



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

“FROM PUNISHMENT TO REHABILITATION: A CRITICAL ANALYSIS OF REFORMATIVE PENOLOGY UNDER THE NEW CRIMINAL LAWS IN INDIA”

AUTHORED BY - DAYA PRAJAPATI¹

ABSTRACT

This study critically analyzes the paradigm shift in Indian criminal jurisprudence from the enactment of Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) in 2023. India's criminal justice system for more than a century had been under the colonial influence of colonial codes, namely the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act, which had introduced punitive penology, which was based on punishment and retribution rather than rehabilitation. The new criminal laws represent a conscious break with this tradition in substantive, procedural and evidentiary provisions which include the concept of reformatory penology. The study contextualizes reformatory penology to the theoretical development of criminology, which is from Classical and Neo-Classical school to modern reformatory and restorative school. It calls attention to the fact that community service is a new part of the BNS's "punishment" for offenders, and to the fact that community service is in line with restorative justice principles, which demand that those who are wronged return to society in some positive way. BNSS adopts reformatory principles through measures such as undertrial release, plea bargaining, and digital justice, which help to tackle systemic delays and the issue of overcrowding. The BSA modernizes evidentiary law, including the recognition of electronic records, enhanced witness protection and victim-centric provisions, to ensure fair trials and substantive justice. The paper also looks at the constitutional and international aspects of reformatory penology, examining how these reforms fit in with Article 21's commitment to dignity, the Directive Principles of State Policy which demand humane justice and international conventions like the ICCPR, the Nelson Mandela Rules, etc.

¹ Assistant Professor of Law, School of Law, Maharaja Ganga Singh University, Bikaner

INTRODUCTION

Punitive philosophy has always been the guiding principle of the Indian criminal justice system, as it is derived from the colonial laws enacted by the Indian Penal Code, 1860 (IPC), Code of Criminal Procedure, 1973 (CrPC) and Indian Evidence Act, 1872. These laws adopted the classical school of criminology, which placed a focus on punishment as a means of deterrence and retribution. In recent times, however, the criminological world has also come to understand the relevance of reformatory penology that sees offenders as not only wrongdoers deserving of punishment, but also as people who can be mended and re-integrated into society. Such a change has been reflected in innovations in legislation, such as the Probation of Offenders Act, 1958, which enabled courts to order an offender to be released on probation of good conduct as an alternative to a custodial sentence.²

The judiciary has given rich voices to the concepts of reform in the Indian criminal jurisprudence. In *Mohammad Giasuddin v State of Andhra Pradesh*, the Supreme Court has said “every saint has a past, and every sinner has a future”, emphasising that punishment has a therapeutic value, and that offenders should be treated as patients, not irredeemable criminals.³ In *Sunil Batra v Delhi Administration*, the Court condemned solitary confinement and custodial torture, reinforcing the constitutional mandate of humane treatment of prisoners, because “prisoners have a fundamental right to live under Article 21 of the Constitution”.⁴ In *State of Gujarat v High Court of Gujarat*, the judiciary has said that “probation and parole are tools of reformation”, re-affirming the constitutional requirement for humane treatment of prisoners.⁵

The year 2023 is a landmark in the criminal justice system of India with the enactment of three new criminal laws, namely *Bharatiya Nyaya Sanhita, 2023 (BNS)*, *Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)* and *Bharatiya Sakshya Adhiniyam, 2023 (BSA)*.⁶ These laws supersede the IPC, CrPC and the Evidence Act respectively and represent a paradigm change from punishment to rehabilitation. Restorative justice principles are reflected in the BNS's community service punishment. The BNSS provisions on expedited trials, plea bargaining, and release of undertrials after completing 1/3 of the sentence, seek to solve the delays and overcrowding in the jails. The BSA introduces modern amendments to the rules of evidence, such as the acceptance of electronic and digital records, tougher protections for witnesses and

² Probation of Offenders Act, No. 20 of 1958, India Code (1958).

³ *Mohammad Giasuddin v. State of Andhra Pradesh*, AIR 1977 SC 1926, (1977) 3 SCC 287.

⁴ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675, (1978) 4 SCC 494; see also *Sunil Batra v. Delhi Administration (II)*, AIR 1980 SC 1579, (1980) 3 SCC 488.

⁵ *State of Gujarat v. High Court of Gujarat*, (1998) 7 SCC 392.

⁶ *Bharatiya Nyaya Sanhita*, No. 45 of 2023, Gazette of India (Dec. 25, 2023).

increased transparency of trial proceedings.⁷

It reflects a reformatory thrust similar to the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) adopted by the General Assembly in 2015 which emphasizes humane treatment and rehabilitation of prisoners, and India's obligations under the International Covenant on Civil and Political Rights (ICCPR), which guarantees the right to life, dignity, and fair trial.⁸

Although there have been some normative changes, there are still some practical ones to face. The overcrowding, poor medical facilities, vocational training and custodial violence still pose threats to rehabilitative measures in prisons, whereas of December 2023, there were 530,333 inmates against the official prison capacity of 439,119, with nearly 75% being undertrials.⁹ The effectiveness of community service and probationary requirements requires institutional capacity, judicial sensitivity and community acceptance. The Scandinavian countries with their emphasis on rehabilitation have displayed examples that reformatory penology is possible if correctional facilities are invested in and attitudes are changed.

