   b. copies of police reports to accused -clause193(8)
   c. progress of investigation to informant/ victim within 90 days-clause 193 (3) ii

3. Compulsory videography of all search and seizure operations -clause 105

4. Cl. 58 which deals with the requirement of production of the accused within 24 hours before a Magistrate says, this may be before

a Magistrate, whether having jurisdiction or not. This resolves some logistical issues that the police often confront.

5. Cl. 107: IO can move court for attachment of property derived from criminal activity
6. C.112: lays down procedure for moving for investigation abroad. Cl. 113 provides reciprocal arrangement.
7. Cl. 151(2): provisos afford protection to members of armed forces for acts done under orders or in exercise of duties: No FIR without preliminary enquiry and no arrest without consent of govt.
8. Cl. 172: This mandates that everyone should conform to lawful directions from a police officer issued by way of preventive action.
9. Cl.173, equivalent to 154 CrPC, provides some significant changes relating to FIR. Under this, information about a cognizable offence can be given in any police station irrespective of jurisdiction and it can be given orally or by electronic means. If it is by electronic means, it shall be taken on record by the SHO on being signed within three days by the person giving it. While CrPC provided for giving a copy of the FIR free of cost to the informant, BNS says it may be given to the informant or the victim.
10. submission of **complaints through electronic means**-clause 173 (1) and 173(1) ii
11. (A) **Recording of FIR by women police officer/**women officer on a complaint by women, who is victim of offences under clauses 64,66,67,68,70,73,74,7576,77,78 or 122 of BNS 2023-clause 173(1)i and (B) even recording of above complaint at her residence, in case victim is temporarily/permanently disabled, (physically or mentally) and videography of above statement-(clause 173(1) a, b, c). (C) recording of statement of victim/complainant by a judicial magistrate - clause 183.
12. Provision for **recording the statements of witnesses-acute sick, mentally or physically disabled and senior citizens at their residence**-clause 179 (1)
13. Provision for recording the statement of women victims in selected cases; statement of witnesses in case of offences punishable with 10 years or more imprisonment by judicial magistrates and women judicial magistrates (for women victims) and use of special educator or interpreter in recording the statement of mentally or physically disabled persons, use of audio-video recording etc. -clause 183 (6 a, 6 b).
14. Judicial review of all non-cognisable cases- SHOs to forward a fortnightly report of all non-cognisable cases reported at PS- clause 174(1) ii.
15. Cl.175 says the SP himself may investigate or ask a DSP to do so, considering the nature and gravity of the offence.
16. Cl.176(3) requires that in cases punishable by more than 7 years, SHO shall cause forensic experts to visit the scene. This mandatory **visit by forensic experts for examination of SOC** and collection of forensic evidence and videography through mobile phone or any other electronic device in all cases with punishments of 7 years or more-clause, is likely to be a game-changer.
17. Cl. 187(5) makes it clear that no person shall be detained otherwise than in police station under policy custody or in prison under Judicial custody or place declared as prison by the Central Government or the State Government.
18. 190(1) A proviso says when evidence is sufficient, the SHO while sending a police report on conclusion of investigation shall take security from such person for his appearance before the Judicial Magistrate who shall not refuse to accept the same on the ground that the accused is not taken in custody.
19. Cl. 193(3)(ii): (ii) The police officer shall, within a period of ninety days, inform the progress of the investigation by any means including electronic communication to the informant or the victim.
20. Cl. 193(8): Subject to the provisions contained in sub-section (7), the police officer investigating the case shall also submit such number of copies

of the police report along with other documents duly indexed to the Judicial Magistrate for supply to the accused as required under section 230: Provided that supply of report and other documents by electronic communication shall be considered as duly served.

21. Magistrates have been empowered to order individuals to provide samples of their signatures, handwriting, voice or finger prints for investigation to police both without arrest-clause 349 (in 1973 CRPC, under section 311-A magistrate could order only samples of signature or handwriting only for those arrested).

22. Time limits for courts- 60 days for framing of charges-clause 251 (1 b); 30/60 days for delivery of judgement after completion of hearings-clause 258; 14 days for supplying documents to the accused;

23. Clause 336: Where a public servant, expert etc has to depose about a document prepared by him and is not available because of transfer, retirement or death, his successor may depose.

24. Cl. 346: Even when circumstances are out of the control of the party seeking an adjournment of hearing, not more than two adjournments can be granted.

