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The Criminal Law Amendment Bill, 2023: A Critical Analysis

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India's criminal justice system undergoes a critical juncture with the introduction of The Criminal Law (Amendment) Bill, 2023¹ (Bill No. 85 of 2023) by Shri Abdul Khaleque. This article delves into the proposed amendments to the Indian Penal Code, 1860² and the Code of Criminal Procedure, 1973³, specifically targeting the alarming trend of extra-judicial killings. It offers an in-depth analysis of the bill's key provisions, including limitations on law enforcement's right to self-defence, a new section criminalizing extra-judicial killings, and nuanced changes to arrest procedures. The analysis critically examines the delicate balance between empowering law enforcement and safeguarding individual rights. It explores the effectiveness of these amendments in curbing extra-judicial killings while considering the potential impact on officer safety. Furthermore, the article acknowledges the complexities of implementing stricter penalties for such offences. Beyond the focal bill, the article explores the broader legislative reforms encompassed by the Bharatiya Nyaya (Second) Sanhita, 2023⁴ (BNS), Bharatiya Sakshya (Second) Bill, 2023⁵ (BSB), and Bharatiya Nagarik Suraksha (Second) Sanhita, 2023⁶ (BNSS). While these bills aim to modernize colonial-era laws, the article raises concerns about potential infringements on fundamental rights like freedom of speech and privacy in the digital age. It emphasizes the need for a robust impact assessment to ensure a balance between security imperatives and individual liberties. In conclusion, the article underscores the importance of ongoing scrutiny, public discourse, and vigilant oversight. It argues that these

¹ Criminal Law (Amendment) Bill 2023

² Indian Penal Code 1860

³ Code of Criminal Procedure 1973

⁴ Bharatiya Nyaya Sanhita 2023

⁵ Bharatiya Sakshya (Second) Bill 2023

⁶ Bharatiya Nagarik Suraksha Sanhita 2023

measures are crucial for navigating the intricate dynamics of legal reform and ensuring a just and balanced criminal justice system in India.

Keywords: *criminal law, bill, extra-judicial killings, law enforcement, individual rights, fundamental rights.*

INTRODUCTION

In a significant legislative move, Shri Abdul Khaleque, Member of Parliament, has presented a pivotal initiative through Bill No. 85 of 2023 – ‘The Criminal Law (Amendment) Bill, 2023.’⁷ This proposed legislation stands as a response to the disturbing surge in extra-judicial killings, commonly known as fake encounters, raising critical questions about the state of law enforcement and human rights in India. The bill meticulously addresses the intricate dynamics by proposing amendments to the Indian Penal Code, 1860⁸ and the Code of Criminal Procedure, 1973⁹. Notably, it introduces profound alterations, including limitations on the right of private defence for law enforcement officials, the incorporation of a new section explicitly penalizing extra-judicial killings, and nuanced amendments to arrest procedures aimed at preventing the unjust use of force. This article undertakes an in-depth exploration of the key provisions encapsulated in the bill, analyzing their potential impact on safeguarding human rights, and illuminating the pressing necessity for comprehensive legal reforms to curb the alarming trend of extra-judicial killings in the Indian context.

The President of India, on December 25, 2023, accorded assent to three pivotal bills aimed at a comprehensive overhaul of the nation's criminal justice system. These transformative measures, namely Bharatiya Nyaya Sanhita¹⁰, Bharatiya Nagarik Suraksha Sanhita¹¹, and Bharatiya Sakshya Adhinyam¹², have now been officially promulgated and published in the Gazette of India on the same day.

⁷ The Criminal Law (Amendment) Bill 2023

⁸ Indian Penal Code 1860

⁹ Code of Criminal Procedure 1973

¹⁰ Bharatiya Nyaya (Second) Sanhita Bill 2023

¹¹ Bharatiya Nagarik Suraksha (Second) Sanhita Bill 2023

¹² Bharatiya Sakshya Adhinyam 2023

This legislative evolution began with their introduction in the Lok Sabha on August 11, initially recognized as Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Bill. The bills underwent meticulous examination by a parliamentary committee led by Brij Lal before receiving approval from the Lok Sabha on December 20 and the Rajya Sabha on December 21. This significant milestone signifies the culmination of a rigorous legislative process, underscoring a commitment to address critical facets of legal procedures and enhance citizen protection within the framework of India's criminal justice system.