Codification Under British Rule

The IPC, 1860 (Lord Macaulay): IPC is the first comprehensive codification of the Indian criminal law, which was drafted by Lord Macaulay. It was not to reform offenders, but to make the punishment equitable and regular, and to secure uniformity and certainty in punishment, thus consolidating colonial control. The classical school of criminology was reflected in the IPC's imposition of imprisonment, fines, and capital punishment as the main sanctions.¹⁰

The Code of Criminal Procedure of 1898 (CrPC): This procedural code brought together the investigative and prosecuting functions in the colonial magistrates and police. It was focused on ensuring convictions at the fastest pace possible, at the risk of defeating due process and rights of the accused.¹¹

- Indian Evidence Act, 1872: The Act was enacted to codify the rules of evidence, introducing stricter rules in favour of documentary and testimonial evidence, under the supervision of the colonial regime. It increased the prosecutorial power and reduced the

⁷ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, Gazette of India (Dec. 25, 2023).

⁸ G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (Dec. 17, 2015).

⁹ National Crime Records Bureau, Prison Statistics India 2023 (Ministry of Home Affairs, 2025).

¹⁰ Indian Penal Code, No. 45 of 1860, India Code (1860).

¹¹ Code of Criminal Procedure, No. 5 of 1898, India Code (1898).

discretion of the Indians.¹² These laws, compiled together, established an "incapacitation/deterrence" system that was state-oriented and punitive.

Discipline in action, a punitive approach to school discipline in practice

Prison System: Colonial prisons were extremely severe and crowded; built to incapacitate, not rehabilitate. The use of prison labour was exploitative in terms of pursuing the interests of the Raj.¹³ **Policing:** Police Act 1861 established military police force whose purpose was to arrest dissenters and keep the peace not to deter crime by involving communities.¹⁴

Judicial Attitudes: Colonial courts were more concerned with following the letter of the law and provided little opportunity for discretion or foreshadowing's of reformatory sentencing. This punitive attitude served to establish custodial violence, extended detention, and hierarchical control, which carried over into post-independence India.

Post-Independence Continuities

Although the colonies were independent, colonial structures were still entrenched: The IPC retained its definition of substantive offences, including very few reformatory elements.

The CrPC (revised in 1973) continued to have adversarial system and police-centric investigation. The Evidence Act remains the foundation for admissibility with very slightly more flexible interpretation, but hardly a change in substance from colonialism. Scholars point out that these legacies continue to give rise to punitive penology, as seen in large numbers of people in custody, violence within that custody and a focus on prison.¹⁵

Post-independence Indian penology

Post-independence Indian penology has shown a gradual shift from the punitive policy of the British rule that consciously it is taken out from the colonial ways and the state adopts the policy of reform and welfare. The change is reflected in the legislation governing probation, the various Juvenile Justice laws passed over time and prison reforms that aimed at making criminal justice more humane and in keeping with the constitutional guarantees of Article 14,

¹² Indian Evidence Act, No. 1 of 1872, India Code (1872).

¹³ Abhyuday Ram Tripathi & Dr. Sheeba Khalid, Evolution of the Criminal Justice System in India: Colonial Legacy and Reforms, Indian J. Legal Rev., Vol. 6, Issue 2, 727–738 (2026).

¹⁴ Police Act, No. 5 of 1861, India Code (1861).

¹⁵ Mahek Thacker, Reforms in the Indian Criminal Justice System: Colonial Legacies, New Legislation, and Ongoing Challenges, Indian J. Res. L. & Mgmt., Vol. III, Issue 9 (2026).

21 and 39 of the Constitution of India, and India's international commitments.

The Probation of Offenders Act, 1958, one of the earliest reformatory laws, gave the power to the courts to release offenders on good conduct bonds, especially for first time and minor offenders, thereby avoiding the stigma of imprisonment.¹⁶ Social Investigation Reports had to be prepared by probation officers, they were to counsel offenders and they were to facilitate reintegration in society. The ideology behind this was the reformatory one that punishment should rectify behavior, not inflict suffering. The Supreme Court has recognised probation as a mechanism of reform and rehabilitation of the offenders in the case of *Rattan Lal v. State of Punjab*, where it highlighted that the purpose of probation was to reform the offenders and stop them from becoming hardened criminals.¹⁷

