A Paradigm Shift in Indian Legislative Approaches: The New Criminal Laws of 2023.

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Abstract:

The Delphic maxims, etched on the pillars of the Temple of Apollo in Greece, whilst key in defining how man should live his life, unironically become a great representation of the new approach taken by the Indian Parliament in the formation and implementation of the new criminal laws assented in December 2023 and passed in the July of 2024. These moral precepts show what an ideal state would look like, and the idea of a legislative utopia, whilst still faraway, may be achieved sooner through the adoption of such principles. The Bharatiya Nyaya Sanhita (2023)[1], The Bharatiya Nagarik Suraksha Sanhita (2023)[2] and the Bharatiya Sakhshiya Adhinyam (2023)[3] were intended to be a cosmic shift in the approach to law taken by Indian law, catering to concepts and entities that were previously either neglected or not paid much attention to. The purpose of this article is to discuss this multidimensional shift in approach, and truly gage how 4 of these 167 Delphic principles represent what the parliament intended in the first place.

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Agathoùs tíma – Honour Good Men

The transliteration of the original principle '*Ἀγαθοὺς τίμα*' literally translates to 'honour good men', meaning that one should respect and regard the one who is morally good, or has committed no crime. Parallelly, the legal system of this country prides itself on fair trial and equal justice to all. A rather defining part of the nation's criminal justice system is the reformative theory that it follows with regards to punishment and retribution, aimed at reforming a criminal rather than elongating their suffering. Additionally, there were various provisions in the former Criminal Procedure (Code of Criminal Procedure, 1973)[4] that

[1] Bharatiya Nyaya Sanhita, Act 45 of 2023, India.
[2] Bharatiya Nagarik Suraksha Sanhita, Act 46 of 2023, India
[3] Bharatiya Sakshya Adhiniyam, Act, Act 47 of 2023, India
[4] Code of Criminal Procedure, Act 2 of 1974, India

pertained to the rights of the accused[5], such as their rights during arrest, and their right against self-incrimination[6] (Article 20 of the Constitution[7]) etc. Amidst all this, it may appear that not much light is shone on the plight of the victim, who seeks firsthand justice from the court. This defeats the very idea of equal justice for all, and may prove to either disturb or delay the delivery of justice. This has also been a topic of extreme uproar amongst Indian masses, especially when cases such as *Ajmal Amir Kasab v. The State of Maharashtra*[8] had surfaced, and people started to wonder whether a trial was really required when the crime was open for everyone to observe, and the terrorist was caught on the spot. It was also discussed that since the accused was not an Indian citizen, and in turn inflicted violence on the country, whether he really deserved to be given the protection that would be given to an accused during proceedings of ordinary nature. Similarly, during the 2012 Delhi Gang Rape case[9], also referred to as the 'Nirbhaya' case, public outroar surrounded the alleged lenient treatment of an accused who was a minor by a year, and hence avoided the death penalty, and had his criminal background struck from the records. Whilst the ethics surrounding such events are up for debate and contention, this has nevertheless given rise to a need for a victim-centric criminal system, that focuses more on the aggrieved party, than the party inflicting damage. Consequentially, the new criminal laws have taken a much more victim-centric approach during the formation of new laws, giving many rights to victims that are intended to create transparency in proceedings and giving them more opportunities to testify. This also includes various other procedural provisions where the victim is to be duly notified as to the status of the investigation, and whether or not the case will move forward. For example, Section 193(3)(ii) of the Bharatiya Nagarik Suraksha Sanhita (2023), a police officer has 90 days from the beginning of an inquiry to notify the victim/informant of the status of the process of investigation. Perhaps, one of the biggest additions to the fundamental procedure of trial has been given through the way of Section 360, where a victim is given an opportunity to be heard before prosecution is dropped for lack of evidence. Not only does this enhance the idea of fairness and responsiveness in the justice system, it also eliminates a glaring abyss that was formerly Section 321 of the Code of Criminal Procedure (1973). Additionally, the Concept of 'Zero-FIR'[10] was finally incorporated by way of Section 173 in the Bharatiya Nagarik Suraksha Sanhita (2023).

