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EVOLUTION OF THE CRIMINAL JUSTICE SYSTEM IN INDIA: COLONIAL LEGACY AND REFORMS

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Abstract

The criminal justice system in India has evolved from a plural and community-based set of norms in the pre-colonial period to a highly codified, state-centric apparatus under British rule and a rights-oriented, constitutional framework in the post-independence era. The British introduced the Indian Penal Code 1860 (IPC), the Code of Criminal Procedure 1898 (CrPC), and the Indian Evidence Act 1872 to serve imperial interests, centralise authority, and control subject populations rather than to secure substantive justice. After 1950, the Constitution reoriented this inherited system around fundamental rights, particularly Articles 14, 19, 20, 21 and 22, and the Supreme Court gradually transformed criminal procedure through expansive interpretations of Article 21. Subsequent statutory and institutional reforms—including the CrPC 1973, victim-centric rape law amendments, the Malimath Committee's recommendations, police reforms mandated in Prakash Singh, and recognition of rights such as speedy trial and safeguards against custodial torture—have sought to reconcile colonial-era structures with democratic values. Yet many colonial legacies endure in policing culture, penal practices, and hierarchical institutional design, as highlighted by contemporary scholarship and recent debates around the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) enacted to replace the IPC, CrPC and Evidence Act.

This paper traces the historical evolution of the Indian criminal justice system, analyses the colonial imprint on substantive, procedural, and institutional arrangements, and critically evaluates major post-independence reforms with reference to leading case law. It argues that while constitutional jurisprudence has significantly humanised criminal law and procedure, structural and cultural continuities from the colonial period continue to limit the system's capacity to deliver speedy, fair and victim-sensitive justice.

Keywords

1. Dharmashastra
2. Legal Traditions
3. Indian Penal Code
4. Criminal Procedure Code
5. Indian Evidence Act

Introduction

The criminal justice system may be understood as the set of institutions, norms, and procedures through which the state defines crimes, investigates and prosecutes offenders, adjudicates guilt, and imposes punishment,

with the twin aims of maintaining social order and protecting rights. In India, this system is the product of layered historical influences—from ancient dharmashastric and Arthashastra traditions to Islamic legal practices, British colonial codification, and post-independence constitutionalism.

The specific theme of this paper is the evolution of India's criminal justice system under the impact of colonial rule and the trajectory of subsequent reforms. The focus is not only on statutes such as the IPC, CrPC and Evidence Act, but also on the institutions of police, prosecution, judiciary, and prisons, and on the role of constitutional courts in progressively reshaping the inherited framework. Recent legislative developments replacing core colonial codes with the BNS, BNSS and BSA make this historical inquiry especially relevant, as they are explicitly justified as an attempt to "decolonise" criminal law.

This paper proceeds in a broadly chronological and thematic manner. It begins with a brief overview of pre-colonial criminal justice, then examines the colonial project of codification and control. It then analyses the constitutional transformation after 1950, major statutory and institutional reforms, and the development of rights-based jurisprudence through landmark Supreme Court decisions. Finally, it evaluates contemporary reform initiatives and debates on decolonisation of criminal law, highlighting both achievements and persistent challenges.

Pre-Colonial Background: Plural Legal Traditions

Ancient and Classical Indian Traditions

Before British rule, criminal justice in the Indian subcontinent rested on a combination of religious, customary, and royal norms rather than a single uniform code. Texts like the Manusmriti and Yajnavalkya Smriti, and treatises such as Kautilya's Arthashastra, provided normative guidance on offences, evidence, and punishments, but their practical application varied across regions and dynasties.

[1942]The Arthashastra, for example, envisaged a king-centred system in which the ruler, assisted by judges and officials, enforced order through a mix of fines, corporal punishment and exile, with significant emphasis on deterrence and state security. At the same time, local panchayats and guilds resolved many disputes by consensus, using restorative mechanisms and compensation, which reflected community-centric rather than purely state-centred justice.

Medieval Islamic and Mughal Influences

Under the Delhi Sultanate and the Mughal Empire, criminal justice for Muslims was formally governed by Islamic criminal law (sharīa), supplemented by the ruler's executive regulations (zabita or siyasa), while non-Muslims were often governed by their own customs in personal matters. The Mughal system recognised categories of offences such as hadd (fixed Qur'anic offences), qisas (retaliatory offences) and ta'zir (discretionary offences), but in practice, political expediency and royal discretion often overshadowed strict doctrinal application.