In parallel, India also had a well-established juvenile justice system. At the same time, India was also having a strong system for juvenile justice. The Juvenile Justice Act, 1986 was the first central legislation that differentiated between “delinquent juveniles” and “children in need of care and protection” and focused on institutionalization in special homes, education and vocational training, but had been poorly implemented because of its underfunding and lack of trained personnel.¹⁸ The Act, 2000 on Juvenile Justice (Care and Protection of Children) marked a change that focused on rights, rather than the use of the word delinquent, which was replaced by ‘juvenile in conflict with law’, and abandoned or orphaned children were included.¹⁹ The Act was influenced by the ratification of the United Nations Convention on the Rights of the Child (UNCRC) in 1992.²⁰ The Juvenile Justice (Care and Protection of Children) Act, 2015 also amended the framework, making it controversial to allow juveniles aged between 16 and 18 to be tried in the adult courts, but subject to evaluation by the Juvenile Justice Board, in response to the pressure from society after the 2012 Delhi case of a gang rape.²¹ In the case of *Salil Bali v. Union of India*, which was decided by the Supreme Court, it has affirmed child-centric justice by observing that juvenile justice mechanisms are constitutional.²²

Prison reform was also an important issue in the post-Independence penology. Judicial activism supported such reformatory ideas as the promotion of vocational training, education, and rehabilitation programmes, and the establishment of open prisons and aftercare services as

¹⁶ Probation of Offenders Act, No. 20 of 1958, India Code (1958).

¹⁷ *Rattan Lal v. State of Punjab*, AIR 1965 SC 444.

¹⁸ Juvenile Justice Act, No. 53 of 1986, India Code (1986).

¹⁹ Juvenile Justice (Care and Protection of Children) Act, No. 56 of 2000, India Code (2000).

²⁰ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (India ratified Dec. 11, 1992).

²¹ Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, India Code (2016).

²² *Salil Bali v. Union of India*, (2013) 7 SCC 705.

recommended by committees like the Mulla Committee (1980s).²³ *Sunil Batra v. Delhi Administration* case has condemned solitary confinement and custodial torture and has affirmed that prisoners have fundamental rights under article 21. *Sunil Batra v. Delhi Administration* case also highlighted the need for establishment of child friendly procedures. These cases paved the way for constitutional protections of prisoners and emphasized the judiciary's role in ensuring reformatory penology.²⁴

While these advances have been made, issues remain. However, the National Crime Records Bureau (NCRB) data in Prison Statistics India 2023 indicates that almost 75% of the prison population is undertrial, highlighting systemic delays and the ineffectiveness of rehabilitative measures.²⁵ The pressures of overcrowding, violence, and poor infrastructure persist, limiting the impact of rehabilitation efforts.

The reformatory orientation of the reform is supported by constitutional requirements. The rights of the child are guaranteed under Article 15(3); Article 21 guarantees dignity and humane treatment; and the Directive Principles including Article 39(e) and (f) guarantee protection of children from exploitation. India's reformatory course has been influenced by these provisions alongside other international standards such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules),²⁶ which provide international guidelines for the regulation of prisons. In addition, with international standards like the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), 12, these provisions have influenced the reformatory course of India.

The Classical and Neo-Classical schools of criminology represent two foundational stages in the intellectual history of criminal law and penology. The Classical school emerged in the eighteenth century during the Enlightenment, when thinkers such as Cesare Beccaria and Jeremy Bentham sought to rationalize criminal justice systems that had previously been arbitrary, cruel, and heavily influenced by superstition. Beccaria's *On Crimes and Punishments* (1764) argued that crime was the product of rational choice, that individuals acted out of free will, and that punishment should be proportionate, certain, and swift to deter future offending.²⁷ Bentham, in *An Introduction to the Principles of Morals and Legislation* (1789), advanced

²³ Government of India, Ministry of Home Affairs, Report of the All India Committee on Jail Reforms (Mulla Committee Report) (1980–83).

²⁴ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675; see also *Sunil Batra v. Delhi Administration (II)*, AIR 1980 SC 1579.

²⁵ National Crime Records Bureau, Prison Statistics India 2023 (Ministry of Home Affairs, 2025).

²⁶ G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (Dec. 17, 2015).

²⁷ Cesare Beccaria, *On Crimes and Punishments* (1764).

utilitarianism, emphasizing that punishment should serve the greatest happiness of the greatest number, thereby linking criminal sanctions to social utility.²⁸ Together, these thinkers established the Classical school's central tenets: crime is a rational act, punishment must be proportionate and codified, and deterrence is the primary objective of criminal law.

The Classical school's influence was profound. It led to codified laws across Europe and colonial territories, including the Indian Penal Code of 1860, which embodied proportional punishment and deterrence.²⁹ The emphasis on equality before the law meant that all offenders were to be treated alike, regardless of social status. However, the Classical school was criticized for its rigidity. It assumed that all individuals possessed equal rational capacity and ignored factors such as age, mental illness, coercion, or socio-economic conditions. It also overemphasized punishment, neglecting rehabilitation and failing to explain impulsive or emotional crimes.

The Neo-Classical school arose in the nineteenth century as a refinement of Classical principles. While retaining the idea of rational choice, Neo-Classical thinkers acknowledged that free will could be limited or constrained. They recognized that children, the mentally ill, or those acting under coercion did not exercise the same rational capacity as adults acting voluntarily.³⁰ This school introduced mitigating factors into sentencing, allowing judges to consider personal circumstances when determining punishment. The Neo-Classical school thus emphasized equity rather than strict equality, tailoring punishment to the offender's condition. It also opened the door to rehabilitative measures, suggesting that treatment or reform might be more effective than punishment for certain categories of offenders.