25. Cl. 349: Magistrate may order a person to give sample signature, handwriting, etc even if he has not been arrested.

26. Cl.356:Provides procedure for in absentia trial and judgment in the case of a proclaimed offender.

27. Cl.360: Withdrawal from prosecution not to be allowed without hearing the victim

28. Cl. 397: Free treatment of victims of certain category of offences in government hospitals.

29. 398: Witness Protection scheme: Every State is mandated to prepare and notify a scheme for protection of witnesses.

30. 473: Procedure and time limits relating to mercy petitions

31. 481: CrPC provided that if a remand prisoner had completed one-half of the term of punishment prescribed, he shall be released on bail by the court. Now this term has been reduced to one-third. The Superintendent of the Jail has been made responsible for moving the Court for this purpose.

32. 499: When Court decides to dispose of a property, a photograph or videograph of the property shall be taken and it can be used as evidence in the trial.

33. 532: Permits trials, enquiries and some proceedings to be held in electronic mode by using electronic communication or use of audio video electronic means.

These new provisions are progressive and the IPF welcomes their addition to the law.

iii. PROVISIONS THAT REQUIRE CLARIFICATION

1. Explanation within Clause.2: Explanation.— Where any of the provisions of a special Act are inconsistent with the provisions of this Sanhita, the provisions of the special Act shall prevail. It is not clear why it is placed under 2(1)(j) investigation - instead of at the end of the clause. This may create confusion as someone may argue this applies only to investigation. If it is meant to be of general application. It may even be a separate clause.

2. Cl. 35(7): "No arrest shall be made without prior permission of the officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for less than three years and such person is infirm or is above sixty years of age." This is a new provision that was not there in the CrPC. Cl 35(1)(a) empowers a police officer to arrest a person who commits an offence in his presence. At that time, he may not know whether the offender is above sixty years of age. If it so happens that the offender is above 60, the police officer would appear to have violated Cl. 35(7). A proviso may be added to take care of such a contingency. Further, will this apply to arrest of a released convict or proclaimed offender or to one who obstructs a police officer or to a person arrested in a non-

cognizable offence for failing to give his name and address (vide Cl.39(1))?

3. In clause 35(6), the following words may be added at the end of the sub-clause to safeguard against the misuse of the process contained in this sub-clause.

   "After issuing him the notice of giving last opportunity so that he may comply with the directions to appear before such police officer".

4. Clause 37(b) requires that the govt "designate a police officer in every district and in every police station, not below the rank of Assistant Sub-Inspector of Police who shall be responsible for maintaining the information about the names and addresses of the persons arrested, nature of the offence with which charged, which shall be prominently displayed in any manner including in digital mode in every police station and at the district headquarters". This is a progressive provision. However, at the time of arrest, it is hardly likely the person would have been charged. The phrase "nature of the offence with which charged" may be modified as "Sections of law under which arrested." In Tamil Nadu and in some other States, there is no rank of ASI. This would mean that an SI would have to be nominated. There are some other ambiguities: How soon should the arrest be displayed? Is it enough to display the list of persons arrested on the day? If not, for how long should the names be displayed? Will the State govt have to designate an officer by name for each police station? If the names and addresses are displayed on a board or digitally, will there be a question of violation of privacy of the arrested person? Will a similar information have to be maintained at State headquarters? These are issues to be ironed out. Further, ultimately, it is the SHO of the Station who holds the authority and responsibility for everything done in the Station. Without designating another officer, it may be stated that it is the responsibility of the SHO.

5. Cl. 43(1) requires that when a woman is arrested the officer shall "give the information regarding such arrest and place where she is being held to any of her relatives, friends or such other persons as may be disclosed or mentioned by her for the purpose of giving such information." This is included in 48. (1) "Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or mentioned by the arrested person for the purpose of giving such information and also to the designated police officer in the district." While the intention is laudable, there is no necessity to repeat this in Cl. 43(1).

6. Cl. 53(3)(a) (a) refers to examination of an accused by a medical practitioner and says "examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case. The clause may be modified to specify that the medical practitioner may take samples or swabs of the types of things specified.

7. Cl. 58: The provision to produce before any Magistrate even without jurisdiction should not result in forum hunting. Justification may be stipulated - such as arrest far away or absence of jurisdiction Magistrate.

8. Cl. 70(3) provides that all summons served through electronic communication shall be considered as duly served and a copy of such electronic summons shall be attested and kept as a proof of service of summons. This means proof of sending of an electronic communication will be considered as proof of delivery. This introduces convenience and can have the potential to streamline the service of summons. However, the scheme may also be fraught with risks. The person to whom the electronic communication has been sent may have lost his phone or the phone may be out of

order or he may not have connectivity. It is not clear how this problem will be addressed.

