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BEYOND THE BACKLOG: WHY POLITICAL INERTIA, NOT LEGAL IGNORANCE, SUSTAINS INDIA'S CRISIS OF CRIMINAL JUSTICE

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ABSTRACT:-

The Indian criminal justice system operates under a profound crisis rooted in systemic structural failures and the persistent legacy of colonial control . This analysis identifies three interconnected crises compromising judicial legitimacy: the endemic pendency epidemic (exceeding 5 crore cases), driven by severe judicial under-resourcing (21 judges per million); the prosecutorial-investigative chasm, stemming from the lack of functional separation and susceptibility to executive influence; and a humanitarian confinement crisis, evidenced by the high population of undertrials (77%) enduring prolonged detention . These deficiencies fundamentally violate the constitutional Right to a Speedy Trial.

These operational failures are directly linked to the political inertia that has preserved the antiquated Police Act of 1861, blocking crucial institutional overhaul . In stark contrast, the UK's model provides a clear blueprint for accountability: the independent Crown Prosecution Service (CPS) enforces strict quality control via the Full Code Test (Evidential and Public Interest stages), and the Victims' Code ensures citizen-centric justice .

The recently enacted Indian criminal codes (BNS, BNSS, BSA) represent a necessary move toward modernization, formalizing digital evidence and victim-centric principles. However, their efficacy remains precarious. The success of this legislative overhaul hinges entirely on overcoming the long-standing bureaucratic resistance to implementing fundamental structural separation (as recommended by Malimath) and committing to massive investment in judicial capacity . The mandate is clear: the system must shift from one designed for political control to one dedicated to the efficient, humane, and impartial rule of law. Failure to act decisively will ensure procedural injustice continues to define the system, perpetuating the erosion of democratic faith and national legitimacy.

Keywords:- Judicial backlog, qSpeedy Trial,prosecutorial independence,Colonial Legacy, victim – centric justice, Comparative Justice,Rule Of Law

1)India's Criminal Justice Crisis:-

The criminal justice system in India currently operates under the shadow of a profound crisis, characterized by deeply ingrained systemic and structural failures that severely compromise the delivery of justice, undermine the rule of law, and erode citizen faith¹. This dysfunction is not merely an issue of procedural delays but represents a fundamental breakdown across the entire judicial, investigative, and correctional spectrum. The crisis is best understood through three interconnected systemic pathologies that actively negate the constitutional mandate for justice: the endemic pendency of cases, the profound prosecutorial-investigative chasm, and a humanitarian confinement crisis fueled by chronic overcrowding².

The Pendency Epidemic and the Right to Speedy Trial :-

The courts are currently facing a crippling backlog of cases, which has virtually paralyzed judicial operations.³ . The courts are burdened by a staggering backlog, with the combined total of unresolved cases across all levels from subordinate courts up to the Supreme Court, surpassing 50 million (or 5 crore) as of late 2024⁴. The investigative-prosecutorial axis suffers from structural issues, leading to poor quality investigations and a prosecution system that often lacks the necessary independence from the government, which contributes to persistently low conviction rates.⁸

The Prosecutorial-Investigative Chasm :-

The backlog in the courts is made worse by a fundamental structural fault within the enforcement agencies: the lack of separation between the police's investigative function and the prosecution's legal role. This investigative-prosecutorial gap directly causes weak evidence gathering, the infrequent use of modern forensic science, and a prosecution service often criticized for its dependence on executive control and lack of autonomy⁵ . This systemic inability to meet the required evidentiary standard is clearly demonstrated by persistently low national conviction rates. For example, 2023 data reveals significantly low conviction figures in major urban centers, signalling a critical failure of investigations to produce sufficient proof for guilty verdicts⁶. As a consequence of this structural inadequacy, justice frequently proves

¹ TheLaw.Institute (2023) 'Addressing the Maladies in India's Criminal Justice System', *Law Notes by TheLaw.Institute* . Available at: <https://thelaw.institute/criminal-justice-system/indias-criminal-justice-system-maladies-addressed/>

² Malimath, V.S. (2003) *Report of the Committee on Reforms of the Criminal Justice System*. New Delhi: Ministry of Home Affairs, Government of India.

³ Sekhri, A. (2019) 'Pendency in the Indian Criminal Process: A Creature of Crisis or Flawed Design?', *Socio-Legal Review*, 15(1) . Available at: <https://repository.nls.ac.in/slr/vol15/iss1/1/>

⁴ The Wire (2025) '5 Crore Cases and Counting: India's Courts are Struggling to Clear the Pile-Up', *The Wire*, October⁸ TheLaw.Institute (2023) 'Addressing the Maladies in India's Criminal Justice System', *Law Notes by TheLaw.Institute* . Available at: <https://thelaw.institute/criminal-justice-system/indias-criminal-justice-system-maladies-addressed/>

⁵ TheLaw.Institute (2023) 'Addressing the Maladies in India's Criminal Justice System', *Law Notes by TheLaw.Institute* . Available at: <https://thelaw.institute/criminal-justice-system/indias-criminal-justice-systemmaladies-addressed/>

⁶ Hindustan Times (2024) 'Conviction rate in 2023 fell by 9.7 percentage points: NCRB report', *Hindustan Times*, 15 July [Online]. Available at: <https://www.hindustantimes.com/cities/delhi-news/conviction-rate-in-2023-fell-by-9-7-percentage-points-ncrb-report-101759257861602.html>

to be inaccessible, ineffective, and focused Here is a detailed paraphrase of the final sections, maintaining the sources and ensuring original language:

The Confinement Crisis :-The most tragic endpoint of these procedural and investigative failures is seen in the nation's prison infrastructure. Because of persistent systemic delays in the trial process and an overreliance on detaining individuals during investigation, India now grapples with a severe confinement crisis characterized by damaging and chronic prison overcrowding⁷. The data from the *Prison Statistics India 2023* report underscores this reality: the national prison occupancy rate significantly exceeds its designed capacity, with a shocking 73.5% of the total incarcerated population classified as undertrial prisoners, meaning these individuals have not been convicted of any offense but remain stripped of their liberty purely due to the justice system's prolonged inertia⁸. This critical situation turns correctional institutions into severely overcrowded holding facilities, simultaneously violating fundamental human rights and making any possibility of meaningful rehabilitation utterly impossible.