The impact of the Neo-Classical school was significant. It influenced the development of probation laws and juvenile justice systems worldwide. In India, the Probation of Offenders Act, 1958, reflected Neo-Classical ideals by allowing courts to release first-time or minor offenders on probation rather than imposing custodial sentences.³¹ Similarly, successive Juvenile Justice Acts (1986, 2000, 2015) embodied Neo-Classical principles by recognizing diminished responsibility in juveniles and emphasizing rehabilitation over punishment.³² Judicial pronouncements also illustrate this blending of Classical deterrence with Neo-Classical reform. In *Rattan Lal v. State of Punjab*, the Supreme Court emphasized that

²⁸ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1789).

²⁹ Indian Penal Code, No. 45 of 1860, India Code (1860).

³⁰ Roger Hopkins Burke, *An Introduction to Criminological Theory* (5th ed. 2018).

³¹ Probation of Offenders Act, No. 20 of 1958, India Code (1958).

³² Juvenile Justice (Care and Protection of Children) Act, No. 56 of 2000, India Code (2000); Juvenile Justice (Care and Protection of Children) Act, No. 2 of 2016, India Code (2016).

probation was intended to reform offenders and prevent them from becoming hardened criminals.³³ In *Salil Bali v. Union of India*, the Court upheld the constitutionality of juvenile justice frameworks, stressing the importance of child-centric justice.³⁴

Comparatively, the Classical school insisted on fixed, proportionate punishment and absolute free will, while the Neo-Classical school introduced flexibility, recognizing that circumstances matter. The Classical school focused on deterrence, whereas the Neo-Classical school balanced deterrence with rehabilitation. The Classical school's principle of strict equality before law was tempered by the Neo-Classical emphasis on equity, considering age, mental health, and coercion.

In the Indian context, both schools have left a lasting imprint. The IPC reflects Classical principles of deterrence and proportionality, while probation and juvenile justice laws embody Neo-Classical ideals. Together, they shaped India's penal philosophy, influencing colonial codes and post-independence reforms. Their relevance continues under the new criminal laws of 2023, which attempt to balance deterrence with rehabilitation by introducing community service, plea bargaining, and victim-centric provisions.

Reformative Theory: Foundations

The (reformative) theory of punishment arose as an alternative to the retributive and deterrent theories, which emphasized suffering and fear. Reformative justice is based on the belief that offenders are capable of change and improvement. According to scholars, crime is frequently a result of socio-economic disadvantage, psychological factors or lack of education and not a result of innate criminality, hence punishment should address correction, rehabilitation and reintegration of offenders to the society.³⁵

Rehabilitation

Rehabilitation is the principal of reformative justice. This includes education programmes, vocational training, psychological counselling and de-addiction programmes in correctional institutions, with the aim to provide skills and values to the offender to enable them to live lawfully after release.³⁶ In India, probation and parole are based on the

³³ *Rattan Lal v. State of Punjab*, AIR 1965 SC 444.

³⁴ *Salil Bali v. Union of India*, (2013) 7 SCC 705.

³⁵ Swati Saurabh, *Reformative Theory of Punishment in the Modern Era: A Myth or Reality?*, *The LaWWay with Lawyers J.*, Vol. 30, Issue 30 (Dec. 11, 2025).

³⁶ Vaibhav Singh Kirsali & Vatsal Chaudhary, *Criminological Evaluation of Reformative Justice and Its Role in Preventing Repeat Offences*, *Indian J. Legal Rev.*, Vol. 6, Issue 1 (2026).

rehabilitative principle which permits the release of criminals from prison with supervision and assistance. The Supreme Court in *Mohd. Giasuddin v. State of A.P.* made it clear that “every saint has a past, every sinner has a future”, and thus punishment has therapeutic value.³⁷

Re-Socialization

Re-socialization means the socialization of an offender by altering their attitude and behavior. This includes community service, restorative programs and family supports.³⁸ Re-socialization was also adopted in Juvenile Justice legislation, which provides for the care, guidance and opportunities for children in conflict with the law, and not punishment in the form of incarceration.³⁹

Restorative Justice

Restorative justice is a form of complementary theory to reformatory which emphasizes the repairing of harm from crime. Restorative justice focuses on the victim-offender dialogue, on community involvement and reconciliation, rather than on isolating offenders.⁴⁰ Community service provisions in *Bharatiya Nyaya Sanhita, 2023*, bring forth the restorative ideals as they demand that the offenders make a positive contribution to society.⁴¹

BHARATIYA NYAYA SANHITA (BNS, 2023) AND REFORMATORY PENOLOGY

The *Bharatiya Nyaya Sanhita, 2023* (BNS), which supersedes the erstwhile Indian Penal Code from 1860, is a milestone in the criminal law reform in India. The IPC for more than 160 years reflected the colonial punitive philosophy, with a focus on deterrence and retribution. The most significant development is the formal acceptance of community service as punishment – something that differs significantly from the traditional methods of sending people to jail or fining them.⁴² This is especially important in India where prisons are often overcrowded and there is a high number of undertrial prisoners which makes it difficult to carry

³⁷ *Mohd. Giasuddin v. State of A.P.*, AIR 1977 SC 1926.