Royal courts (qazi and faujdari courts) applied a combination of Islamic law, imperial orders and local practice, and punishments ranged from fines and flogging to mutilation and death. Policing functions were performed by officials such as kotwals and faujdars, and prisons served as places of detention pending trial or punishment, rather than as sites of long-term rehabilitation.

These pre-colonial arrangements were plural, localised and often personalised, lacking the standardised, pan-territorial codes and bureaucratic institutions characteristic of modern criminal justice systems. It was this fragmented landscape that British rulers sought

[1942] (n.d.). *Pre colonial and colonial india*. Egyankosh. Retrieved March 7, 2026, from https://egyankosh.ac.in/bitstream/123456789/22972/1/Unit-5.pdf

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to rationalise and centralise in the interests of colonial governance.

Colonial Codification and the Construction of a Modern Criminal Justice Apparatus

Early Company Rule and Experiments in Legal Ordering

British involvement in Indian criminal justice began with the East India Company's territorial acquisitions and revenue functions in Bengal, Bihar and Orissa after 1765. The Regulating Act 1773 and subsequent Charter Acts empowered the Company and the Crown to establish courts applying English law to British subjects and a mix of Hindu, Muslim and customary law to Indians.

In the late eighteenth and early nineteenth centuries, Governor-General Cornwallis and his successors introduced a series of judicial and police regulations aimed at curbing perceived arbitrariness in indigenous institutions and creating a hierarchy of courts. However, the legal system remained complex, with overlapping jurisdictions, diverse sources of law, and significant discretion in the hands of colonial officials.

The Indian Penal Code 1860

A decisive step towards a modern, codified criminal law came with the work of the First Law Commission chaired by Lord Macaulay, which drafted a comprehensive penal code drawing heavily on English law but adapted to Indian conditions. The Indian Penal Code was enacted in 1860 and came into force in 1862, creating a single general criminal code applicable throughout British India, displacing much of the previous pluralism.

The IPC defined a wide range of offences—from offences against the state and public tranquillity to offences against the human body, property, and public morals—and prescribed detailed general exceptions and rules on attempt, abetment, and joint liability. Scholars have noted that provisions such as sedition (Section 124A), unlawful assembly (Section 141), and offences relating to public servants and public order were crafted to protect colonial authority and suppress dissent.

The penal philosophy underlying the IPC has been characterised as utilitarian and retributive, seeking to deter and incapacitate wrongdoers to secure "order" rather than to rehabilitate offenders or address structural injustices. Despite numerous amendments, this colonial-era code remained the backbone of substantive criminal law in India until its replacement by the Bharatiya Nyaya Sanhita in 2023–24.

Criminal Procedure Code and Indian Evidence Act

The codification of substantive offences was complemented by procedural and evidentiary codes. The Criminal Procedure Code of 1861, replaced by a more elaborate CrPC in 1898, standardised processes of investigation, arrest, bail, trial, and appeal across British India. It strengthened magisterial and police powers, specified classes of courts, and established procedures for committal, jury trials in certain cases, and summary trials for minor offences.

[1943]The Indian Evidence Act 1872, drafted by Sir James Fitzjames Stephen, rationalised rules of relevance, admissibility and burden of proof, displacing diverse indigenous evidentiary practices and privileging "scientific" and documentary forms of proof in line with Victorian legal thought. Together, these three codes—the IPC, CrPC and Evidence Act—constituted what later scholars have termed the "colonial legal trinity" that structured Indian criminal justice for more than a century.

Colonial Police and Prisons

The police system was reorganised under the Police Act 1861 following the 1857 rebellion, with the explicit aim of creating a disciplined, centralised, and paramilitary-style force under the control of the executive. This model prioritised state security and regime stability

[1943] (n.d.). *Overhauling IPC, CrPC and Indian Evidence Act*. DrishtiIAS. Retrieved March 7, 2026, from https://www.drishtiias.com/daily-updates/daily-news-analysis/overhauling-ipc-crpc-evidence-act

over community policing and accountability, and it left a deep imprint on post-independence policing culture.

Prisons were similarly reconfigured from ad hoc detention spaces into institutions of penal labour and discipline, with coercive labour regimes and harsh conditions widely documented in late nineteenth and early twentieth century reports. While reformist rhetoric about rehabilitation and moral improvement of prisoners appeared in official discourses, practices often remained punitive, racialised, and exploitative.

