

Press Release

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New criminal laws mockery of Constitution, enacted without consultation: Experts

At a large gathering of Mumbai's citizens, people's movements, activists and lawyers, on June 28, the three new criminal laws set to be enforced from Monday, July 1, 2024 were discussed and critiqued.

[India's new criminal laws: Reform or Repression](#) saw experts, Vrinda Grover, advocate Supreme Court, Vijay Hiremath, advocate, Bombay High Court and Teesta Setalvad, human rights defender and journalist (secretary, Citizens for Justice and Peace) analyse how the three laws make a mockery of the Constitution and have been passed in haste without consultation with stake holders or experts.

On June 28, an event was organised by a group of organisations at the St. Michaels Auditorium to discuss the three new criminal laws 'Bharatiya Nagarik Suraksha Sanhita (BNSS) Act 2023', 'Bharatiya Nyaya Sanhita (BNS) Act 2023' and 'Bharatiya Sakshya Adhinyam (BSA) Act 2023'. These three new laws, which are to replace the Indian Penal Code, 1860, Code of Criminal Procedure and Indian Evidence Act, are to come into force from July 1, 2024.

This gathering passed a resolution to reinforce the persistent demands countrywide to defer the enforcement of these laws, citing sparked serious concerns about their constitutionality and their potential to erode the very foundation of India's democracy. A Letter Petition campaign addressed to Prime Minister, Narendra Modi, Leader of the Opposition, Rahul Gandhi and Supreme Court Bar Association (SCBA, Kapil Sibal was initiated. At the said meeting, similar detailed concerns were raised by the three speakers- senior journalist Teesta Setalvad, senior advocate Vrinda Grover and advocate Vijay Hiremath.

These laws mock the sovereignty enshrined in the Constitution and moreover reduce a citizen in a constitutional democracy to a supplicant and subject.

A detailed and elaborate consultation was necessary before these laws were passed but that did not happen," Setalvad said while setting the context for the discussion on the edifice of existing criminal laws, which, though brought in by the British, have seen multiple amendments over the decades, including those that were response to pathbreaking judgements like DK Basu, Lalitha Kumari and Arnesh Kumar that ensured some measure of protection to undertrials, contained brute powers of the police, stopped the practice of handcuffing, brought in Victimology (rights of Victims and Survivors.) These were the legislative response to people's movements and path-breaking judgements. To say therefore that the newly introduced and hastily passed laws "de-colonise" law is an untruth that is being propagated.

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Setalvad also focussed on the way in which these three laws were passed in the Parliament, when 146 opposition members were suspended from the Parliament, ensuring that there is no voice for discussion nor criticism of these carelessly and hastily drafted laws. A committee with three members was secretly drafting these laws from 2020. This Committee's functioning was not open to public scrutiny, an anathema in a Constitutional democracy where the sovereignty lies with the people.

In essence, the three criminal laws, the BNSS, BNS and BSA that are coming into force fundamentally violate the Constitutional matrix laid down in Chapter III of the Fundamental Rights Chapter, most specifically Articles 14, 19 and 21 of the Constitution.

She highlighted several provisions that provide draconian powers to the police, endanger the statutory right to bail, criminalise free speech (in a newly introduced provision that she described as "sedition plus" and also penalise, if not criminalise legitimate democratic protest. Safeguards against police abuse that had been introduced through amendments earlier have been deliberately left out said Setalvad.

Apart from the section 150 of BNS that she referred as "sedition plus", she flagged the dangers in the new criminal laws that have replicated existing provisions of the draconian terror laws into normal criminal law, removed protection of rape under the previously amended Section 377 (for men) and failed to penalise/recognise marital rape when matters are still pending on the question in the Supreme Court.

Section 111 of the Bharatiya Nyaya Sanhita incorporates a new crime as the 'Terrorist act' under general penal law. When there exists, for dealing with terrorist activities special laws like UAPA (Unlawful Activities Prevention Act, 1967), why are the same provisions and features being brought into the new penal provisions of the new laws with extraordinary discretion given over these to the police?