³⁸ Probation of Offenders Act, No. 20 of 1958, India Code (1958).

³⁹ Juvenile Justice (Care and Protection of Children) Act, No. 56 of 2000, India Code (2000).

⁴⁰ Preeti Bhagat, *From Punishment to Rehabilitation: A Human Rights Analysis of the Reformatory System*, Legal Service India (Mar. 24, 2026).

⁴¹ G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (Dec. 17, 2015); Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁴² *Bharatiya Nyaya Sanhita*, No. 45 of 2023, Gazette of India (Dec. 25, 2023).

out the tenets of restorative justice.⁴³ Community service helps to reduce recidivism and reintegration and allows the diversion of minor offenders from prison.

The BNS also strengthens and streamline victim-centred provisions, particularly in the context of offences against women and children; in doing so, it reflects the constitutional mandate for dignity, protection and rehabilitation, as well as the Direction Principles of the Constitution which advocate for humane justice.⁴⁴ Strict measures are in place against sexual offences, trafficking and exploitation, which is a combination of deterrent measures against the most serious crimes and alternative ways to punish less serious crimes. This balance reflects a subtle philosophy of BNS, which acknowledges that there are not all bad people, and that rehabilitation is a moral and pragmatic imperative.

The other reformative aspect of the BNS is the organized crime and terrorism. The law maintains the drastic measures needed to protect society from the most serious of offences, while at the same time providing opportunities for plea bargaining and community-based sanctions in the right case, ensuring that offenders who can be remediated will not be denied that opportunity.⁴⁵

Jurisprudence grounded in the reformative thrust of the BNS can be found in Supreme Court statements. In *Mohd. These judgments not only established the norm of rehabilitative penology but also extended the scope of Article 21 to protect prisoners from custodial torture and solitary confinement, as in the case of *Giasuddin v State of A.P.*⁴⁶ and in *Sunil Batra v Delhi Administration.*⁴⁷*

In comparison, the community service has been introduced in India and its adoption is in line with the global trend. The Scandinavian countries like Norway provide education, training and reintegration with humane approach and has very less reoffending rate.⁴⁸ European countries like Scandinavian countries, Norway emphasizes humane treatment, education and reintegration which reduces recidivism rate than short-term custody. The BNS' approach is community service with a focus on creating the same kind of success in India, but with obstacles like infrastructure, supervision and social acceptance.

Critics say that community service might turn out to be tough in India because of

⁴³ Parvatkar Krishna Rishikesh & Sunil Kulhare, *Reformative Outlook on Criminal Justice and Major Legal Codes: An Analysis of India's Transformative Criminal Law Reforms*, MJAP J., Vol. 1, Issue 2 (2025).

⁴⁴ Abhilash Sontake, *The Bharatiya Nyaya Sanhita, 2023: A Paradigm Shift in Indian Criminal Jurisprudence*, Abhilash Sontake & Associates (Apr. 18, 2026).

⁴⁵ *Id.*

⁴⁶ *Mohd. Giasuddin v. State of A.P.*, AIR 1977 SC 1926.

⁴⁷ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1675.

⁴⁸ Roger Hopkins Burke, *An Introduction to Criminological Theory* (5th ed. 2018).

substandard probation facilities. Furthermore, the number of probation officers per prisoner is extremely low, and there are concerns about the effectiveness of supervision, while the stigma attached to the presence of offenders in society could affect the reintegration of offenders, thus affecting the effectiveness of re-socialization.⁴⁹ The judiciary is also very important and judges should strike a balance between deterrence and reformative values, especially in regard to repeat offenders and serious crimes.

But the BNS is a new paradigm in Indian penology. It incorporates within substantive law reformative measures that are a radical shift away from punitive colonial legacy. It is a reflection of constitutional values of dignity and humane treatment, is in line with international standards including the Nelson Mandela Rules,⁵⁰ and addresses current issues of overcrowded prisons and systemic delays. The enactment of BNS is a historic step towards establishing a criminal justice system that is more humane and more effective at deterring crime, but it will take time to see the full impact of the new law.

BHARATIYA NAGARIK SURAKSHA SANHITA (BNSS, 2023) AND REFORMATIVE PENOLOGY

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) is one of the most important procedural changes in the Indian criminal justice system, which is implemented with the intention of replacing the Code of Criminal Procedure, 1973 (CrPC). The CrPC had faced criticism for decades for its rigidity, its colonial past and the emphasis it placed on the state and its procedures over individual rights, and for its delays. The BNSS, which will come into force on 1st July 2024, aims to modernise criminal procedure and to incorporate reformative penology into the very fabric of its investigation, trial and sentencing system, rather than adhering to the punitive colonial system.⁵¹

The BNSS explicitly tackles the issue of overcrowded prisons, a serious problem in which almost three-fourths of the prison population consists of undertrials, by providing for their mandatory release after serving one-third of the maximum sentence imposed on the crime.⁵² The constitutional guarantees under Article 21, which safeguards the right to life and to personal liberty, are operationalized by the BNSS.⁵³ The provision is an expression of

⁴⁹ National Crime Records Bureau, Prison Statistics India 2023 (Ministry of Home Affairs, 2025).