Colonial Objectives and Legacies

Historians and criminologists have highlighted that colonial criminal law was designed primarily to secure British rule, extract labour, and manage subject populations along racial, class and caste lines. The centralisation of criminal law and procedure under all-India codes created an enduring framework, but it also embedded authoritarian and hierarchical institutional logics that did not automatically disappear with independence.

Key legacies included expansive police and executive powers, broad offences criminalising dissent, a prison system oriented around discipline rather than rehabilitation, and a legal culture that often prioritised order over individual rights. As the post-colonial state adopted the same codes with relatively minor amendments, the challenge became how to constitutionalise and democratise this inherited apparatus.

Constitutional Transformation: From Colonial Codes to a Rights-Based Framework

The Constitution and New Normative Foundations

With the adoption of the Constitution of India in 1950, the normative foundations of the criminal justice system shifted from colonial objectives to the values of sovereignty, democracy, secularism, social justice and fundamental rights. Part III of the Constitution guarantees rights directly relevant to criminal law, including equality before the law (Article 14), freedoms under Article 19, protections against ex post facto laws and double jeopardy (Article 20), the right to life and personal liberty (Article 21), and safeguards against arbitrary arrest and detention (Article 22).

Initially, the Supreme Court interpreted these provisions conservatively, treating "procedure established by law" in Article 21 as satisfied by any duly enacted law regardless of its fairness, as seen in A.K. Gopalan v. State of Madras. Over time, however, the Court fundamentally revised this approach and infused criminal process with substantive due process values, thereby transforming the colonial codes from within.

Maneka Gandhi v. Union of India: A New Due Process Jurisprudence

The Supreme Court's decision in Maneka Gandhi v. Union of India (1978) is widely regarded as a watershed in constitutional criminal procedure. In that case, involving impounding of a passport, the Court held that Articles 14, 19 and 21 form an interlinked "golden triangle", and that any law depriving a person of personal liberty must be just, fair and reasonable, satisfying requirements of non-arbitrariness and proportionality.

The Court expressly rejected the earlier narrow view that Article 21 protects only against executive arbitrariness, holding instead that both the substance of laws and the procedures they prescribe are subject to constitutional scrutiny. This reinterpretation effectively introduced a due process requirement into Indian law, enabling challenges to criminal statutes and procedures that are oppressive, vague, or disproportionate.

The 1973 Code of Criminal Procedure

Even before Maneka Gandhi, Parliament had enacted a comprehensive revision of criminal procedure through the Code of Criminal Procedure 1973, which came into force in 1974, replacing the CrPC 1898. The new Code introduced several safeguards and rationalisations—such as clearer provisions on

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arrest, bail, legal aid, and compounding of offences—while broadly retaining the colonial structure of magistrates' courts and sessions courts.

Subsequent amendments to the CrPC—such as those following the Law Commission's reports on speedy trial and the rights of victims—have further attempted to balance efficiency, fairness and victim participation, though implementation challenges remain. Nevertheless, the basic procedural architecture continues to reflect its nineteenth-century origins, illustrating the tension between constitutional transformation and structural continuity.

Judicial Expansion of Rights in the Criminal Process

Right to Speedy Trial: Hussainara Khatoon v. State of Bihar

[1944]One of the most significant judicially recognised rights in the criminal process is the right to speedy trial, articulated in the Hussainara Khatoon v. State of Bihar series of decisions (1979–80). Triggered by newspaper reports about thousands of undertrial prisoners languishing in Bihar jails for periods longer than the maximum sentence for their alleged offences, the Court held that speedy trial is an integral and essential part of the right to life and personal liberty under Article 21.

The Supreme Court directed the release of large numbers of undertrial prisoners who had been detained beyond reasonable periods and called upon governments to provide legal aid and take steps to prevent undue delays. Subsequent decisions such as A.R. Antulay v. R.S. Nayak and P. Ramachandra Rao v. State of Karnataka refined the contours of this right, rejecting fixed time limits but insisting that prolonged delays can amount to denial of justice.

The Law Commission's 239th Report on expeditious investigation and trial further highlighted systemic causes of delay—such as inadequate judicial capacity, weak investigation, and procedural bottlenecks—and recommended structural and managerial reforms to make the right effective in practice.