9. Cl. 175(4) is verbatim repeated in Cl. 210. At any rate, it is out of place in this chapter.

10. Cl. 176: This lays down the procedure for investigation and specifies when the IO need not proceed to the spot and when he need not investigate. He is supposed to report this to the Magistrate but the requirement newly added viz. that he should forward the daily diary report fortnightly to the Magistrate is ambiguous with reference to cases not investigated, because if the case is not investigated there would be no necessity for daily report.

11. 183(6)(a) provides that in cases of sexual offence, recording of a statement by a victim shall be by a woman Judicial Magistrate and in her absence by a male Judicial Magistrate in the presence of a woman. A proviso under this sub clause lays down that in cases relating to the offences punishable with imprisonment for ten years or more or imprisonment for life or with death, the Judicial Magistrate shall record the statement of the witness brought before him by the police officer. Is it necessary that this should be confined only to cases involving imprisonment for 10 year or more?

12. Two other provisos in the same sub-clause provide that if a statement is to be recorded by the Magistrate from a mentally or physically disabled personit may be done with the assistance of an interpreter or a special educator, and that it shall be recorded by audio video electronic means, preferably a cell phone. Cl 183(6)(b) provides that such a person need not undergo examination in chief during trial. Since these two provisos and subclause (b) relate to 183(6)(a) which deals with sexual offences, it would appear that they would not apply to other types of cases. It may be clarified whether this restriction is intended.

13. 187(2) Extension of remand is to be done for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days: We suggest that the restrictions of initial 40 days or 60 days of detention for obtaining police remand should be done away with. Police may be allowed to obtain police remand at any time during the period when the accused person is in judicial custody as at times, absconding accused, or co-accused may be arrested later and confrontation may be required.

14. As regards the period of Police Remand period, we suggest that the period of police custody must be limited to a maximum of 30 days, and that too for cases punishable with death or life imprisonment, as under UAPA and Organised Crimes. There is an apprehension that the indiscriminate increase of police remand periods may lead to more cases of police violence, torture, or even custodial deaths. The CrPC says, "the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days…" up to 60/90 days. This phrase "otherwise than in custody of the police" is omitted in BNSS. Does this mean the prisoner can be in police custody for up tom 60/90 days?

15. Cl. 210, similar to Section 190 of CrPC describes the circumstances under which a Magistrate may take cognizance of an offence. This includes receipt of a complaint. Cl.210(3) provides as follows: "Any Magistrate empowered under this section, shall upon receiving a complaint against a public servant arising in course of the discharge of his official duties, take cognizance, subject to—(a) receiving a report containing facts and circumstances of the incident from the officer superior to such public servant; and(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged." It is not clear what kind of complaint can be taken cognizance of by the Magistrate. The phrasing is so open ended that this provision can be misused just to harass public servants. Secondly, it seems to negate the protection afforded under Cl. 218 in respect of officials removable from service by orders of the government. The ambiguity in this is to be cleared.

16. Cl. 218 is analogous to Section 197 of CrPC and relates to sanction of prosecution for public servants. It contains a new provision that Government shall take a decision within a period of one hundred and twenty days from the date of the receipt of the request for sanction and in case it fails to do so, the sanction shall be deemed to have been accorded by such Government. This clause, like the one under the CrPC affords protection only to public servants removable by the Govt. Lower subordinates, who are more likely to face such prosecution are not protected. It may be provided that such cases will also require sanction by the authority competent to remove the person from service.

17. However, this protection of prosecution sanction may be taken away in cases of custodial torture, booking of false cases, arresting of innocents, corruption and other misconducts by police officer/other agencies.

iv. SUGGESTIONS FOR IMPROVEMENT AND RECTIFICATION OF ERRORS

1. Use of handcuffs: Cl. 45(3) permits handcuffing under specific circumstances. Provision for use of handcuff by police for arresting habitual and repeat offenders, escapees, those involved in serious crimes like-terrorism, organised crimes or crimes against the State, drug crimes, illegal possession of arms, murder, rape, human trafficking, economic offences, sexual offences against children etc-clause 43(3). However, Clause 43(3), concerning the use of handcuffs, could have been more appropriate if it directly incorporated the Supreme Court guidelines, which gives wider discretion to the police officer to handcuff an arrestee immediately after arrest, after recording reasons. This clause currently restricts the scope of use of handcuffs only in certain eventualities. Alternatively, the following phrase may be appended at the end of sub-clause (3)- "or who may harm the police officer or inflict self- harm or attempt to escape from custody, irrespective of the nature of offence in which the offender is arrested." It needs to be specified whether the person can be handcuffed while being escorted to court or prison.