DECOLONIZING JUSTICE? EXAMINING INDIA'S 2023 CRIMINAL LAW REFORMS

The onset of the Winter Session in December 2023 not only convened the Indian Parliament but also initiated a paradigm shift in the country's legal landscape with the consideration of 18 bills, notably the Bharatiya Nyaya (Second) Sanhita, 2023 (BNS)¹³, Bharatiya Sakshya (Second) Bill, 2023 (BSB)¹⁴, and Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 (BNSS)¹⁵. These legislative undertakings, strategically passed in both Lok Sabha and Rajya Sabha, signify a profound overhaul of foundational statutes governing the Indian criminal justice system – transforming the Indian Penal Code, 1860 (now BNS)¹⁶, the Code of Criminal Procedure, 1973 (now BNSS)¹⁷, and the Indian Evidence Act 1872 (now BSB). The genesis of these bills traces back to the 2023 Monsoon Session, propelled by a visionary objective to ‘decolonize’ archaic British-era criminal laws and infuse a distinctly ‘Indian’ essence. Despite being referred to the Parliamentary Standing Committee on Home Affairs for meticulous review, dissent notes accompanying their reports illuminated critical gaps in scrutinizing contentious provisions. This advanced narrative sets the groundwork for an in-depth exploration into the historical trajectory of these amendments, their intricate implications on digital rights and freedoms, the nuanced circumstances surrounding their passage, and a rigorous critique of the Standing Committee's role, or the perceived lack thereof, in shaping a comprehensive discourse on the concerning facets of the legislation.

¹³ Bharatiya Nyaya (Second) Sanhita 2023

¹⁴ Bharatiya Sakshya (Second) Bill 2023

¹⁵ Bharatiya Nagarik Suraksha (Second) Sanhita 2023

¹⁶ Indian Penal Code 1860

¹⁷ Code of Criminal Procedure 1973

CRITICAL ANALYSIS OF CRIMINAL AMENDMENT BILL, 2023

'The Criminal Law (Amendment) Bill, 2023¹⁸,' addresses the pressing issue of extra-judicial killings, seeking to reshape the legal landscape governing law enforcement actions in India. The intricate provisions of the bill demand a thorough examination to comprehend the potential impact on human rights, the rule of law, and the broader criminal justice system.

RESTRICTIONS ON THE RIGHT OF PRIVATE DEFENCE

Analysis of the Amendment to the Right of Private Defence -

The excerpt discusses a proposed amendment to Section 99¹⁹. While the specific wording of the amendment isn't provided, we can analyze its potential impact based on the information given.

Explicit Provisions from the Amendment:

Proportionality: The amendment emphasizes proportionality in self-defence, meaning the harm inflicted must be proportionate to the threat faced. This likely draws inspiration from existing legal principles but codifies them more explicitly in Section 99.

Public Servants and Good Faith: The amendment restricts the right of private defence against public servants acting in good faith under their official duties. This likely clarifies existing interpretations of Section 99 but tightens the legal framework.

Time to Seek Help: The amendment denies the right to self-defence if there's sufficient time to seek help from authorities. This aligns with the principle that self-defence is a last resort when legal recourse is unavailable.

¹⁸ The Criminal Law (Amendment) Bill 2023

¹⁹ Indian Penal Code 1860, s 99

Balancing Rights and Powers:

The amendment attempts to balance law enforcement powers with individual rights by

Preventing Misuse of Self-Defense: By mandating proportionality and restricting self-defence against good-faith actions, the amendment aims to prevent individuals from using it as an excuse for violence.

Promoting Reliance on Legal Protection: By emphasizing seeking help from authorities, the amendment encourages individuals to trust the legal system for protection.

Curtailing Self-Defense for Police:

The amendment's most significant departure is curbing self-defence against unprovoked arrests without reasonable apprehension of harm. This raises the question of officer safety:

Protecting Individuals from Unreasonable Force: The amendment aims to safeguard individuals from excessive force during arrests, particularly those lacking legal justification.