⁵⁰ G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) (Dec. 17, 2015).

⁵¹ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, Gazette of India (Dec. 25, 2023).

⁵² Id. § 479.

⁵³ National Crime Records Bureau, Prison Statistics India 2023 (Ministry of Home Affairs, 2025).

reformatory penology, as the failure to convict does not only have a negative impact on human dignity, but also on the rehabilitative capacity of the offender. It also is in sync with the Supreme Court rulings, including *Hussainara Khatoon v. State of Bihar*, which highlighted the right to a speedy trial as a fundamental right.⁵⁴

Plea bargaining mechanism was another reformatory innovation in BNSS which came into India through the amendments of CrPC in the year 2005, though it failed to gain much traction as it faced issues of procedural complexity and awareness.⁵⁵ The BNSS streamlines and extends plea bargaining, promoting negotiated justice to decrease the trial backlog and provide rehabilitative opportunities for offenders. Plea bargaining is an example of restorative justice in practice because it enables offenders to acknowledge guilt, to make a restitution and to not become part of an extended litigation process. It also saves the courts the strain of having to deal with less serious crimes.

These measures improve accessibility, transparency and efficiency by introducing digital justice mechanisms such as videoconferencing for trials and provisions for Zero FIR and e-FIR filing.⁵⁶ The BNSS allows victims to file an FIR online and the trials to be conducted without their personal presence, thereby minimizing the procedural hurdles and empowering the marginalized community. Digital justice also promotes re-socialization, as it reduces the shame of entering the real court and enables offenders to attend court remotely.

A major change that has happened is the focus on victim-centered justice. The BNSS requires that victims be notified of bail applications, plea negotiations, and court hearings to advance the restorative justice ideals that place victims as key players at the heart of the criminal justice process.⁵⁷ It is ensuring justice is not only state-based but is also responsive to the victim of a crime. Involving victims in reconciliation and strengthening the legitimacy of the justice system.

The BNSS also bolsters measures to protect the safety and dignity of witnesses, as credible testimony is a key element of a fair trial and restorative justice.⁵⁸ The law ensures the safety and dignity of witnesses to build trust in the system and aid in restorative justice. Witness Protection in its indirect way also contributes to Rehabilitation because if the trials are fair and transparent, the offender is more likely to accept responsibility.

The BNSS's focus on undertrial release and plea bargaining, on the other hand, is more

⁵⁴ *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1369.

⁵⁵ *Bharatiya Nagarik Suraksha Sanhita*, No. 46 of 2023, Gazette of India (Dec. 25, 2023).

⁵⁶ *Id.* §§ 173, 530.

⁵⁷ *Id.* § 530(2).

⁵⁸ *Id.* § 530(3).

like the rest of the world in comparison to India. Plea bargaining in the United States accounts for nearly 90% of criminal convictions, shortening the delay in court proceedings and enabling negotiated justice, while in European jurisdictions undertrial release is strictly enforced to avoid overcrowding and human rights violations. These international practices are reflected in the BNSS, but the poverty, illiteracy and lack of infrastructure must be overcome in the context.⁵⁹

Some critics have said that the reformative aspects of the BNSS could be problematic when it comes to implementation. Monitoring systems should be in place for the release of undertrials to ensure they are not misused. Victims can object to plea bargaining if they see it as being lenient. The issues of concern include privacy, data security, and digital divides as they relate to digital justice. Judicial attitudes are also very important because courts will need to weigh on the need to deter as well as rehabilitate, especially in serious cases.⁶⁰

BHARATIYA SAKSHYA ADHINIYAM (BSA, 2023) AND REFORMATIVE PENOLOGY

The Bharatiya Sakshya Adhiniyam, 2023 (BSA), which replaced the Indian Evidence Act of 1872, is a complete paradigm shift in the evidence law of India. The colonial Evidence Act, which for more than one hundred years had ruled admissibility and proof, imposed strict requirements on documents and witnesses, especially working to the detriment of marginalized groups and not considering technological developments. The modernisation of the evidentiary rules that the BSA will bring in from July 2024 is not only procedural, but also reformative penological, as it aims to ensure fair trials, the protection of dignity and the possibility of restorative justice.⁶¹

It is one of the greatest innovations of the BSA to have formalized electronic and digital evidence.⁶² These documents were the most common modes of proof used in the colonial era. With today's technology, however, crimes are more often committed through the use of electronic communications, digital transactions and cyber activities. The BSA explicitly acknowledges electronic records, which improves transparency and credibility and makes justice more in line with today. This reform also helps with rehabilitation as it eliminates wrongful convictions and brings offenders to justice based on evidence and not on procedural

⁵⁹ Roger Hopkins Burke, *An Introduction to Criminological Theory* (5th ed. 2018).