2. Section 144-A in the CrPC, which empowered District Magistrate to issue orders prohibiting carrying arms in a procession or mass drill or mass training with arms, has been omitted. We advise restoration of the provision in the interests of maintaining law and order.

3. The Role of Executive Magistrates in Riot Control: Clause 148 authorises any Executive Magistrate, the SHO or any police officer not below the rank of Sub Inspector to command an unlawful assembly to disperse and then to disperse it by force. But Clause 149 empowers only the District Magistrate or any other Executive Magistrate authorized by him to cause the unlawful assembly to be dispersed by using armed forces. This needs a re-look. It is not often that a District Magistrate takes up this responsibility. Further if there is widespread disturbance, the DM cannot afford to be locked up in the midst of a riot when (s)he may have to perform many other tasks. In practice, it is the police who liaise with any armed forces summoned for assistance. Executive Magistrates generally have a brief stint in that role, whereas a police officer will have much more experience. It will be appropriate if this section provides that the District Magistrate or an executive magistrate nominated by him or a police officer not below the rank of an Deputy Superintendent of Police can disperse an unlawful assembly using armed forces.

4. Clauses 289-300, dealing with plea bargaining requires a detailed review to make them more effective. Release on probation and payment of compensation etc should be prescribed in lieu of imprisonment. Both charge bargaining and sentence bargaining should be included. Similarly, prelitigation mediation may also be included.

5. The schedule attached to BNSS needs revision to convert more offences from cognisable to non-cognisable (where only a fine is prescribed as punishment) and non bailable to bailable

(clause 241, 242, 244, 267 etc.). This will help decriminalise some of the lesser forms of deviant behaviour.

6. Cl. 2(1)(x) provides that the term victim will also include the guardian and legal heir of the victim. However, there is a view that the definition of 'victim' in clause 2(1)(x) needs to be further expanded. As per the clause victim means a person who has suffered any loss and injury caused by reason of the act or omission for which the accused person has been charged and includes the guardian or legal heir of such victim. As per this definition if no person is charged for the offence, there would be no victim of crime. Ideally, the term 'victim' should include all persons who have suffered loss or injury by act or omission, including that of the state agencies irrespective of the fact whether some body is charged or not for such act or omission. The victim should also include government agencies and environment as an entity, if any loss is suffered by them by the act or omission on part of the offender.

7. Clause 3(2)(a): The word 'shifting' to be corrected as 'sifting.'

8. There are several State amendments to the CrPC. Clarity is required about how these amendments will continue to remain in force.

PART 4

BHARATIYA SAKSHYA BILL

Comments and suggestions of Indian Police Foundation

The Bhartiya Sakshya Bill, 2023, introduced to replace the Indian Evidence Act, 1872, proposes significant changes in the law governing the admissibility of evidence in courts, keeping with contemporary legal and technological developments. At the same time, the Bill retains some of the colonial character. If we are truly resolved to modernise Indian law, it is time to reconsider some of these colonial era provisions.

I. Excising the colonial genes – admissibility of statements recorded by the police.

The Bharatiya Sakshya Bill (BSB) 2023, has brought about several noteworthy and progressive changes, but it still retains some fundamental, colonial-era principles, particularly regarding the admissibility of statements / confessions made before a police officer. Sections 25 and 26 of the Indian Evidence Act is essentially replicated in the following Clauses in the new bill:

23. (1) Confession to police officer: No confession made to a police officer shall be proved as against a person accused of any offence.

23 (2) No confession made by any person while he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate shall be proved against him:

Similarly, under Section 145[1] of the Evidence Act, 1872, (Clause 148 Sakshya Bill) in criminal trials, statements recorded by the police during the course of any investigation cannot be used for any purpose during the trial except to contradict the witness as provided.

Discarding colonial era legal principles is essential to modernise law enforcement

From a policing perspective, it is to be noted that the purpose of an investigation is to gather admissible evidence. The truth of the matter is that prompted by a sense of guilt, a culprit tends to come out with the truth when he is first questioned by the police, especially when it is immediately after the occurrence, before there is time for others to influence him or manipulate him. Similarly, recording statements of witnesses by a police officer during a criminal investigation is significant because it serves as an official record of the witness's account, preserving evidence for use in court proceedings. This record helps establish material facts, timelines, and crucial details related to the case, contributing to the overall transparency and integrity of the investigative process. Moreover, it allows for the cross-examination of witnesses during trial, ensuring fair and comprehensive adjudication. The truthful recording of statements by the witnesses and accused persons is key to the integrity of the investigation process. Obviously, diminishing the value of these important steps of a criminal investigation in the law itself, does not contribute to the robustness of the criminal justice process.