Ensuring Officer Safety: Limiting self-defence options might discourage some officers from performing their duties, potentially impacting public safety.

Finding the Balance:

Finding the right balance is complex. Here are some considerations:

Clear Guidelines for Police: Providing officers with clear guidelines on proper arrest procedures and appropriate use of force can minimize situations where self-defence becomes a factor.

Independent Oversight Mechanisms: Robust oversight bodies can investigate alleged police brutality and ensure accountability, fostering public trust.

Equipping Law Enforcement: Equipping officers with non-lethal force options can de-escalate situations where self-defence becomes a concern.

This analysis highlights the tension between individual rights and law enforcement power. The proposed amendment attempts a solution, but further discussion and refinement might be necessary to strike the most effective balance. The excerpt doesn't explicitly state whether public official protection or individual rights are more important. However, the analysis suggests a focus on finding a balance between the two. Ideally, both can be protected without compromising the other.

Further Analysis:

To further analyze the amendment, it would be helpful to:

Obtain the Specific Wording: Examining the exact wording of the amendment would provide a clearer understanding of its scope and potential implications.

Compare to Existing Jurisdictions: Researching how other countries approach the right to self-defence in situations involving public servants can offer valuable insights for potential improvements.

Consider Public Opinion: Conducting surveys or analyzing public discourse could shed light on public concerns regarding both police brutality and individual safety.

By delving deeper into these areas, a more comprehensive understanding of the proposed amendment and its potential impact can be established.

Amendments to Arrest Procedures -

The proposed changes to Section 46²⁰, introduce a nuanced approach to arrest protocols. The amendment prohibits causing death while effecting an arrest, replacing the previous authorization to use 'all means necessary' with a more tempered 'all means except causing death'. The addition of a proviso mandates legal consequences if a person is killed during an arrest and accountability of the public officials in such circumstances. However, the omission of

²⁰ Code of Criminal Procedure 1973, s 46

sub-section (3) raises questions about the broader implications on arrest procedures and public safety.

Statement of Objects and Reasons -

Shri Abdul Khaleque's statement elucidates the urgent need for these amendments²¹. It underscores how extra-judicial killings, historically associated with authoritarian regimes, have found an alarming resurgence in democratic India. The statement emphasizes the increasing use of such acts for personal and political gains, leading to a violation of human rights and eroding the credibility of the rule of law. The proposed reforms aim to instil respect for human rights within law enforcement agencies, emphasizing the importance of diligent investigation in cases of encounter killings.

The legislative shake-up in India, with the Bharatiya Nyaya (Second) Sanhita, 2023 (BNS), Bharatiya Sakshya (Second) Bill, 2023 (BSB), and Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 (BNSS), signals a seismic shift in the country's criminal justice landscape. The BNS' ostensibly progressive repeal of sedition replaces it with Clause 150, a vague framework criminalizing acts endangering India's sovereignty via electronic communications. Concerns loom over the broadened scope's impact on free speech and privacy, aggravated by mandatory imprisonment.

The BSB's expansion of 'documents' to encompass electronic records lacks safeguards, risking privacy breaches and tampering with digital evidence. BNSS²² provisions empower courts and police to summon and search digital evidence, raising questions about privacy infringements and the need for robust safeguards.

The bills' push for digitization, while acknowledging its inevitability, sparks concerns over the exclusion of those without internet access and potential privacy risks, especially concerning FIRs and identity verification.

²¹ Abdul Khaleque, 'Statement on the Urgent Need for Criminal Law Reform in India' (2023) Justice Policy Institute Newsletter

²² Bharatiya Nagarik Suraksha (Second) Sanhita 2023

Notably, the BNS's²³ classification of financial scams and cybercrimes as 'organised crime' demands careful consideration to avoid unintended consequences. As technology intersects with legal frameworks, a nuanced impact assessment is crucial to balance security imperatives with safeguarding digital rights and individual privacy.

CRITICISM AND THEIR SOLUTIONS ACCORDING TO THE CRIMINAL LAW AMENDMENT BILL, 2023

Restrictions on the Right of Private Defence -

Criticism: Critics argue that curtailing the right of private defence for law enforcement during unprovoked arrests may compromise officers' ability to respond effectively in high-stakes situations.