Protection against Custodial Violence: D.K. Basu v. State of West Bengal

Custodial torture and deaths, a grim continuity from colonial policing practices, have been another area of judicial intervention. In D.K. Basu v. State of West Bengal (1997), a public interest litigation based on escalating reports of custodial violence, the Supreme Court held that torture and death in custody violate Article 21 and that the state is vicariously liable for such abuses.

The Court laid down detailed guidelines to be followed during arrest and detention, including requirements that police wear visible identification, prepare arrest memos countersigned by a relative or respectable person, inform the arrestee's family of the arrest, conduct medical examinations, maintain custody records, and produce the arrestee before a magistrate within twenty-four hours. It also indicated that failure to comply with these guidelines could attract departmental action and even contempt of court, thereby constitutionalising safeguards that supplemented statutory provisions in the CrPC.

Despite these directions, reports and empirical studies show that custodial torture and deaths persist, highlighting the gap between constitutional norms and policing practices and underscoring the need for deeper institutional reforms.

Victim-Centric Criminal Justice: State of Punjab v. Gurmit Singh and Beyond

The colonial codes marginalised victims, treating crime primarily as an offence against the state rather than against individuals and

[1944] (n.d.). *Hussainra Khatoon & Ors. Vs. Home Secretary, State of Bihar*. Judicial Academy Jharkhand. Retrieved March 7, 2026, from chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://jajharkhand.in/wp/wp-content/judicial_updates_files/07_Criminal_Law/15_order_of_remand/Hussainara_Khatoon_&_Ors_vs_Home_Secretary,_State_Of_Bihar,_..._on_9_March,_1979.PDF

communities. Over recent decades, however, judicial decisions and legislative amendments have gradually moved towards a more victim-centric approach, especially in sexual offence cases.

In State of Punjab v. Gurmit Singh (1996), the Supreme Court criticised the insensitive treatment of rape survivors in trial courts and held that the sole testimony of the prosecutrix, if credible and trustworthy, is sufficient to sustain a conviction without corroboration. The Court emphasised that a rape victim is not an accomplice but a victim of another's lust and that courts must avoid re-victimising her through humiliating cross-examination and stereotypical assumptions.

Subsequent jurisprudence has built on this foundation, and combined with statutory reforms, it has strengthened evidentiary presumptions in favour of victims in certain categories of sexual offences. Nevertheless, scholars note that victim-centric jurisprudence remains uneven, hampered by entrenched biases, intersectional discrimination, and gaps in protection mechanisms.

Statutory Reforms in Substantive Criminal Law

Post-Independence Amendments to the IPC

In the decades following independence, Parliament amended the IPC to address specific social concerns, such as dowry deaths (Section 304B), cruelty by husband or relatives (Section 498A), offences against children, and corruption, but the overall structure and many colonial-era offences remained intact. Criticisms persisted regarding provisions like sedition (Section 124A), obscenity, adultery (later struck down), and "unnatural offences" under Section 377, which reflected Victorian morality and colonial priorities rather than contemporary constitutional values.

Debates around the death penalty, another colonial inheritance, also intensified, with the Supreme Court in Bachan Singh v. State of Punjab (1980) upholding capital punishment but limiting it to the "rarest of rare cases", a standard that has been criticised as indeterminate and inconsistently applied.

Criminal Law (Amendment) Acts and Gender Justice

The 1983 Criminal Law (Amendment) Act was an early landmark, enacted in response to the Mathura custodial rape case and widespread feminist mobilisation, introducing changes such as the offence of custodial rape, in-camera trials for rape cases, and restrictions on cross-examination regarding past sexual history. These reforms sought to correct patriarchal biases in the law of evidence and procedure that made it difficult for survivors to secure convictions.

After the 2012 Delhi gang-rape (Nirbhaya) incident, the Justice Verma Committee recommended sweeping changes, leading to the Criminal Law (Amendment) Act 2013, which expanded the definition of rape, criminalised stalking, voyeurism and acid attacks, increased penalties, and introduced new procedural safeguards such as recording statements by women police officers and use of video-conferencing.

However, the 2013 and subsequent amendments have been criticised for retaining exceptions like the marital rape exception, maintaining gender-specific definitions that exclude male and transgender survivors, and relying heavily on enhanced punishments, including the death penalty in certain cases, rather than addressing systemic failures in investigation and victim support.

Replacement of Colonial Codes: BNS, BNSS and BSA (2023–24)

In 2023, Parliament enacted three new criminal laws—the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA)—to replace the IPC 1860, CrPC 1973 and Evidence Act 1872, with full implementation from July 2024. Official narratives present these statutes as part of a project to decolonise criminal law and align it

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with contemporary realities such as cybercrime, organised crime, and terrorism.

