Criminal law reforms

Why in news?

Recently, the government unveiled three new bills that will have significant transformation in the criminal justice system.

New bills
• Bharatiya Nyaya Sanhita Bill 2023- To replace Indian Penal Code (IPC), 1860. • Bharatiya Nagarik Suraksha Sanhita Bill 2023- To replace the Code of Criminal Procedure (CrPC), 1973. • Bharatiya Sakshya Bill 2023 -To replace the Indian Evidence Act, 1872.

What is the need for reforms?

- **Updation**- Since, Indian penal code was launched in 1860 during British colonial rule, it is outdated to the present context.
- **Technology usage**- Code of criminal procedure launched in 1861 didn't have much emphasis for technology usage.
- **Address the delays-** Indian Evidence Act, 1872 also needs reforms to the present day requirements, as it hampers speedy justice.
- Slow police investigations often result in catastrophic miscarriages of justice.
    - According to Supreme Court, "Speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 of the Constitution.
- **Promote transparency** - The rich and the resourceful get better access to justice than the marginalised and the vulnerable.
- **Speedy justice-** Jails overflow with under trials and the slow moving courts are clogged with some 50 million cases.
    - According to a 2017 survey, nearly 60,000 cases are pending in the Supreme Court.
    - *Equity deferred is denied equity.*

What are the advantages of the bills?

- **Expansion**- It bring offences like terrorism, corruption, mob lynching and organised crime under penal laws.
- **Zero FIR-** It allows people to register a police complaint in any police station, regardless of the location where the crime took place.
- **ICT applications-** They propose video recording of search and seizure operations and increased the use of electronic evidence and forensics during investigation.
- **Community service-** It is introduced as a new form of punishment.
- **Sedition-** The offence has been judiciously tempered to prevent misuse, facilitated by

introducing a test for criminal intent.
- **Speedy justice**- They advocate video trials, and holding trials in absence of the accused.
- **In line with Supreme Court ruling**- It has excluded attempted suicide and adultery in the bills which aligns with the Supreme Court rulings.
- **Undertrials -** The Police Superintendent has to ensure that an application is made to the court to release under trials who have completed 1/2 or 1/3rd of their maximum possible sentence.

What are the challenges associated with the bill?

- **New definition of sedition-** The new bill punishes acts endangering sovereignty, unity and integrity of India.
- It gives the police unchecked powers of arrest.
- **Vague-** The manner in which the offences are drafted continue to perpetuate the problem of vague criminal law provisions that worsen the risk of arbitrary arrests.
- The bills should have revisited the offences relating to religion and blasphemy.
- **Borrowed legislations**- Some of the new offences are borrowed from existing legislations on organised crime and the UAPA without clarifying the reasons for such borrowing.
- **Criminalise speech-** Offences including sedition and obscenity require reconsideration.
- **Marital rape -** It has not been criminalised despite India having tough laws to prevent sexual violence against women.
- **Modesty-** The terminology of "modesty" employed in the code for the offence of "outraging the modesty of a woman" should be taken out.
- **Bail adjudication-** The new Bills do very little to resolve the manner in which bail is adjudicated and accessed.
- **Torture in investigation**- Without appropriate changes in the evidence legislation on recovery evidence based on statements to the police, the institutional reality of torture will continue.
- **Death penalty to mob lynching-** Sentencing a mob to death doesn't seem like appropriate punishment.
- **Retains outdated laws-** The bills removed the reference to thugs and punishment for it as it is based on the Victorian morality, but have retained more than 80% of 160 year old IPC.
- **Institutional challenge-** The bills propose that every crime scene must undergo forensic investigation.
- Collection and analysis of forensic evidence along with the manner in which they are used in courts remain unaddressed.
- **Issue with the committee –** A committee was constituted in 2020 to undertake public consultations and recommendations.
    - It was a male dominated committee with lack of adequate representation.
    - The real information on the methodology adopted to process and analyse the submissions that were received is unavailable.
    - The Committee's recommendations are not in the public domain.
- **Strategic power asset-** The political executive has consistently sought to wield

criminal law as a pre-emptive tool. The proliferation of this approach to criminal law raises legitimate concerns.

- **Police custody-** The period during which an arrested person can be sent to police custody has been expanded from 15 days to over 60 or 90 day period depending on the offence.
- **International practices-** Countries like Singapore, Malaysia, Sri Lanka and Bhutan are still using the colonial penal code.
- Singapore recently made amendments to update it and introduce present-day requirements.

What lies ahead?

- The criminal reform change must strike a delicate equilibrium between state security imperatives and individual freedom.
- The principle of equality and equitability is essential to check on criminal law reform and to ensure public trust.
- The effectiveness of the reforms will be tested on the basis of its impact on the vulnerable, the victims and the poor.

Committees for reform of criminal laws
• **Malimath committee-** It was formed in 2003 to bring reforms in the criminal justice system. • The Committee recommended that the victim should be allowed to participate in cases involving serious crimes and also be given adequate compensation. • **Justice Verma panel-** It was formed to ensure quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. It submitted its report in 2013. • **Ranbir Singh committee**- It was formed in 2020 to review three codes of criminal law - Indian Penal Code (IPC), 1860 - Code of Criminal Procedure (CrPC), 1973 and - Indian Evidence Act, 1872.

References

1. Indian Express- The bills in perspective
2. The Hindu- Principled course for criminal law reforms
3. BBC- India's planned criminal law reform a game changer

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