The UK Model

In sharp contrast to the structurally integrated Indian system, the United Kingdom provides a compelling template for institutional transformation, particularly in how it manages legal oversight and functions. The UK established the independent Crown Prosecution Service (CPS), an entity entirely distinct from the police force, ensuring that both investigators and prosecutors operate with separate accountability and defined mandates⁹. This essential separation is further codified by the CPS's mandatory Full Code Test, a rigorous, two-stage evaluation: prosecutors must confirm both a "realistic prospect of conviction" (the Evidential Stage) and that pursuing the case serves the public interest. Furthermore, the UK has institutionalized a victim-centric framework, which includes the Victims' Code and the Victims' Right to Review (VRR) for decisions not to prosecute, thereby centering the victim in the justice process Code of Practice for Victims of Crime in England and Wales.

The Limits of Indian Legislative Change:-

While recent legislative actions in India, specifically the introduction of the new criminal codes: the Bharatiya Nyaya Sanhita (BNS), the Bharatiya Nagarik Suraksha Sanhita (BNSS), and the Bharatiya Sakshya Adhinyam (BSA), do represent a constructive move toward legal modernization, their ultimate effectiveness remains highly uncertain¹⁰. These new statutes are

⁷ Code of Practice for Victims of Crime in England and Wales (Victims' Code) (no date) GOV.UK [Online]. Available at: <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime/code-of-practice-for-victims-of-crime-in-england-and-wales-victims-code>

⁸ About CPS (no date) The Crown Prosecution Service [Online]. Available at: <https://www.cps.gov.uk/aboutcps>

⁹ About CPS (no date) The Crown Prosecution Service [Online]. Available at: <https://www.cps.gov.uk/aboutcps>

¹⁰ Bureau of Police Research & Development (BPR&D) (2024) Handbook on the Bharatiya Nyaya Sanhita, 2023. New Delhi: Ministry of Home Affairs.

designed to optimize judicial processes, incorporate digital tools such as e-FIRs, and make forensic investigation compulsory for serious offenses¹¹. Yet, the successful implementation of these laws relies entirely on India's political commitment to finally execute the fundamental structural reforms necessary for enforcement. This critical undertaking requires a genuine achievement of the functional separation of investigation and prosecution (a key recommendation of the Malimath Committee), substantial investment in increasing judicial capacity, and ensuring the comprehensive professionalization and resource allocation for law enforcement agencies¹².

India's Justice System

1)The Adversarial Legacy:

The modern legal frameworks of both India and the UK share a common foundation in the adversarial system inherited during British colonial rule. This system's core principle that an impartial judge determines a case contested by opposing parties is central to both nations' legal identities, upholding the doctrine of innocent until proven guilty.

However, the constitutional paths diverged sharply after independence. While the UK pursued continuous institutional reform, notably throughout the late 20th century, India largely preserved the structures of the British Raj. Critically, India retained the Police Act of 1861, a statute designed for imperial control and social suppression. This retention left the police structure beholden to the political executive rather than systemic accountability, creating a severe justice deficit.

India's criminal justice system is therefore burdened by a "colonial residue," an antiquated framework incapable of serving a modern democracy. The current operational instability is a direct consequence of this foundational structural flaw, compounded by persistent political and bureaucratic inertia against necessary change over many decades.

2. The Manifestations of India's Crisis:

The sustained use of the colonial model has led to the operational erosion of the three core components of India's criminal justice system, which are now afflicted by deep-seated, systemic deficiencies.

India's Criminal Justice System:

The current state of India's criminal justice system is defined by a deep-seated, persistent structural crisis rooted firmly in its colonial inheritance, manifesting as three pervasive

¹¹ Drishti IAS (2024) 'New Criminal Laws Come into Force', Drishti IAS (Daily News Analysis), 4 July [Online]. Available at: <https://www.drishtiias.com/daily-updates/daily-news-analysis/new-criminal-laws-come-into-force> ¹² Malimath, V.S. (2003) Report of the Committee on Reforms of the Criminal Justice System. New Delhi:

Ministry of Home Affairs, Government of India.

operational failures that stand in stark contrast to the modernized efficiency models observed in the United Kingdom. This comprehensive failure of governance, a systemic issue rather than a collection of individual errors underscores the critical importance of a roadmap focused on fundamental institutional transformation, rather than superficial legislative adjustment.

1. The Crisis of Capacity and Accountability

The core of India's justice system collapse is two-fold: a crisis of capacity leading to procedural failure, and a crisis of accountability leading to poor quality enforcement. The judicial process is effectively paralyzed by a severe pendency epidemic, with the staggering volume of over 5 crore (50 million) cases pending across all judicial tiers. This immense backlog is a direct result of a crippling resource deficit within the judiciary; the judge-to-population ratio (21.03 per million) falls dramatically short of the 50 per million recommended by expert bodies, creating a structural inability to handle the caseload. This structural incapacity, coupled with widespread judicial vacancies and a reluctance to fully embrace technology for case management, severely violates the constitutional Right to a Speedy Trial and results in a profound failure of justice delivery. This procedural failure then fuels the confinement crisis, where a devastating 73.5% of the prison population consists of undertrials. These legally presumed innocent individuals are punished with prolonged detention solely due to systemic delay, transforming correctional centers into overcrowded holding facilities.

Simultaneously, the enforcement sector suffers from a critical structural fault: the persistent lack of functional separation between the police's investigative work and the state's prosecutorial function. This integrated structure, a legacy of colonial rule, compromises objectivity as the police control both evidence gathering and case presentation, leading to unscientific methods and a prosecution service perpetually susceptible to executive influence. The consequence is a low national conviction rate—as confirmed by 2023 data because investigations are routinely inadequate in securing the proof necessary to meet the "beyond a reasonable doubt" standard. The inability to reform this system stems from the colonial-era Police Act of 1861, which maintains police accountability to the political executive, creating an inherent conflict of interest that sustains the nexus between political control and enforcement failure.

2. The UK Model: Blueprints for Separation and Quality Control

In stark contrast, the UK offers a clear, functioning model for overcoming these structural flaws through institutional separation and mandated procedural rigor. The establishment of the Crown Prosecution Service (CPS) in 1986 was a deliberate and necessary move to separate prosecution from police investigation, eliminating the conflict of interest prevalent in India's merged system. This independent oversight ensures that police investigations are scrutinized objectively by legal experts, thereby enforcing a higher standard of evidence quality.