⁶⁰ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

⁶¹ Bharatiya Sakshya Adhiniyam, No. 47 of 2023, Gazette of India (Dec. 25, 2023).

⁶² Id. § 65B.

technicalities.

The BSA also enhances witness protection systems, as good evidence is crucial to the administration of justice and for the trust of the public to the justice system.⁶³ Witness intimidation has long plagued the criminal justice system in India, leading to acquittals, and reducing public confidence in the justice system. The BSA ensures that witnesses are safe and treated with dignity, in turn, increasing the trust in the system and in restorative justice. Witness protection also contributes to rehabilitation (indirectly) through the increased likelihood of an offender's willingness to accept culpability for the offence, when trials are conducted fairly and transparently. It is also in line with the Supreme Court decisions, including *Zahira Habibullah Sheikh v. State of Gujarat*, which highlighted the core of criminal justice as a fair trial.⁶⁴

The BSA also places a focus on a victim-centered approach to justice, with the law requiring the victim to be advised of the trial process, the development of the evidence, and the rights of the victim.⁶⁵ This provision is in line with restorative justice ideal by making the victim a key stakeholder in the criminal process. It makes justice not just a state affair, but also a crime-affected peoples' affair. Involving victims helps to build reconciliation and strengthen the legitimacy of the justice system.

The BSA also modernizes the rules of admissibility and relevancy, which simplify the procedures and eliminate technical hurdles, thus bringing trials back on track by concentrating on substantive justice.⁶⁶ This reform will encourage rehabilitation by reducing the time period between charges and sentences, the number of time individuals remain in prison, and the speed at which cases are resolved. It also embodies constitutional guarantees under Article 21 that provides for the right to speedy trial.

In contrast with this, the BSA places greater weightage on electronic evidence and witness protection, which is in sync with the international trends. The European jurisdictions include provisions of the evidentiary law, which have been victim-oriented, and witness protection programs are robust in the United States. The BSA is informed by these international practices, but challenges like digital divides, privacy issues, and infrastructural problems need to be overcome.

Some critics say the provisions of the BSA to reform the industry could have trouble getting enforced. Strong technology, staff training, and protection against unauthorized access

⁶³ Id. § 114A.

⁶⁴ *Zahira Habibullah Sheikh v. State of Gujarat*, (2004) 4 SCC 158.

⁶⁵ *Bharatiya Sakshya Adhiniyam*, No. 47 of 2023, Gazette of India (Dec. 25, 2023).

⁶⁶ Id. §§ 5–11.

and modifications must be in place to handle electronic evidence. Witness protection requires money and institutional strength, both of which are lacking in India. Sometimes, traditional actors of the legal system may disagree with the participation of victims, considering criminal justice as a state-oriented system. The attitudes of the judges are also important, as they must strike a balance between deterrence and rehabilitation, especially in cases of serious offenses.⁶⁷

The BSA is still, however, a paradigm shift in Indian evidentiary law. It puts reformatory measures at the heart of the rules of proof, and thereby, it takes a clear step away from the colonial legacy of punishment. It embodies the constitutional principles of respect for dignity and humane treatment; it is consistent with international human rights instruments, namely the International Covenant on Civil and Political Rights (ICCPR);⁶⁸ it addresses current issues of digital crime, witness intimidation and victim marginalization. The BSA will be successful if it is well designed, has jurists who are sensitive, and is accepted by the community, but its creation is a historic milestone in the development of a criminal justice system that is both deterrent and humane.

CONCLUSION

The Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhiniyam 2023 provide the turning points in the development of the penal system and criminal law in India. India's criminal justice system had been ruled by the colonial codes, which were based on the principles of deterrence, retribution and state control for over 150 years. These laws embodied the Classical criminology theory which stressed on punishment as a way of maintaining order and fear. They gave uniformity and predictability, however, they were unable to handle the complexities of human behavior, socio-economic realities of Indian society and the values of dignity and justice which blossomed post-Independence. The new criminal laws are purposefully rooted in a different tradition, one that moves away from punishment and towards the reformatory tenets of penology, in substantive law, procedure, and evidence.

The BNS establishes community service as a legitimate punishment, a concept that reflects the principles of restorative justice in asking offenders to positively contribute to society instead of languishing in prisons. This innovation is a recognition that imprisonment can keep minor offenders locked-up and keep them in the cycle of crime and stigma. The BNS

⁶⁷ Federal Rules of Evidence, Rule 803(6), U.S. Code (2023).

⁶⁸ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

helps to decrease recidivism and reintegration, and also helps to reduce overcrowding in prisons by sending such offenders to community-based sanctions. The BNS has also imposed a tough punishment regime for serious offences including terrorism and sexual violence while also emphasising rehabilitation. This dual approach reflects a subtle philosophy that recognises the need for both society's protection and opportunities for the transformation of the offender.