[1945]The BNS reduces the number of sections compared to the IPC, introduces new offences (for example, mob lynching and organised crime), increases minimum punishments and fines for several offences, and adds community service as a punishment in some cases. The BNSS incorporates provisions for greater use of technology, mandatory forensic investigation in certain offences, and stricter timelines for investigation and trial, while the BSA gives statutory recognition to electronic and digital evidence.

Critics, however, argue that despite changes in terminology and some progressive innovations, many colonial-era concepts and power structures remain intact. For instance, the sedition provision is formally repealed, but a new offence—"acts endangering sovereignty, unity and integrity of India"—has been introduced, which some scholars contend may replicate or even expand the scope of sedition under a different label. There are also concerns that enhanced police powers, broader definitions of terrorism-related offences, and increased reliance on pre-trial detention may reinforce authoritarian tendencies rather than fully decolonise the system.

Institutional Reforms: Police, Prosecution and Courts

[1946] Police Reforms and Prakash Singh v. Union of India

Recognising that the colonial Police Act 1861 created a force primarily accountable to the executive rather than to the law or the community, multiple expert bodies and civil society campaigns have demanded police reforms for decades. In Prakash Singh v. Union of India (2006), the Supreme Court responded to a public interest litigation by issuing seven binding directives to insulate the police from political interference and enhance accountability.

Key directives included establishing State Security Commissions to lay down broad policy and evaluate police performance, providing minimum fixed tenures for senior officers to prevent arbitrary transfers, setting up Police Establishment Boards to decide postings and promotions, creating Police Complaints Authorities at state and district levels to inquire into allegations of serious misconduct, separating investigation from law and order, and setting up a National Security Commission for central police organisations.

Despite the landmark nature of the judgment, implementation by states has been partial and uneven, with many enacting new police laws that dilute the Court's directives or retaining significant executive control. Consequently, problems such as politicisation, excessive use of force, custodial torture, and corruption persist, indicating that the colonial policing ethos remains only partially transformed.

Committee on Reforms of the Criminal Justice System (Malimath Committee)

[1947]In 2000, the Government of India constituted the Committee on Reforms of the Criminal Justice System under Justice V.S. Malimath to examine the fundamental principles of criminal jurisprudence and suggest comprehensive reforms. The Committee's 2003 report made 158 recommendations, including shifting the focus from the rights of the accused to the rights of victims, incorporating some inquisitorial elements into the adversarial system, relaxing the standard of proof for conviction in certain cases, and making confessions to senior police officers admissible under safeguards.

[1945] NLSIU (n.d.). *Bharatiya Nyaya Sanhita: Decolonising or Reinforcing Colonial Ideas?* National Law School of India University, Bengaluru. Retrieved March 7, 2026, from https://www.nls.ac.in/blog/bharatiya-nyaya-sanhita-decolonising-or-reinforcing-colonial-ideas/

[1946] HARYANA POLICE (n.d.). *Police Reforms in India: An Overview*. Retrieved March 7, 2026, from chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://haryanapolice.gov.in/policejournal/pdf/police_reform.pdf

[1947] Ministry of Home Affairs (n.d.). *Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs*. MInistry of Home Affairs. Retrieved March 7, 2026, from chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.mha.gov.in/sites/default/files/2022-08/criminal_justice_system%5B1%5D.pdf

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While the Committee highlighted genuine concerns about low conviction rates, delays, and under-resourced prosecution, human rights organisations and scholars criticised several recommendations as undermining due process, presumption of innocence, and protection against torture. Amnesty International, for example, argued that proposals to extend police custody, broaden admissibility of confessions, and dilute evidentiary protections could exacerbate existing patterns of abuse and impunity.

Only a subset of the Malimath Committee's proposals have been implemented, often in modified form, but its report continues to influence debates on balancing victims' rights, efficiency, and fair trial guarantees in criminal justice policy.

Judicial Capacity, Delay and Law Commission Recommendations

Structural issues such as chronic under-staffing of courts, inadequate infrastructure, and case backlogs have long undermined the effectiveness of criminal justice, with millions of cases pending at various levels. The Law Commission of India, in several reports including the 239th Report on expeditious investigation and trial of cases against influential public personalities, has recommended time-bound processes, greater use of technology, improved case management, and enhanced accountability of police and prosecution for delays.