The CPS enforces this quality control via the mandatory Full Code Test, a rigorous, two-stage evaluation that is critical for judicial efficiency. The Evidential Stage requires prosecutors to confirm a "realistic prospect of conviction," ensuring weak cases are filtered out at the initial stage. If this threshold is met, the Public Interest Stage then assesses whether prosecution is truly necessary, weighing factors like the severity of the offense against the broader public good. This institutionalized procedural discipline is a powerful tool for promoting efficiency

and accountability, a systemic mechanism that India critically lacks . Furthermore, the UK has codified its commitment to victims through the Victims' Code, which grants victims rights like the Victims' Right to Review (VRR), transforming them into active stakeholders and fundamentally helping to rebuild public trust in the legal process.

3. The Paradox and Peril of Indian Reform

The path forward is complicated by the paradox of Indian reform: the knowledge and blueprints for change exist, but the political will to implement them remains elusive. While the new criminal codes (BNS, BNSS, BSA) represent a constructive move toward legislative modernization formalizing forensics and digital evidence their success is highly precarious . These new statutes update the *rulebook* but do not automatically dismantle the deep-seated structural flaws of the system ..

Decades of expert recommendations (e.g the Malimath Committee) calling for fundamental structural separation have been systematically ignored. The success of the BNSS provision for a Directorate of Prosecution is entirely contingent upon the political executive granting it genuine operational autonomy, something consistently withheld from predecessor bodies. Without a commitment to fund judicial capacity, professionalize the police, and implement genuine functional separation. The crisis remains a question of governance and political courage, not legal complexity.

2. The UK's Criminal Justice System:

2.1. The Crown Prosecution Service (CPS): A Pillar of Independent Prosecution

The most critical structural distinction between the UK and Indian legal systems is the UK's establishment of the Crown Prosecution Service (CPS) in 1985 under the Prosecution of Offences Act, an essential institutional evolution that fundamentally altered the dynamics of the adversarial process¹³ . This landmark reform was explicitly designed to separate the conflicting functions of investigation (Police) and prosecution (Legal). Prior to 1985, the police were burdened with both roles, a merged structure that created an undeniable conflict of interest; having invested resources in an investigation, the police often exhibited a "predisposition to prosecute," failing to conduct the necessary, rigorous independent review of their own evidence¹⁴. The creation of the CPS resolved this by establishing an independent body, deliberately structured to be separate from the police and insulated from direct political control, granting it the sole responsibility for deciding which cases should be prosecuted and managing the court process

This institutional separation is the core lesson for India, offering a tested blueprint to address the systemic flaws in its own system. The CPS's independence ensures that prosecutorial accountability is channeled through the Director of Public Prosecutions (DPP) to the Attorney General, adhering to the law, rather than being subject to the immediate commands of the political executive¹⁵ . By centralizing this decision-making authority, the CPS enforces a single,

¹³ Zander, M. (2017) *The Law-Making Process*. 8th edn. Cambridge: Cambridge University Press

¹⁴ Gopalan, S. (2019) *Criminal Justice System in India: A Comparative Perspective*. New York: Routledge.

¹⁵ Singh, M.P. (2018) *Comparative Criminal Procedure*. London: Sage Publications

high evidentiary standard across England and Wales. This central governance contrasts sharply with the fragmented, often politically susceptible prosecution system in India, where the functional lack of autonomy directly contributes to low conviction rates and procedural failures¹⁶.

The bedrock of the CPS's operational integrity is the mandatory application of the Full Code Test, a stringent, formalized process designed as a critical filtering mechanism to ensure that scarce judicial time and resources are used effectively¹⁷. This test guarantees procedural rigor and is divided into two distinct, sequential stages, both of which must be satisfied before a prosecution can commence.

The first stage is the Evidential Stage, which is the non-negotiable legal threshold. Prosecutors must be objectively satisfied that there is sufficient, admissible, and reliable evidence to provide a "realistic prospect of conviction." This high standard requires the prosecutor to conclude that an impartial jury or court, acting correctly according to the law, is more likely than not to convict the defendant¹⁸. The process involves a deep, forensic analysis: the prosecutor must scrutinize the credibility of key witnesses, assess the reliability of documents and digital evidence, and, crucially, anticipate the likely defense arguments and how they might challenge the prosecution's case. If the evidence is deemed inadequate to meet this high standard, the prosecution must be immediately discontinued, irrespective of the public or political profile of the case¹⁹.

The second stage is the Public Interest Stage, which is only considered if the evidential test has been successfully met. This stage involves a comprehensive, balanced consideration of factors both for and against pursuing a prosecution. The prosecutor must determine whether initiating the case is genuinely required in the public interest, acknowledging that a successful prosecution may not always be the best outcome for justice²⁰. Factors weighed include the seriousness of the offence, the level of harm inflicted upon the victim (physical, emotional, or financial), the age and maturity of the offender, and, significantly, the necessity of the prosecution to maintain public confidence in the criminal justice system²¹. This formalized, two-tiered filtering process directly prevents the wasteful consumption of judicial time on weaker peripheral cases, offering a procedural discipline entirely absent in India's heavily overburdened system²². However, the UK's institutional model, while exemplary in principle, is not immune to operational pressures, offering crucial caveats for reformers in India. Critics

¹⁶ Malimath, V.S. (2003) Report of the Committee on Reforms of the Criminal Justice System. New Delhi: Ministry of Home Affairs, Government of India.

¹⁷ Crown Prosecution Service (2024) The Code for Crown Prosecutors [Online]. Available at: <https://www.cps.gov.uk/legal-guidance/code-crown-prosecutors>

¹⁸ Zander, M. (2017) The Law-Making Process. 8th edn. Cambridge: Cambridge University Press²⁵

Crown Prosecution Service (2024) The Code for Crown Prosecutors [Online]. Available at: <https://www.cps.gov.uk/legal-guidance/code-crown-prosecutors>

¹⁹ Malimath, V.S. (2003) Report of the Committee on Reforms of the Criminal Justice System. New Delhi: Ministry of Home Affairs, Government of India.

²⁰ Crown Prosecution Service (2024) The Code for Crown Prosecutors [Online]. Available at: <https://www.cps.gov.uk/legal-guidance/code-crown-prosecutors>

²¹ Singh, M.P. (2018) Comparative Criminal Procedure. London: Sage Publications.