In conclusion Setalvad said that these laws were reflection of an autocratic regime in power since 2014, now in its third term (though now in a majority) that sees citizens as mute subjects, critiques to be silent as it perverts Indian constitutional democracy into a Hindu Rashtra.

Expanding on the strands to the context set by Teesta, advocate, Vrinda Grover came down heavily upon the claim of the union government's that these laws will be the process of decolonisation needed by India. Calling the introduction of these law as regressive, she highlighted how the citizens of India have been turned from victims to suspects and mute spectators.

Criticising the laws to also being incoherent, she mentioned certain provisions that are the most concerning, which included the offense of sedition. Calling the provision covering the offense of sedition under BNS (Section 150) more dangerous and vaguer than before, she said that anyone can now be facing the offence of sedition since the discretion now resides with in the favour the union government and the loose definition leaves interpretation open to misuse. For this government to have claimed, as jt did to the Supreme Court on affidavit (May 2022) that it would do away with the offence of Sedition (Section 124-A of the now erstwhile Indian Penal Code) and bring in the same offence under a different name is deception at its worst.

Section 150 of the new Bharatiya Nyaya Sanhita Bill details the acts, which “endanger” the sovereignty, unity, and integrity of India. It states: “Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years and shall also be liable to fine.” This is a definition that will be used as a tool against dissenting public opinion, said Grover.

Ms Grover outlined how the new criminal laws will now, assuredly, be used by the state to further repress the liberties of the people. She further spoke about the provisions of seizure, attachment of property, and forfeiture that have now been included in these laws, which highly expand the powers of the state to target individuals arbitrarily. Light was also shed by Vrinda Grover of the expansion of the period of police custody through the BNSS, which could lead to increase in cases of intimidation, torture and coercion of the ones arrested. Connecting to the same provision, she also spoke on how the said law will have a negative impact on the right of bail that can be exercised by the one arrested.

Additionally, she spoke of the provisions that have been introduced in defiance of the judgments of the court and the procedures that had been established throughout the years, which included the criminalisation of abortion and adultery. She ended by stating that these laws will bring in a situation of legal mayhem in the country, and the brunt of the same will be faced by the people of India.

Speaking on the lack of seriousness in the “consultation” process being adopted by the union government while formulating new laws, Vijay Hiremath referred to the laws being brought in as more sinister than the ones that the British had implemented. To emphasise the issue of the laws being state centric than citizen centric, Hiremath spoke about the time limitation that has been introduced with regards to the filing of a discharge application, the provision of in-absentia trials against those deemed as proclaimed offenders, and the provision of preliminary inquiry.

All these provisions of the new laws, and many more that were highlighted, give unprecedented powers to the executive and the police officers. According to Vijay Hiremath, under the guise of doing a copy-paste job, the union government has introduced many illogical and draconian legislations. Hiremath further highlighted the issue of impossibility of filing complaints against any defaulting police officer, due to the rather sinister and confusing sections the BNSS has. Hiremath concluded ends by saying that these laws are extremely dangerous, and will make the whole of the country and its citizens a target.

After the three resource persons, there were intense deliberations with the audience thar included how the critique against these laws should and will be taken to the Opposition benches and expanded to draw in People’s Movements, Farmers Movements, Journalists and Press Associations. An issue that was flagged during the discussions was how even independent and opposition state governments should be approached to explore how —given that Law and Order is a State Subject—the possibility of amendments to the most draconian sections can happen at the level of state legislatures. Primarily of course the challenges to these

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draconian new criminal laws will be in the constitutional courts where too, apart from citizens and organisations, a wide section of the Opposition should be urged to approach the Courts, it was felt.

The meeting was jointly organised by the Bombay Catholic Sabha, Citizens for Justice & Peace, Lok Morcha, Progressive Republican Front and Vote for Democracy at St Michael's Church, Mahim. Dolphy D'souza, the moderator, wrapped up deliberations by saying that there will always be struggles in the sector of human rights and development, and it is essential to discuss and see what stands at the stake for the citizen for India. Calling the passing of these three laws as sudden, Dolphy deemed the three set of laws to be a cause for concern. It is also important therefore that a sustained Grassroot campaign on this issue evolves and is sustained all over Mumbai, Maharashtra and India.