[5] Sunil Batra vs Delhi Administration 1980 AIR 1579
[6] Selvi & Ors vs State Of Karnataka AIR 2010 SUPREME COURT 1974
[7] Constitution of India, Act 1 of 1950, India
[8] Ajmal Amir Kasab v. State of Maharashtra AIR 2012 SUPREME COURT 3565
[9] Mukesh & Anr vs State For Nct Of Delhi & Ors AIR 2017 SUPREME COURT 2161

Fundamentally, the concept of Zero FIR supersedes jurisdiction, in the way that the victim is allowed to file an FIR in any police station, and that station cannot deny such filing on the basis of the lack of jurisdiction. This increases fluidity and accessibility of justice to victims, especially in cases where it is unclear where the crime took place.

Nevertheless, these were just a few examples of how victims are better tended to and regarded during the investigation and trial process, along with an overall expansion in the calibre of rights of being\heard and being notified. This, according to the incumbent government, should ensure equality of justice, and an overall fairer system of adjudication, just as the Delphic principles intended.

Adōrodókētos díkaze – judge incorruptibly

As far as equity and fairness are concerned, the maxim *'Ἀδωροδόκητος δίκαζε'* translates to the virtue of judging incorruptibly. This means that all those who seek justice or are involved in the process of delivery of justice should be weighed in the same scale. Every legal system around every democracy in the world rests its shoulders on the idea of an equitable justice system, where people are treated fairly. In fact, the very Constitution of India enshrines such principles, not only in our preamble, but also in Part III of the Constitution (Fundamental Rights). Every virtue is considered and it is clearly established that no one should be discriminated against by virtue of gender, race, religion caste etc. Considering that our Constitution, like other democracies in the world, is also our *grund norm,* it is only fitting that all laws align to it, hence the need for a change in the new criminal laws. There is extreme peculiarity in the word 'gender', which is something that has been up for debate for more than a decade now, especially in the realm of criminal law. Legislatively, there is absolutely no right given to one gender over another. However, from a social perspective, the usage of language and specific connotations made for an extremely unidimensional criminal system, where in a lot of cases, only 'men' could be perpetrators, and 'women' could be victims. This is why, according to various legal experts and the drafters themselves, gender neutrality was something that was kept in mind when the new bill was proposed, and a lot of offences now are gender neutral in nature. Firstly, the very definition of the word 'gender' under Section 10 has been expanded, in order to include transgenders as well. This is pertaining to their own civil right, but it still hasn't afforded protection to them against sexual offences. However, due to growing awareness surrounding men also facing offences that were originally attributed to the

victimhood of women[10], a lot of offences now are considered to be against men, and by women as well. For example, the offence of voyeurism under Section 77 of the Bharatiya Nyah Sanhita (2023), can now also be committed by women with the term 'whoever' replacing the term 'man' in the original Section 345C of the Indian Penal Code, 1860 Similarly, in Section 79 of the BNS, the pronoun of the perpetrator has now been changed from 'man' to 'whoever', which defines the insult to modesty or privacy of a woman. It is to be noted that in both of these offences, the victims are still and can only be women. It is also to be noted that under offences such as Rape (Section 63 of BNS, 2023), Stalking (Section 78 of BNS, 2023) etc, the victims can still only be women, which is also subject to widespread debate in the current legal spectrum of the country. However, there are other laws, especially relating to minors where the BNS has now widened the ambit of the victimhood of the crime. For example, the offence of procuration under Section 96 of the Bharatiya Nyaya Sanhita (2023) has now been changed from 'minor girl' to 'child'. Additionally, Section 141 of the Bharatiya Nyaya Sanhita (2023) now contains the words 'girl or boy' as opposed to 'girl' when it comes to the 'importation of girl or boy from a foreign country'. These replacements and changes become a clear representation of the new approach that these new criminal laws have taken, that protect the oppressed class without encroaching upon the rights of other victims.

In summary, the promotion of gender neutrality helps endorse the 'incorruptibility' of justice, and that everyone shall be weighed in the same scale, without discrimination on the basis of what class they belong to. Whilst progress is slow and this is just a small step, it is still a step in the right direction to ensure equal justice for all.

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Ídia phúlatte – Guard what is yours

Another approach that was rather built upon through the onset of these new criminal laws was an approach to national security. A problem that plagues not only India, but the globe is terrorism, and more specifically, the definition of a terrorist act. This pertains to the age-old dilemma of 'one-man's terrorist being another man's freedom fighter', and that it is almost impossible to distinguish between an act of aggression from an act of terrorism. This ambiguity ironically provides immunity to vigilantism and possible terrorist acts. The Delhi High Court, speaking in the case of Devangana Kalita v. State of Delhi NCT[11], laid this down "We are constrained to say, that it appears, that in its anxiety to suppress dissent and in the morbid fear

[10] Lalita Kumari v. Govt. of U.P. & Ors. AIR 2014 SC 187

that matters may get out of hand, the state has blurred the lines between the constitutionally guaranteed 'right to protest' and 'terrorist activity'. If such blurring gains traction, democracy would be in peril". On the other hand, KG Kannabiran, in his memoir 'The Speaking Constitution: A Sisyphean Life in Law', stated "If an attack on a political or cultural organization is construed as a terrorist offence, every political conflict will be labelled as terrorist activity, and all political activity will be labelled terrorism".