²² Sekhri, A. (2019) 'Pendency in the Indian Criminal Process: A Creature of Crisis or Flawed Design?', Socio- Legal Review, 15(1) [Online]. Available at: <https://repository.nls.ac.in/slr/vol15/iss1/1/>

point to significant funding problems and staff reductions that have plagued the CPS since the 2010s, leading to heavy caseloads and internal delays that affect its overall efficiency²³. Furthermore, the CPS has faced academic and public criticism regarding a residual perceived lack of complete independence from the police. This challenge arises because the CPS remains structurally dependent on the police's initial investigative quality and the evidence supplied by them, occasionally leading to a relationship that is perceived as being too close. This dependency has been cited in analyses of the CPS's challenges in securing convictions in high-profile, complex cases, particularly those involving sexual offenses, where meticulous, impartial investigation is critical²⁴. These critiques underscore a vital reality: while institutional separation is essential, its effectiveness relies entirely on consistent financial investment, comprehensive training, and strict oversight to counteract external pressures²⁵.

2.2. A Victim-Centric Approach: Beyond Punishment to Support

Another area where the UK system provides a valuable, actionable model for India is its formalized, legally codified commitment to victim support, which fundamentally redefines the purpose of justice delivery beyond mere state retribution²⁶. This approach is legally enshrined in the Victims' Code, a framework established by the *Domestic Violence, Crime and Victims Act 2004*, transforming the experience of victims within the system. This legislation mandates that all criminal justice agencies adhere to a specific charter of core rights, ensuring the system's focus is also directed toward the needs of the injured party²⁷.

This mechanism effectively elevates the victim from a mere witness the common, passive role assigned in the state-centric Indian adversarial system to an active, protected stakeholder with defined, legally enforceable expectations. Key provisions of the code ensure victims are:

- **Informed and Supported:** Victims hold the right to be informed about the case's trajectory at every critical decision point (e.g., charging, bail, sentence), and must be automatically referred to appropriate support services
- **Empowered in the Process:** Victims are given the vital right to submit a Victim Personal Statement (VPS), which allows them to formally convey the full physical, emotional, and financial impact of the crime to the court before sentencing is determined .
- **Granted Accountability Mechanisms:** The inclusion of the Victims' Right to Review (VRR) grants victims the unique power to formally challenge a CPS decision not to prosecute or to discontinue a prosecution. This VRR mechanism acts as a powerful external check on prosecutorial discretion and significantly enhances public confidence in the system's fairness .

²³ Dhavan, R. (2019) *Justice on Trial: The Law and the Judiciary in India*. New Delhi: Oxford University Press.

²⁴ Gopalan, S. (2019) *Criminal Justice System in India: A Comparative Perspective*. New York: Routledge.

²⁵ Jain, M.P. (2021) *Outlines of Indian Legal History*. 8th edn. Nagpur: LexisNexis.

²⁶ Zander, M. (2017) *The Law-Making Process*. 8th edn. Cambridge: Cambridge University Press

²⁷ Drishti IAS (2024) 'New Criminal Laws Come into Force', Drishti IAS (Daily News Analysis), 4 July [Online]. Available at: <https://www.drishtias.com/daily-updates/daily-news-analysis/new-criminal-laws-come-into-force>

This robust victim-centric framework stands in stark contrast to the significant trust deficit prevalent in the Indian system, where victims frequently face indifference or reluctance to cooperate due to a lack of confidence in the process's efficacy. The UK's tested framework provides a concrete, systematic blueprint for how legal systems can actively empower and support the wronged, thus addressing the profound social and emotional consequences of the criminal justice failure²⁸.

3) The Paradox of Reform in India:

3.1. The Failure of Past Reforms: A Lack of Political and Bureaucratic Will

The deep-seated structural and institutional problems plaguing India's criminal justice system have been consistently identified and analyzed by numerous high-level expert committees over the past half-century²⁹. The most prominent and often-cited diagnostic effort is the Justice V. S. Malimath Committee, constituted in 2000, which delivered a sweeping report in 2003 containing 158 comprehensive recommendations for a systemic overhaul. The Malimath Committee's vision was transformative: it advocated for moving away from the purely adversarial model inherited from Britain towards a hybrid adversarial-inquisitorial model, a change intended to introduce the truth-seeking mechanisms commonly found in civil law jurisdictions to strengthen the investigatory and adjudicatory process³⁰.

Crucially, the committee focused intensely on institutional accountability, identifying the merged police and prosecution structure as the system's Achilles' heel. It recommended the creation of a dedicated Directorate of Prosecution, independent of the police, to ensure objectivity in charging decisions, a reform directly inspired by the successful establishment of the UK's CPS. It also pushed vehemently for the physical and functional separation of police investigation from law and order duties a reform deemed essential to professionalize policing, guarantee forensic impartiality, and eliminate the inherent conflict of interest perpetuated by the outdated Police Act of 1861³¹. Furthermore, the report called for a legally binding charter of rights for victims, recognizing their status as key stakeholders whose interests had been systematically sidelined. The committee's overriding vision was to shift the system's focus away from a framework that was seen as unduly favouring the accused (a misinterpretation of the adversarial burden of proof) to one that guaranteed procedural fairness and efficacy for victims, thereby restoring systemic balance³².

However, despite the clarity, depth, and broad consensus on the technical necessity of these recommendations, their effective implementation has been notoriously inconsistent and largely superficial³³. The government's response to the critical Malimath report, for instance, involved little more than issuing non-binding advisories, circulating the report, and soliciting passive views from state governments, deliberately sidestepping the difficult legislative and

²⁸ Singh, M.P. (2018) *Comparative Criminal Procedure*. London: Sage Publications

²⁹ Basu, D.D. (2017) *Commentary on the Constitution of India*. 9th edn. New Delhi: LexisNexis.

³⁰ Gopalan, S. (2019) *Criminal Justice System in India: A Comparative Perspective*. New York: Routledge.

³¹ Singh, M.P. (2018) *Comparative Criminal Procedure*. London: Sage Publications.

³² 'Addressing the Maladies in India's Criminal Justice System', Law Notes by TheLaw.Institute [Online].