It is necessary to prescribe investigative procedures that result in police-collected evidence being deemed admissible. While seeking to modernise India's criminal laws, we cannot hold on to regressive colonial era provisions, as they hinder police efficiency and the overall quality of investigations. IPF believes that time has come to take the first steps

to discard some of the colonial legal provisions and adapt new laws to suit contemporary realities.

One key objective of the new legislations being excising of colonial legacies, the question whether to retain the above colonial era legal provisions or to rectify them and establish modern laws for India's criminal justice system, deserves consideration.

What are the pros and cons?

IPF carried out extensive consultations amongst police officers including SHOs, middle level and top ranking police officers / retired officers to understand their views on the subject. Interestingly, this was a matter that led to highly contested positions and most police officers were of the opinion that this is a matter that requires careful consideration.

The existence of police officers engaging in malpractices, such as manipulating facts, planting of evidence, or using coercive and third degree tactics, sadly is a reality. However, the existence of such criminality is no excuse to justify a failure to confront such behaviour decisively. It is crucial to put an end to such illegal practices and hold such officers accountable for their wrongdoings.

There is widespread recognition that it is vital to ensure that such reforms do not become tools in the hands of criminal minded or pliable police officers who easily buckle under pressure to extricate or fabricate false evidence or those in the pursuit of vendetta politics. We believe that striking a balance would be necessary and possible, with appropriate checks and balances.

Previous Experiments

It may be mentioned here that both the Prevention of Terrorism Act (POTA) and the Terrorist and Disruptive Activities (Prevention) Act (TADA) contained provisions that allowed for the admissibility of confessions made to police officers of the rank of Superintendent of Police or above in certain circumstances. Under these provisions, a confession made by a person before such a police officer, recorded in writing or electronically, could be admitted as evidence in the trial of the person or co-accused for offenses under the respective acts, subject to some procedural safeguards. But these concessions were short-lived as the Acts themselves did not survive for long. Even confessions recorded under POTA and TADA by some senior officers were not free of blemish. There were also doubts whether higher rank of the police officer would automatically make the confession more trustworthy.

It is time to move on.

Recommendation

It may be mentioned here that in our comments on BNSS in Part 3 above, IPF has suggested the introduction of strict procedures, supported by appropriate infrastructure, for holding of interviews with witnesses, accused and suspects and recording of their statements. It is important that the police voluntarily begin following strict protocols while recording statements of witnesses, accused and suspects. At the same time, the law should prescribe exemplary, major punishments to police officers who indulge in fabrication or planting of evidence.

As a first step towards reform, it is recommended to insert an exception to Clause 23 of the Bharatiya Sakshya Bill, together with suitable changes in Clause 148, as proposed below.

1. It is recommended that in the case of offences involving punishment with death and life imprisonment, all statements recorded by police officers whether from witnesses or accused, and recorded by the police officer during the course of investigation and following the procedure prescribed in Clause .. of BNSS, be made admissible, subject to the following safeguards:
    a. The statement in question was recorded using tamper-proof audio-video devices.
    b. In the case of an accused or suspect, the statement was made in the presence of the defence lawyer.
    c. A copy of the record of conversation and the media in which conversation was recorded, was sealed in original and signed by the investigation officer, accused or

suspect as the case may be and his lawyer, and was forthwith sent to the magistrate having jurisdiction.

d. During the recording of the interview, the accused or suspect was cautioned in a language that they understand.

e. Before making the statement, the accused / suspect was informed of their constitutional rights to remain silent or not to make a statement, and also the pros and cons of making a statement.

f. No conviction should flow solely from a confessional statement made before a police officer.

g. Additional safeguards will include: statement on oath & advance warning (Miranda procedure), the need for corroborative evidence and a robustly functioning police complaints authority.

h. Supportive infrastructure will include the introduction of body-worn cameras, CCTVs at police stations and Custody Facilities to record the proceedings and produce the artifacts in the trial with the required chain of custody,.

2. The Court may on its own motion or, if the contents of the record as produced by the Prosecution are disputed by the defence, open the seal and see or hear the conversation in presence of both parties in order to compare any assertion made by defence or prosecution.

3. if the accused or suspect relies on anything in his defence which he knowingly failed to mention at the time of interview, the court shall presume that such fact or circumstance either did not exist or if these exist shall be inadmissible in defence and such omissions shall be taken to be of probative value in proving the guilt of the accused.

To safeguard against any potential misuse of the law by the police, some essential measures and safeguards have been suggested in our comments on BNSS in Part 3 above. These include the establishment of appropriate custody facilities and interview protocols that meet standards including CCTV coverage.