The BNSS implements reformatory principles in the criminal process. Its directive on mandatory release of undertrials who have served one-third of their maximum sentence directly tackles the issue of the prolonged pre-trial detention, which has been a recurring issue in India, threatening the constitutional rights of liberty and fair trial. The BNSS will improve plea bargaining provisions and integration of technology in justice processes like e-FIRs and video conferencing to curb delays, increase access and empower victims. These measures are a departure from the state-centric approach to justice to a more participatory, victim-sensitive and rehabilitative practice. The BNSS thus lives by the principle of reformatory penology whereby the process itself is a means to dignity, efficiency, and fairness.

The BSA comes up to date in the realm of evidentiary law, including recognition of electronic records, enhancement of witness protection, and inclusion of victim-centered provisions. These changes will make trials fair, transparent and relevant to the modern world of digital crime and intimidation of witnesses. The BSA promotes trust in the justice system and supports restorative justice by safeguarding witnesses and supporting victims. It is open to substantive fairness rather than being rigid in form; it focuses on the substantive rather than the procedural, and it is truly aimed at reform, not at merely establishing guilt.

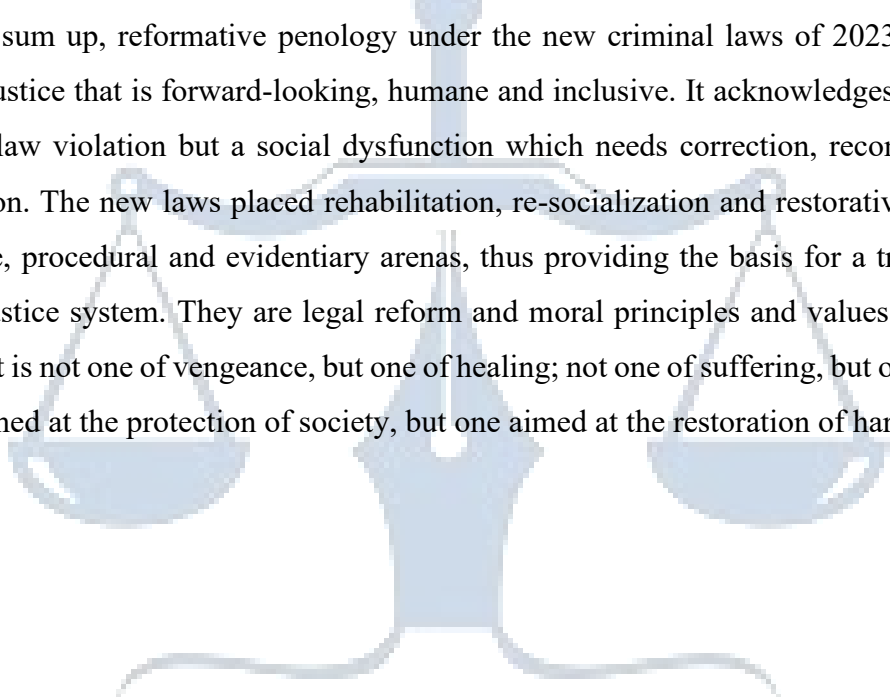
The three codes collectively show a comprehensive approach of reformatory penology. Emphasis is placed on rehabilitation: community service, probation and parole. Digital justice, victim-offender mediation and community-based sanctions promote re-socialization. All provisions towards victims, plea bargaining, and reconciliation are based on the principles of restorative justice. These changes bring India in line with international norms like the Nelson Mandela Rules, ICCPR and are also in accordance with the constitutional provisions under articles 14, 21 and 39.

Yet, challenges remain. The effectiveness of the reformatory penology under the new laws will rely on well-developed infrastructure, well-trained staff, and acceptance within society. There are limited probation officers, prisons are overcrowded, and there is stigma in society towards offenders. Attitudes of judges need to change to ensure that the balance is struck between deterrence and rehabilitation, especially in serious crime cases. Both digital justice and plea bargaining is a cause for concern with regard to digital divides and privacy

issues, and victims may reject plea bargaining as soft justice. The problems highlight that the reformatory paradigm of penology cannot be implemented by legislation alone, and calls for a long-term institutional effort and cultural shift.

Thus, even with these challenges, the new criminal laws are a historic paradigm shift. They are swiftly breaking free from the shackles of colonial punishments and moving toward a system that is punitive but fair. They embody the constitutional principles of dignity and humane treatment, are aligned with good practice internationally and address emerging issues related to digital crime and overcrowded prisons. When done well, they can revolutionize the Indian criminal justice system, making it efficient, fair, humane and rehabilitative.

To sum up, reformatory penology under the new criminal laws of 2023 represents a vision of justice that is forward-looking, humane and inclusive. It acknowledges that crime is not just a law violation but a social dysfunction which needs correction, reconciliation and reintegration. The new laws placed rehabilitation, re-socialization and restorative justice into substantive, procedural and evidentiary arenas, thus providing the basis for a transformative criminal justice system. They are legal reform and moral principles and values of creating a society that is not one of vengeance, but one of healing; not one of suffering, but one of change; not one aimed at the protection of society, but one aimed at the restoration of harmony.



WHITE BLACK
LEGAL