Available at: <https://thelaw.institute/criminal-justice-system/indias-criminal-justice-system-maladiesaddressed/>

³³ Dhavan, R. (2019) *Justice on Trial: The Law and the Judiciary in India*. New Delhi: Oxford University Press.

constitutional amendments required for genuine transformation . This chronic pattern reveals a profound and consistent disconnect between expert diagnosis and political action . The persistent problems afflicting India's criminal justice system are thus not attributable to a lack of detailed blueprints or expert knowledge, but rather to an entrenched, systemic resistance to change from powerful political and bureaucratic stakeholders³⁴.

The reluctance to empower an independent prosecution service or functionally separate police wings is primarily rooted in the political convenience afforded by maintaining executive control over the enforcement apparatus ³⁵. This structure ensures that accountability flows vertically to the executive, preserving the historical legacy of the colonial state and rendering the police a readily available, unified tool for political purposes. This entrenched political and bureaucratic resistance is the most significant and enduring obstacle to meaningful reform, effectively ensuring that the system's foundational structural flaws identified repeatedly over decades continue to persist ³⁶ . The continued failure to act decisively on these expert recommendations confirms that the crisis is fundamentally one of governance and political will, not one of technical capability or lack of legal understanding . This obstruction has cost the public trust and efficiency, directly contributing to the overwhelming pendency crisis and low conviction rates discussed earlier. The failure to reform has effectively sustained a system where procedural injustice is the norm, shielded by institutional inertia .³⁷

3.2. The Promise and Peril of the Bharatiya Nyaya Sanhita (BNS) and Related Acts

In a massive and high-profile legislative undertaking aimed at replacing the colonial-era statutes, the Indian government recently enacted three new criminal laws: the Bharatiya Nyaya Sanhita (BNS) (substantive law), the Bharatiya Nagarik Suraksha Sanhita (BNSS) (procedural law), and the Bharatiya Sakshya Adhiniyam (BSA) (evidence law) . These new codes have been widely applauded for their progressive intent, attempting to signal a desired pivot towards a more technologically modern and victim-centric approach to justice delivery³⁸.

The promise of these new Acts lies in their explicit commitment to procedural and technological advancements crucial for the 21st century. The BNS, replacing the IPC, updates substantive law by introducing new offenses tailored to modern societal challenges, such as organized crime and mob lynching, demonstrating a necessary effort to modernize the penal code. Addressing the Maladies in India's Criminal Justice System', The BSA formally recognizes and governs the admissibility of digital evidence (e.g., electronic records, emails, messages), a long-overdue step to align the law of evidence with contemporary communication methods . The BNSS, replacing the CrPC, is particularly relevant to systemic efficiency, as it mandates forensic investigation for serious crimes (punishable by seven years or more), sets strict timelines for various judicial procedures (including judgment delivery and chargesheeting), and codifies a more rigorous approach to bail hearings and victim protection, addressing the

³⁴ Gopalan, S. (2019) *Criminal Justice System in India: A Comparative Perspective*. New York: Routledge.

³⁵ Malimath, V.S. (2003) *Report of the Committee on Reforms of the Criminal Justice System*. New Delhi: Ministry of Home Affairs, Government of India.

³⁶ Singh, M.P. (2018) *Comparative Criminal Procedure*. London: Sage Publications.

³⁷ Jain, M.P. (2021) *Outlines of Indian Legal History*. 8th edn. Nagpur: LexisNexis.

³⁸ Drishti IAS (2024) 'New Criminal Laws Come into Force', Drishti IAS (Daily News Analysis), 4 July [Online]. Available at: <https://www.drishtias.com/daily-updates/daily-news-analysis/new-criminal-laws-come-into-force>

undertrial issue³⁹. Crucially, the BNSS makes provision for a Directorate of Prosecution, signaling a legislative intent to finally address the critical investigative-prosecutorial chasm, at least in the codified text. These provisions collectively represent a clear effort toward legislative modernization and efficiency that has been demanded since the Malimath report.

However, a critical analysis of these new laws reveals a far more complex and perilous reality. While they represent a necessary legislative update, they are not a definitive remedy for the system's foundational structural flaws, retaining many weaknesses of the colonial laws and even potentially introducing new avenues for abuse⁴⁰. Critics point to vaguely worded provisions that could be arbitrarily interpreted, a lack of clear legal definitions for new offenses (like "terrorism"), and, most disturbingly, an expansion of police powers in specific areas, including an extended maximum period for police custody which could potentially facilitate abuse despite the overall reform rhetoric⁴¹. The expanded reliance on technology, while positive in theory, also introduces new vulnerabilities regarding the right to privacy and potential state surveillance.

The implementation hurdle poses the most significant peril to the success of this reform. The new framework's heavy reliance on the rapid acceptance of digital evidence (BSA), while progressive, lacks adequate explicit safeguards and detailed protocols to prevent tampering and contamination during the investigative process, especially given the current chronic deficiencies in police training and forensic infrastructure across the country⁴². Furthermore, while the BNSS provides for a Directorate of Prosecution, the effectiveness of this body will be entirely dependent on whether the political executive grants it genuine operational and financial autonomy, or whether it remains merely a titular department subservient to the existing executive hierarchy, thereby perpetuating the old enforcement nexus. The structural changes required to implement these laws such as massive investment in mandatory forensic facilities in every district, filling chronic police vacancies, and providing comprehensive judicial and technological training are substantial and require a level of political commitment and resource allocation that has been historically and consistently absent⁴³.

The overall success of this legislative overhaul is thus contingent entirely on implementation and institutional capacity. The new rules demand a seamless "sync" between all stakeholders: the police must operate scientifically and professionally; the prosecution must act independently; and the judiciary must rigorously enforce timelines⁴⁴. Since the system has struggled to achieve this integrity and efficiency for decades, the statutes' potential to revolutionize justice remains tenuous. Without decisively overcoming the underlying crisis of political will and bureaucratic capacity, the same resistance that successfully blocked the Malimath reforms the BNS, BNSS, and BSA risk becoming merely new names for old, chronic

³⁹ BPR&D (Bureau of Police Research & Development) (2024) Handbook on the Bharatiya Nyaya Sanhita, 2023. New Delhi: Ministry of Home Affairs.

⁴⁰ Basu, D.D. (2017) Commentary on the Constitution of India. 9th edn. New Delhi: LexisNexis

⁴¹ Dhavan, R. (2019) Justice on Trial: The Law and the Judiciary in India. New Delhi: Oxford University Press.