For this scheme to succeed, it is important to train our officers, like all modern police forces do, to conduct scientific police interviews without coercion. If other countries can do it, we also can. The challenges are the same whether in India or in any other country.

IPF believes that the insertion of a clause as above, could be a game changer in investigation, prosecution and policing itself. This should be a first step towards modernising the evidence law. Introducing a positive culture of scientific interrogations and recording of statements is expected to bring about organisation-wide cultural changes which can pave the way for more reforms in the future. Today's Indian police are increasingly receptive to adopting suitable measures to usher in transparency, fairness, and the quality of investigations.

Establishing investigative processes that do not ultimately accept the outcomes as 'evidence' only perpetuates the existing chaos in the investigation and trial system. It is imperative to infuse a new vision and innovation to address the flaws in the current system. We believe it's time to instil trust in the police while simultaneously ensuring their accountability for any misconduct. Continued adherence to colonial paradigms will amount to a failure to seize this opportunity, at a time when India would be celebrating her 100 years of independence in 2047.

II. Numbering of Sections

The Bharatiya Sakshya Bill (BSB) 2023 has just 3 sections more than the Indian Evidence Act. It may be possible to retain the old numbering of the Sections, which is very crucial for reasons already narrated in earlier parts of this memorandum. For example, Section 27 of IEA (discovery of facts on information from the accused) becomes Proviso to Cl. 23. Section 24 barring admissibility of confessions made to police officers is now Section 22. Police Officers, lawyers and judicial officers are familiar with Sec 24 and 27 and retaining those numbers will minimize any confusion. These changes in section numbers serve no purpose.

IPF earnestly requests that the existing section numbering scheme as in the Indian Evidence Act

may be retained, making additions / deletions wherever required.

III. The Innovative Changes in the Bill

While retaining several core aspects of the existing Indian Evidence Act, 1872, the Bharatiya Sakshya Bill of 2023 marks some significant and pathbreaking changes from the existing law relating to Evidence. Some of them are listed below:

a. Admissibility of electronic or digital records as evidence: One of the key innovations introduced by the Sakshya Bill is the treatment of electronic or digital records on par with traditional paper records. It brings in electronic and digital records within the definition of the word 'document' in Cl. 2(2)(c). Illustration (vi) in this clause elaborates on this: "An electronic record on emails, server logs, documents on computers, laptop or smartphone, messages, websites, locational evidence and voice mail messages stored on digital devices are documents." This expanded definition of documentary evidence encompassing a wide range of digital formats and devices reflects the growing importance of digital information in contemporary society and the criticality of ensuring that such evidence is made admissible in judicial proceedings.

b. Cl.24 of the BSB - Explanation II provides that the term 'joint trial' will include trial in absentia of an absconder or a proclaimed offender. This will cover individuals who try to escape the law, escaping arrest and arrest warrants. Such cases will be treated as joint trials, streamlining legal procedures and ensuring a fair trial for all parties involved. This facilitation of trial in absentia will be a positive step towards speedy trial.

c. Cl 39(1) enlarges the scope of expert testimony. In the phrase "persons specially skilled in foreign law, science or art" as found in Section 45 of IEA, the phrase " or any other field" has been added.

d. Cl. 48 allows judicial notice of international treaty, agreement or convention with country or countries by India, or decisions made by India at the international associations or other bodies.

e. Scope of Primary evidence has been elaborated by adding 4 more explanations for electronic evidence including video conferencing in clause 57. Clause 61 puts electronic evidence on a sound footing, same as documentary evidence.

f. Cl. 165 is another addition: "No Court shall require any privilege communication between the Ministers and the President of India to be produced before it."

IV. Anomalies / Drafting Errors

There are a number of instances of drafting errors, contradictions and inconsistencies , especially inconsistent applicability of explanations and misplaced references within sections:

a. An illustration below the definition of 'document' in Section 3 of the IEA reads: 'Words printed lithographed or photographed are documents.' In the corresponding Illustration (ii), under 2(1)(c) in BSB, the word 'printed' is replaced by the word 'painted'. This presumably is a typographical error which needs to be corrected.

b. Under the definition of 'Evidence', Sec 3 of the IEA says :"(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;" The corresponding provision 2(1)(e) of BSB is as follows: "(i) statements or any information given electronically which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry and such statements or information are called oral evidence;" It is submitted that it will not be appropriate to call 'information given electronically' as oral evidence.

c. Cl. 48 says, " In a prosecution for an offence under section 64, section 65, section 67, section 68, section 70, section 71, section 73, section 74, section 75, section 76 or section 77 of the