Solution: Refine the bill by including specific criteria or training protocols for law enforcement officials, ensuring limitations on the right of private defence are contextual and don't compromise their ability to protect themselves or others in genuine life-threatening situations.

Amendments to Arrest Procedures -

Criticism: Nuanced changes to Section 46²⁴ are welcomed for emphasizing accountability during arrests, but the omission of sub-section (3) raises concerns about potential gaps in arrest procedures and public safety.

Solution: Amend the bill to provide explicit guidelines on protecting the rights of individuals during arrests, including a reconsideration of sub-section (3) in Section 46. This ensures a balanced approach prioritizing both the safety of law enforcement and the protection of citizens.

²³ Bharatiya Nyaya (Second) Sanhita 2023

²⁴ Code of Criminal Procedure 1973, s 46(3)

BNS's Clause 150²⁵ on Electronic Communications -

Criticism: The replacement of the sedition law with Clause 150 is criticized for vagueness, potentially impacting free speech and privacy.

Solution: Refine the language of Clause 150 for clarity, incorporating clear definitions and limitations. Include provisions to safeguard free speech and privacy, preventing misuse.

Expansion of 'Documents' in BSB -

Criticism: The expansion of 'documents' to include electronic records lacks safeguards, risking privacy breaches and tampering with digital evidence.

Solution: Strengthen safeguards in BSB to protect against privacy breaches and tampering. Implement robust measures for the secure handling of digital evidence.

Digital Evidence Search in BNSS -

Criticism: Provisions empowering courts and police to summon and search digital evidence raise concerns about privacy infringements.

Solution: Implement strict protocols and judicial oversight in BNSS for summoning and searching digital evidence. Strike a balance between law enforcement needs and protecting individual privacy.

Digitization Concerns -

Criticism: Emphasis on digitization raises concerns over the exclusion of those without internet access and potential privacy risks.

Solution: Ensure inclusive digitization efforts, considering accessibility for all citizens. Establish robust privacy protections and identity verification protocols.

²⁵ Bharatiya Nagarik Suraksha (Second) Sanhita 2023, cl 150

Classification of Financial Scams and Cyber Crimes in BNS -

Criticism: Classification of financial scams and cyber-crimes as 'organized crime' demands careful consideration.

Solution: Re-evaluate the classification in BNS to ensure penalties are proportionate and unintended consequences are mitigated.

CONCLUSION: CHARTING A COURSE FOR LEGAL EVOLUTION

In conclusion, the introduction of 'The Criminal Law (Amendment) Bill, 2023²⁶' by Shri Abdul Khaleque represents a significant effort to address the alarming surge in extra-judicial killings in India. The proposed amendments, particularly the restrictions on the right of private defence aim to strike a balance between law enforcement powers and the protection of individual rights.

The critical analysis raises important questions about the potential impact and effectiveness of these amendments in curbing abuse while ensuring the safety of law enforcement personnel. The inclusion of severe penalties for extra-judicial killings marks a crucial step towards holding law enforcement accountable.

The broader legislative changes, including the Bharatiya Nyaya (Second) Sanhita, 2023 (BNS), Bharatiya Sakshya (Second) Bill, 2023 (BSB), and Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 (BNSS), signal a transformative shift in India's criminal justice system. While these bills aim to modernize outdated laws, concerns emerge regarding potential infringements on free speech, privacy, and digital rights.

After careful consideration of the proposed amendments and their potential implications, I believe that India's criminal law system indeed requires reform to better provide justice. The introduction of these new bills is a step in the right direction, addressing critical issues such as extra-judicial killings and outdated legal frameworks. However, I maintain reservations about certain aspects of the reforms, particularly regarding their potential impact on civil liberties.

²⁶ The Criminal Law (Amendment) Bill 2023

To ensure a just and balanced criminal justice system in India, these legislative changes must undergo rigorous scrutiny and public discourse. Ongoing vigilance and oversight will be crucial to strike the right balance between enhancing law enforcement capabilities and safeguarding individual rights. While supporting the overall intent of these reforms, I advocate for continued refinement and careful implementation to address the concerns raised in this analysis.