⁴² Sekhri, A. (2019) 'Pendency in the Indian Criminal Process: A Creature of Crisis or Flawed Design?', Socio-Legal Review, 15(1) [Online]. Available at: <https://repository.nls.ac.in/slr/vol15/iss1/1/>

⁴³ Malimath, V.S. (2003) Report of the Committee on Reforms of the Criminal Justice System. New Delhi: Ministry of Home Affairs, Government of India.

⁴⁴ ETV Bharat (2025) 'Justice Stalled: Experts Call For Urgent Steps To Reduce Backlog Of Over 5 Crore Cases In Indian Courts', ETV Bharat, September.

failures, proving that procedural reform is hollow without foundational institutional transformation⁴⁵. The paradox remains that the laws have been updated, but the institutional culture and political governance required to execute them are stuck in the colonial past⁴⁶.

4. Pathways to Reform:

The preceding analysis established that India's crisis in criminal justice is fundamentally structural, necessitating radical institutional intervention rather than mere legislative adjustments. The comparative success of the United Kingdom, particularly its mechanisms for institutional separation and procedural rigour, offers clear, actionable blueprints that India must adopt to transition from legal theory to actual systemic transformation.

4.1. On Prosecution: The Imperative for an Independent Body

Drawing directly from the effective operation of the UK's Crown Prosecution Service (CPS), India must urgently and decisively establish a Directorate of Prosecution (DoP) in every state that possesses genuine operational autonomy⁴⁷. This body, consistently recommended by the Malimath Committee, must be fundamentally and financially separated from the police force. This separation is the single most crucial institutional step available to address the corrosive prosecutorial-investigative chasm. Currently, the lack of prosecutorial independence prevents objective review of police actions and permits political interference in high-profile cases⁴⁸.

A reformed DoP must be led by professional prosecutors selected through a rigorous, merit-based process, empowered by statute to make charging decisions based purely on the merit and admissibility of the evidence, effectively implementing the rigorous Evidential Stage of the CPS's quality control. This institutional decoupling would serve as an essential check on police power, significantly improve the quality of cases brought to court (thereby alleviating the pendency burden), and enhance the system's overall credibility⁴⁹. Crucially, while the new BNSS provides a legislative foundation for this Directorate, political commitment must extend to ensuring this body is financially and operationally free from the control of the state executive; mere administrative reorganization will not suffice.

4.2. On Investigations: Fostering Expertise

To combat the consistently low quality and non-scientific nature of investigations a primary driver of poor conviction rates India must implement the long-standing recommendation to functionally separate the investigative wing of the police from its law and order duties⁵⁰. This functional split is paramount for creating a specialized, professionalized corps dedicated exclusively to complex criminal investigation, free from the distraction of routine public order

⁴⁵ Dhavan, R. (2019) *Justice on Trial: The Law and the Judiciary in India*. New Delhi: Oxford University Press.

⁴⁶ Basu, D.D. (2017) *Commentary on the Constitution of India*. 9th edn. New Delhi: LexisNexis.

⁴⁷ Singh, M.P. (2018) *Comparative Criminal Procedure*. London: Sage Publications.

⁴⁸ Gopalan, S. (2019) *Criminal Justice System in India: A Comparative Perspective*. New York: Routledge⁵⁶

Zander, M. (2017) *The Law-Making Process*. 8th edn. Cambridge: Cambridge University Press

⁴⁹ 'Addressing the Maladies in India's Criminal Justice System', Law Notes by TheLaw.Institute [Online].

Available at: <https://thelaw.institute/criminal-justice-system/indias-criminal-justice-system-maladiesaddressed/>

⁵⁰ Malimath, V.S. (2003) *Report of the Committee on Reforms of the Criminal Justice System*. New Delhi: Ministry of Home Affairs, Government of India.

management . This specialized force must collaborate closely with the independent DoP to ensure investigative methods align with necessary evidentiary requirements from the earliest stages of the case.

This professionalization requires massive, sustained financial commitment centered on technology and human capital. Significant capital investment must be channeled into modern forensic science and technology, including widespread access to digital evidence analysis tools, mobile forensic facilities, and reliable national crime databases⁵¹. Concurrently, a robust system of continuous training is mandatory to equip personnel especially those handling sensitive evidence under the new BSA to adhere to scientific protocols for evidence collection and preservation, thereby eliminating contamination and tampering⁵² .

Finally, to address the profound crisis of public trust, an independent oversight mechanism with genuine statutory authority must be established. This body must have the power to investigate and act upon public complaints of misconduct or investigative failures, ensuring police personnel are accountable to the rule of law and the public, rather than serving as "political puppets" of the executive, thereby finally dismantling the legacy of the Police Act of 1861 ⁵³.

4.3. On the Judiciary and Trials: Addressing Backlogs

To effectively resolve the debilitating pendency epidemic, the government must treat judicial reform as a national developmental priority requiring concurrent investment in human resources and technology. Firstly, there must be a significant and immediate increase in the sanctioned and functional strength of judges, aiming to meet the long-recommended ratio of 50 per million population .This requires not only funding new judicial posts but radically reforming the judicial appointment process to fill persistent vacancies at all levels ⁵⁴.

Secondly, the judiciary must be comprehensively supported to adopt the technological advancements formalized in the new criminal laws. This necessitates immediate investment in reliable digital infrastructure, robust e-filing systems, and mandatory training for all judicial staff and advocates on digital proceedings ⁵⁵. The primary goal is to shift processes from paperbased, adjournment-prone routines to efficient, digitally managed trials.

Thirdly, utilizing recommendations from the Malimath Committee, a dedicated and adequately funded program for the accelerated disposal of cases pending for over two years should be initiated to quickly clear the immense backlog . This could involve establishing specialized fast-track courts or prioritizing the review and disposal of undertrial cases that fuel the

⁵¹ BPR&D (Bureau of Police Research & Development) (2024) Handbook on the Bharatiya Nyaya Sanhita, 2023. New Delhi: Ministry of Home Affairs.

⁵² Jain, M.P. (2021) Outlines of Indian Legal History. 8th edn. Nagpur: LexisNexis.

⁵³ Gopalan, S. (2019) Criminal Justice System in India: A Comparative Perspective. New York: Routledge.

⁵⁴ Dhavan, R. (2019) Justice on Trial: The Law and the Judiciary in India. New Delhi: Oxford University Press.