In order to fill this rather fatal ambiguity, it is necessary to differentiate between a terrorist act, and an ordinary act of aggression. Hence, the Bharatiya Nyaya Sanhita (2023) borrows provisions from the Unlawful Activities (Prevention) Act, 1967[12], and brings in Section 113, which clearly defines a terrorist act to be an act which threatens, or intends to threaten the unity, integrity, sovereignty, security or economic security or to strike terror in the people of India or any foreign country. This section not only proves to be a milestone for the war against terror, but it also allows for better identification of what construe terrorist acts. Whilst some may still consider the definition to be extremely broad in nature, it still is key in gaining a better understanding of what acts are to be treated as terrorist acts.

In finality, this new approach to criminal law is more than necessary, especially when one considers the history of India, and how it has fallen victim to various terrorist acts. Before, it was difficult to identify an act of terror, especially when committed inside the country with little to no outside influence. Now, not only is there a clearer definition, it also allows for the country to adopt a stricter approach, since an entirely separate class of punishments can be applied to people identified to be involved in terrorist activities (Unlawful Activities (Prevention) Act, 1967).

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Khrô khrémasin- Use what you have

It has been more than a century when Charles Darwin provided his theory of 'Survival of the Fittest', and how only those species willing to or able to evolve will we spared by the leviathan that we have come to refer to as 'Natural Selection'. On the same scale, the very pinnacle of human innovation has rested on technology in a variety of fields. The controlling factor for losing civilisations in wars throughout history has been either the refusal to adhere to technology, or the inability to. Which is why, it becomes extremely clear that it is crucial for a country to acclimatise to technology, to protect its systems from being obsolete. This, like other processes discussed in this article, applies to the realm of law, especially criminal law.

One such field of technology that is interdisciplinary in nature between science and law, is forensic evidence. Whilst forensic investigation had gained traction long before the Bharatiya Nagarik Suraksha Sanhita (2023), it was yet to be integrated seamlessly and expressly as it is now in our criminal procedure. Hence, Section 167(3) of the Act mandates forensic examination of the crime site in cases where the offence in question is punishable with more than 7 years of imprisonment, and is categorized under heinous offences. Additionally, there has been an overhaul of the justice system, and now the whole procedure has been digitised. This means that all proceedings can be held in electronic means under Section 530 of the Sanhita. Not only is this change revolutionary for the Indian justice system, it speeds up the trial process, makes justice more accessible and supersedes logistical barriers that would otherwise hinder the delivery of proper justice. Furthermore, magistrates can now take cognizance of cases based entirely on electronic evidence, such as mails and text messages under Section 202 of the Sanhita. Additionally, instances such as informing the victim of lack of evidence or completion of evidence or any other notification by the police officer may now be done through an electronic medium, to speed up the process and make it more accessible for the victim. These changes form just the tip of the iceberg, as there have been changes made through out the Act that use electronic means and other digital mediums.

Overall, this digital overhaul aligns with the nation's growing adherence to technology, in an effort to make the most use of it so it can make our lives easier. Gone are the times when logistical hinderances and other avoidable, almost trivial issues would have been a roadblock in an otherwise straight road to the attainment of justice. Now, these alterations are sure to make our nation more equipped, and assist in a more efficient delivery of justice.

Conclusion

In conclusion, the Delphic principles not only instruct man how to live his life, they also provide an ideal state, where everyone acts exactly how they are supposed to act. Somehow, the law becomes an enforcing principle that aims to achieve just that, which is why comparing the new criminal laws to these Ancient Greek maxims was so fascinating, and how they seamlessly wove themselves into the tapestry that is human behaviour.

This is also a testament as to how optimistic the nation can get with the onset of the new criminal laws, as they adopt a more efficient medium, focus on equitable delivery of justice, help those in real need of justice, and lastly, protect our citizens from external threats that aim to disrupt the law and order of the country.

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