Bharatiya Nagarik Suraksha Sanhita, 2023 or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent." BNSS wrongly mentioned here instead of BNS. The reference to "Bharatiya Nagarik Suraksha Sanhita" should be corrected as Bharatiy Sakshya Adhiniyam

d. It is not clear why Sections 66 (rape causing death or vegetative state) and 69 (using deceitful means) have been omitted in Clause 48 as there again similar questions about character of the victim may be raised.

e. Cl. 58 mirrors Sec 63 of IEA explaining what constitutes secondary evidence. The following are three new sub clauses in the BSB: (6)Oral admissions; (7) written admissions; (8) evidence of a person who has examined a document, the original of which consists of numerous accounts or other documents which cannot conveniently be examined in Court, and who is skilled in the examination of such documents- have been included in the definition of secondary evidence. Evidence is classified as oral evidence and documentary evidence. The latter is sub classified as primary evidence and secondary evidence. Oral admissions will be covered by Cl 54 (All facts, except the contents of documents may be proved by oral evidence) as oral evidence. It is not clear why oral admissions are sought to be treated as secondary evidence which is a sub-set of documentary evidence and stands distinct from oral evidence. Written admissions must be part of primary evidence vide Cl.57 (Primary evidence means the document itself produced for the inspection of the Court). It may be examined whether sub clauses 6 and 7 need to be retained or can be omitted. Sub clause (8) may be merged with sub-clause (5) which refers to 'oral accounts of the contents of a document given by some person who has himself seen it.

V. Suggestions

a. Relative Evidentiary values of various evidences like FIR, Expert report, Hostile witness, Eyewitness, investigating officer, dying declaration, Circumstantial evidence, co accused/accomplice etc. may be clearly laid down (as evolved by SC in various judgements)

b. In summary trials for petty offences (less than 6 months imprisonment) and summon trials (up to 2 years imprisonment)- standard of proof may be kept as preponderance of probability or clear and convincing (strict proof) rather than beyond reasonable doubt.

c. Special safeguards may be built to ensure that there is no tampering/planting of digital evidence and privacy is not breached.

d. The standard format of certificate (given in schedule) for submission along with secondary electronic evidence will help the investigating agencies in preserving the integrity of electronic records using various hashing algorithms.

e. Bill is silent on admissibility of messages on social media platforms like WhatsApp, Facebook and Twitter.

f. Definition of evidence in clause 2(e) may be expanded to include the material objects recovered, weapons/tools for committing crime, expert opinions, CCTV footage, geo spatial maps, circumstantial evidence, TI parade etc.

g. Electronic evidence, digital records and digital signature must be clearly defined in clause 2 (rather than simply referring to Information Technology Act, 2000 and BNS, 2023). Of course, the definition should also cover new forms of electronic evidence/ digital records that may come into existence in the future.

h. After clause 23, following explanation may be added- "custody means direct or indirect control of police over movement of accused/ suspect and not the formal arrest. The accused

person may be summoned by the police for questioning after serving the due notice and such presence of accused person with police shall deemed to be police custody for the purpose of clause 23". Such a provision would reduce the need for unnecessary arrests.

i. A. Scope of Experts as defined in clause 39 and 41 may be expanded to include

   i. Cyber-crime investigation experts including digital forensic examiners
   ii. Ethical hackers to certify that digital evidence is not tampered or planted on electronic devices
   iii. Experts on CCTV footage, video and audio recordings, experts in CCTV audit etc -to certify authenticity
   iv. Forensic auditors for examining frauds & economic crimes
   v. Language interpreters including sign languages, translators
   vi. Psycho analysts, mental health specialists,
   vii. Forensic scientists-DNA, poison (viscera/ vomit analysis), biological analysis, drugs specialists
   viii. Medical doctors-PME, injury certificate
   ix. Motor vehicle inspectors-vehicle fitness in case of accidents
   x. B. State Govt./Central Govt. may make rules for qualifications required and prescribe authority to certify/nominate an expert
   xi. All the reports by above certified experts should be admissible in court.

j. Clause 49 (54 IEA) may be amended to make evidence of bad character of accused admissible in all situations and removing the rider that only in reply to assertion of good character, it would be applicable. In addition to previous conviction, involvement in various cases which are under trial (court has taken cognisance and framed charges) may also be made relevant in explanation 2 of above clause. Evidence relating to previous conduct and character of accused may be allowed in chief examination itself.

k. Clause 109 (106 IEA) may be amended to make it compulsory for the accused to lead defence evidence relating to facts in his special knowledge, failing which, adverse evidence may be drawn against him.

l. Role of Prosecutors may be well defined and elaborated- prosecutor shall bring it to the notice of court if questions posed by defence lawyer are irrelevant -clause 151(1) or indecent/ scandalous-clause 154 or questions are asked to insult or annoy the witness-clause 155 and assist the court.