⁵⁵ Sekhri, A. (2019) 'Pendency in the Indian Criminal Process: A Creature of Crisis or Flawed Design?', Socio- Legal Review, 15(1) [Online]. Available at: <https://repository.nls.ac.in/slr/vol15/iss1/1/>

confinement crisis⁵⁶ . Successfully addressing pendency is the singular most effective way to restore public confidence in the system's timeliness .

4.4. On Victims: Adopting a Charter of Rights

Inspired by the comprehensive framework of the UK's Victims' Code, India should enact a legally enforceable Victims' Charter⁵⁷ . This institutionalization is vital to move beyond the state-centric philosophy toward genuine citizen engagement ⁵⁸.

This charter must guarantee several core, actionable rights:

- (1) The right to detailed information regarding a case's progress, investigation status, and charging decisions;
- (2) The right to support services, including psychological and legal aid;
- (3) The right to protection from procedural harassment; and
- (4) The right to make a personal impact statement in court before sentencing⁵⁹.

Furthermore, implementing a mechanism similar to the Victims' Right to Review (VRR) would introduce necessary public accountability over the new Directorate of Prosecution's decisions. This robust institutionalization of victim rights provides a more humane experience while simultaneously encouraging public participation, thereby improving the overall justice process.

The Economic and Social Toll of India's Procedural Injustice:-

The structural failures endemic to India's criminal justice system impose severe financial and societal penalties that significantly inhibit the nation's developmental progress. This judicial stagnation functions as a pervasive, hidden drag on the economy, demanding that investment in legal infrastructure be recognized as a critical economic necessity ⁶⁰.

The vast judicial backlog, exceeding 5 crore cases, represents a major fiscal liability . Economists note that the immense public resources and time wasted on chronic procedural delays translate into billions in lost productivity annually . This procedural inertia creates an environment of high risk for commerce, delaying the resolution of commercial and land disputes for years. Consequently, the system actively discourages investment (including FDI)

⁵⁶ ETV Bharat (2025) 'Justice Stalled: Experts Call For Urgent Steps To Reduce Backlog Of Over 5 Crore Cases In Indian Courts', ETV Bharat, September.

⁵⁷ Zander, M. (2017) *The Law-Making Process*. 8th edn. Cambridge: Cambridge University Press

⁵⁸ Dhavan, R. (2019) *Justice on Trial: The Law and the Judiciary in India*. New Delhi: Oxford University Press.

⁵⁹ Drishti IAS (2024) 'New Criminal Laws Come into Force', Drishti IAS (Daily News Analysis), 4 July [Online]. Available at: <https://www.drishtias.com/daily-updates/daily-news-analysis/new-criminal-laws-come-inforce>

⁶⁰ Dhavan, R. (2019) *Justice on Trial: The Law and the Judiciary in India*. New Delhi: Oxford University Press.

(Used for resource misallocation and essential economic infrastructure argument).

and impedes the overall ease of doing business, imposing a quantifiable discount on India's potential GDP ⁶¹.

Furthermore, the Confinement Crisis results in a massive, ethically problematic fiscal drain. The state allocates substantial public funds to maintain prisons where the majority of inmates 73.5% are undertrial prisoners . This constitutes a severe misallocation of resources, as public money is used to finance the incarceration of individuals legally presumed innocent, diverting capital away from essential developmental priorities ⁶². Beyond the direct financial cost, the systemic delays inflict a staggering toll on human capital. Prolonged, unproductive incarceration pushes families into deeper poverty, reduces lifetime earning potential, and permanently compromises the psychological health and social reintegration prospects of the affected individuals . The system thus creates a poverty trap by indefinitely penalizing the marginalized solely due to institutional inefficiency .

Finally, the crisis compounds its social cost through the pervasive erosion of public trust. When the system repeatedly fails to secure convictions in meritorious cases ,a failure confirmed by 2023 data it incentivizes victims to withhold reporting, thereby contributing to the "dark figure" of crime and undermining social cohesion ⁶³. The failure to reliably enforce the law forces citizens to absorb the costs of insecurity and procedural risk. The judicial crisis ultimately operates as a profound tax on national development, underscoring the urgent necessity of structural reform to secure economic growth and democratic legitimacy .

Crucially, this structural inertia reinforces existing societal inequalities. The poor and marginalized suffer disproportionately, lacking the resources to navigate endless adjournments or secure prompt bail, thus bearing the heaviest burden of judicial inefficiency . The sustained breakdown of the justice system fosters an environment of impunity, where non-compliance with the rule of law becomes economically rational for some actors, further destabilizing the market environment . Therefore, addressing the pendency backlog and improving investigative quality are not merely legal goals; they are indispensable prerequisites for poverty alleviation and enhancing the sanctity of contractual agreements. The economic viability of the entire nation is increasingly tied to its ability to demonstrate judicial competence and accountability, requiring the political executive to finally prioritize long-term institutional investment over short-term fiscal convenience . The cost of continued inaction now far outweighs the expenditure required for comprehensive structural overhaul.

In conclusion, India's path to reform is clear but challenging. While the new criminal codes (BNS, BNSS, BSA) offer legislative modernization, their success relies entirely on a commitment to the institutional transformation seen in the UK's structural separation and quality control. The blueprints are available, but effective change requires political willingness

⁶¹ Basu, D.D. (2017) *Commentary on the Constitution of India*. 9th edn. New Delhi: LexisNexis. (Used for the argument that systemic failure operates as a broad tax on national development/social cohesion).

⁶² Dhavan, R. (2019) *Justice on Trial: The Law and the Judiciary in India*. New Delhi: Oxford University Press. (Used for resource misallocation and essential economic infrastructure argument).

⁶³ TheLaw.Institute (2023) 'Addressing the Maladies in India's Criminal Justice System', *Law Notes by TheLaw.Institute* [Online]. Available at: *URL* (Used for public trust and "dark figure" of crime context). ⁷³
Basu, D.D. (2017) *Commentary on the Constitution of India*. 9th edn. New Delhi: LexisNexis.

to commit vast resources and, critically, relinquish the centralized control that has historically defined the crisis⁶⁴ .

Conclusion: Rebuilding Trust in the Rule of Law

The criminal justice system in India currently stands at a definitive, critical crossroads, its future determined by its willingness to confront the structural ghosts of its past ⁶⁴ . The deeply ingrained operational deficiencies that characterize its current state the crippling pendency epidemic, the chronically poor quality of investigations, and the humanitarian catastrophe of prison overcrowding are not isolated administrative failures but are, as this analysis has confirmed, the pervasive and mutually reinforcing symptoms of a fundamental systemic malaise⁶⁵. The core structural defect lies in the failure to dismantle the colonial-era framework that prioritized executive control over enforcement agencies, thereby ensuring both judicial stagnation and poor accountability for over 160 years.

The comparative analysis with the United Kingdom, particularly its institutional innovations, provides a compelling case study for an alternative operational approach, one firmly rooted in the democratic principles of institutional separation, professional accountability, and citizen-centric justice . The UK's structural decoupling of police and prosecution through the Crown Prosecution Service (CPS), coupled with its stringent Full Code Test and formalized Victims' Code, demonstrates definitively that the adversarial system can be successfully adapted to ensure both procedural rigor and public trust .⁶⁶ The central indictment against the Indian system is not a lack of intellectual or legal wisdom, as evidenced by the comprehensive recommendations of the Malimath Committee, but a profound and destructive failure of political governance and implementation .

Institutional Transformation:-

The crisis demands that the government address its structural failures concurrently, recognizing that the three pillars of failure are inherently interconnected. The ultimate success of the new criminal codes (BNS, BNSS, BSA) is entirely predicated on the institutional overhaul proposed below.

The Imperative Of judicial and capacity overhaul :-

The Pendency Epidemic, the staggering backlog exceeding 5 crore cases—is the most immediate existential threat to the constitutional guarantee of liberty and fair justice (Article 21) . The evidence overwhelmingly points to a crisis of chronic underinvestment in human capital: the judge-to-population ratio of approximately 21 per million is structurally insufficient to handle the nation's litigation volume . To rebuild public confidence in the timeline of justice,

⁶⁴ Id

⁶⁵ Dhavan, R. (2019) *Justice on Trial: The Law and the Judiciary in India*. New Delhi: Oxford University Press.

⁶⁶ Gopalan, S. (2019) *Criminal Justice System in India: A Comparative Perspective*. New York: Routledge. ⁷⁷
Jain, M.P. (2021) *Outlines of Indian Legal History*. 8th edn. Nagpur: LexisNexis.

the roadmap must include a mandatory, non-negotiable financial commitment to increase judicial capacity to meet the long-recommended ratio of 50 judges per million .

This requires a two-pronged strategy:

1. **Human Capital Expansion:** Immediate, mass-scale recruitment drives, mandated by national legislation, to fill all chronic vacancies in the High Courts and District Courts within a defined three-year period. This necessitates reforming the judicial appointment process (especially at the subordinate level) to streamline recruitment and enhance meritocracy.
2. **Technological and Procedural Integration:** The financial investment must be supported by the complete modernization of court technology. This means establishing robust, centralized digital case management systems (moving beyond the current capabilities of the National Judicial Data Grid) and ensuring that all judicial staff, advocates, and police officers receive mandatory, comprehensive training to fully utilize electronic evidence and digital proceedings . Specialized Fast-Track Courts or dedicated "Legacy Case Clearance" units must be established and fully funded to address cases pending for over two years, thereby actively breaking the back of the inherited backlog and restoring systemic timeliness . Without this foundational scaling and technological support, the judiciary will remain paralyzed, rendering substantive legal changes ineffective .

The imperative of structural separation:-

The consistently low success rate in criminal prosecutions a symptom of inefficient and unscientific investigation is structurally rooted in the lack of functional independence of the enforcement arm . Therefore, the central, non-negotiable structural reform must be the genuine separation of investigation and prosecution.

This requires two distinct, empowered institutions:

1. **Independent Directorate of Prosecution (DoP):** While the BNSS provides a legislative foundation for a Directorate of Prosecution, the success of this reform relies entirely on granting this DoP absolute operational and financial autonomy, insulating it from the political executive, much like the CPS . Prosecutors must be empowered to independently review cases based on merit and evidence admissibility, mirroring the Evidential Stage of the UK's Full Code Test, thereby acting as a powerful filter against poor police work and political influence .
2. **Professional Investigative Wing:** The separation of police wings must be formally enacted, leading to the creation of a specialized Investigative Service free from routine law-and-order duties. This corps requires massive investment in advanced forensic training and technology, aligning police practice with the scientific standards required by the new BSA . Furthermore, a truly independent Police Accountability Authority must be established to handle public complaints, ensuring police personnel are accountable to the rule of law rather than the executive thereby tackling the destructive legacy of the colonial Police Act of 1861.

The Imperative Of Humane Justice:-

The tragic reality of the large proportion of undertrial prisoners (77% in 2021) underscores the deep humanitarian crisis caused by procedural failure and judicial delay. Rebuilding trust requires a systemic commitment to dignity, focusing on both release and better conditions.

This requires three ethical and procedural commitments:

1. **Proactive Bail Review:** Implementing systemic mechanisms, potentially leveraging AI, to track detention periods and trigger automatic judicial reviews for undertrials who have served half their maximum sentence, ensuring the proactive application of the new BNSS provisions . This must be coupled with expanding legal aid services to provide timely intervention for marginalized undertrials.
2. **Victim Empowerment (VRR):** Drawing from the UK's citizen-centric focus, India must enact a legally enforceable Victims' Charter that guarantees the right to information, support, and protection . Critically, implementing a mechanism similar to the Victims' Right to Review (VRR) would introduce necessary public accountability over the new Directorate of Prosecution's decisions, giving stakeholders confidence in the process
3. **Correctional Philosophy Shift:** The state must move beyond the current model of prisons as "human warehouses." This requires substantial capital investment to increase prison capacity, improve hygiene, and mandate the introduction of educational and vocational services, ensuring that confinement adheres to human rights standards and supports rehabilitation, rather than simply contributing to recidivism .

Conclusion: The Mandate for Political Will

The path to rebuilding public trust in the rule of law in India is clear and requires courage, not new statutes. It demands a decisive, uncompromising shift from a system designed primarily for political control (the colonial residue) to one fundamentally dedicated to the impartial, efficient, and humane delivery of justice . The success of the current legislative overhaul is entirely contingent upon the political will to provide the necessary fiscal resources and implement the structural separation mechanisms, drawing inspiration from the demonstrable accountability achieved by the UK's CPS model . Failure to commit to this institutional overhaul will ensure that the current crisis persists, the new laws become mere ceremonial replacements, and procedural injustice continues to erode democratic faith .