PART 5

OUR SUBMISSION

We respectfully present the above observations, comments, and recommendations on behalf of the Indian Police Foundation for the kind consideration of the Department-related Parliamentary Committee of the Ministry of Home Affairs.

As India approaches the centenary of our independence in the year 2047, we submit that the significance of this moment, and the existence of a political will for bringing about transformation, should not be lost by introducing a hurried legislation, as it might lead to missed opportunities for comprehensive reform.

Considering the inadvertent errors that have crept in as pointed out in the comments on individual Bills, we submit that a clause-by-clause review may be undertaken. Even if it is time-consuming, this is essential as these enactments will have a lasting impact on our criminal justice system over long years to come.

Yours truly,

N. Ramachandran
IPS (Retired)
President
Indian Police Foundation

ANNEXURE 'A'

ABOUT THE INDIAN POLICE FOUNDATION

The Indian Police Foundation (IPF) is an independent think tank dedicated to the improvement of policing through research, capacity building, and policy advocacy. The Foundation is driven by a coalition of progressive police officers, retired police officers and civil servants, lawyers, media persons, academicians, scholars, researchers and citizen stakeholders who believe that positive transformation in the Indian Police is possible, through collective action by the police, citizenry, the State and Central Governments as well as the political leadership.

IPF's mission is to work towards a professionally efficient and socially sensitive police, based on the conviction that a competent and impartial police force grounded in the principles of the rule of law, is indispensable for India's economic progress, societal peace and social cohesion. The IPF works for a secure ecosystem that is essential for India's citizens, commerce, industry and entrepreneurship to thrive. Strong partnerships between the Law Enforcement, Academia, the Corporate Sector in general and IT industry in particular, hold the potential to build a formidable national pool of expertise and intellectual resources to effectively confront the emerging challenges in public order & security, an essential pre-requisite to India's national security and stability, economic growth and preservation of our democratic institutions.

Across India, we have many brilliant and visionary police leaders who have conceptualized and implemented a plethora of pathbreaking reforms. But their initiatives have largely remained sporadic, as islands of excellence. IPF serves as an informal platform to nationally connect, upscale and spread these reforms. IPF is thus, a professional institution of India's police officers providing them with opportunities for the exchange of experiences and ideas in their pursuit of professional excellence.

IPF brings the police and citizen stakeholders together, dedicated to collectively work for reforms in policing, focused on raising the ethical values and service delivery standards of the police. The Foundation is registered in the name: 'The Police Foundation and Institute', as an All India Society under the Societies Registration Act, 1860. The Foundation was inaugurated in New Delhi, by the then Union Home Minister, Hon'ble Shri Rajnath Singh, on October 21, 2015.

OUR LEADERSHIP

The Indian Police Foundation is governed by an eminent Board that provides visionary leadership and value-based governance. Shri Prakash Singh, the legendary crusader for police reforms, is our Patron, and Shri ML Kumawat, former DG BSF / Special Secretary Internal Security is the Acting Chairman. The Board includes Shri Anami Roy (Former DGP Maharashtra), Shri GK Pillai (Former Union Home Secretary), Shri KM Chandrasekhar (Former Cabinet Secretary), Shri Deepak Parekh (Former Chairman HDFC), Shri Raghu Raman (Former CEO NATGRID), Shri Nandkumar Saravade (Former IPS Officer), Shri Rishi Shukla (Former Director CBI), Shri K. Vijay Kumar (Former DG CRPF / Director NPA), Shri PM Nair (Former DG NDRF), Shri Nitin Gokhale (Strategic Analyst), Shri AP Maheswari (Former DG CRPF), Shri Durga Prasad (Former DG CRPF), Shri Sudhir Pratap Singh (Former DG NSG), Dr. Ish Kumar (Former DG NCRB), Prof (Smt) Ruchi Sinha (TISS Mumbai) and Shri Ajit Pai (Chairman, Delhi Urban Art Commission), besides several other prominent persons. Former DGP (Assam-Meghalaya) Shri N. Ramachandran is the Founder, President & CEO

ANNEXURE 'B'

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It is important to note, however, that this document may contain various positions and recommendations that were subject to debate and differing perspectives among contributors and consulted individuals. The document does not necessarily reflect a unanimous consensus among all participants.

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