Recent initiatives such as fast-track courts for sexual offences, special courts for corruption and economic offences, and the introduction of video-conferencing and e-courts seek to improve efficiency, but empirical studies show that without corresponding investments in personnel, training, and forensic capacity, such measures risk shifting bottlenecks rather than eliminating them.

Case Law Illustrating the Transformation of the Criminal Justice System

This section provides more detailed analyses of selected landmark cases that illustrate key shifts from colonial-style criminal justice towards a constitutional and rights-based framework.

Maneka Gandhi v. Union of India (1978)

[1948]In Maneka Gandhi v. Union of India, the petitioner challenged the impounding of her passport under the Passport Act 1967 on grounds of violation of Articles 14, 19 and 21 of the Constitution. The government argued that since the Passport Act authorised impounding and laid down a procedure, Article 21 was satisfied and the Court should not inquire into the fairness of that procedure.

The Supreme Court rejected this contention and overruled earlier dicta in A.K. Gopalan, holding that fundamental rights are not isolated silos but interconnected guarantees forming a single scheme of protection. It ruled that any law depriving a person of personal liberty must not only be formally valid but must also pass the tests of reasonableness and non-arbitrariness under Articles 14 and 19, thereby reading substantive due process into Article 21.

This judgment had far-reaching consequences for criminal justice. It enabled challenges to preventive detention laws, bail provisions, and investigative powers that are manifestly arbitrary or oppressive, and provided the constitutional foundation for later decisions on speedy trial, legal aid, prison conditions, and procedural fairness.

Hussainara Khatoon v. State of Bihar (1979)

The Hussainara Khatoon litigation arose from a newspaper article that exposed the plight of undertrial prisoners in Bihar who had been detained for years without trial, often for petty offences. Public interest petitions were filed on

[1948] Supreme Court of India (n.d.). *Maneka Gandhi vs. Union of India*. Retrieved March 7, 2026, from chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://api.sci.gov.in/jonew/judis/5154.pdf

behalf of these prisoners, and the Supreme Court treated the article as evidence to initiate proceedings.

Justice P.N. Bhagwati held that the right to speedy trial is implicit in Article 21 and that unjustified delay in investigation or trial violates the right to life and personal liberty. The Court ordered the release of undertrials who had been detained for periods longer than the maximum sentence for their alleged offences and directed the state to provide free legal aid to indigent accused, tying this obligation to Article 39A and the broader constitutional commitment to equal justice.

Hussainara Khatoon marked the judicial recognition that colonial-era procedures, when administered without adequate safeguards and resources, could result in de facto punishment without trial, contradicting the constitutional vision. It also inaugurated the Court's practice of using public interest litigation to address systemic criminal justice failures.

D.K. Basu v. State of West Bengal (1997)

[1949]In D.K. Basu, the Supreme Court was confronted with documentation of numerous custodial deaths and allegations of torture in police stations across the country. The petitioners argued that existing statutory safeguards were insufficient and poorly implemented, enabling police to use third-degree methods and illegal detention with impunity.

Recognising custodial violence as a direct assault on Article 21 and as incompatible with India's international human rights obligations, the Court laid down a set of eleven requirements to be followed in all cases of arrest and detention, including preparation of arrest memos, notification of a friend or relative, medical examinations every forty-eight hours, and entry of all details in a police register. It also affirmed that monetary compensation could be awarded in writ jurisdiction for violation of fundamental rights in such cases, thereby reinforcing state accountability.

The D.K. Basu guidelines have since been incorporated in part into statutory law and police manuals, and they are frequently invoked in litigation concerning custodial deaths and illegal detention. However, recurring reports of non-compliance underscore the resilience of colonial-style coercive policing practices.

State of Punjab v. Gurmit Singh (1996)

[1950]In State of Punjab v. Gurmit Singh, the Supreme Court considered an appeal against the acquittal of accused persons in a rape case where the trial court had disbelieved the prosecutrix due to perceived inconsistencies, lack of corroboration, and alleged delay in reporting. The Supreme Court criticised the trial court's approach as insensitive and unrealistic, emphasising that rape survivors often face trauma, stigma and fear that may affect their behaviour and testimony.

The Court held that the testimony of a prosecutrix stands on par with that of an injured witness and that courts should not insist on corroboration as a rule of law; instead, if her testimony is credible and inspires confidence, it alone can form the basis of conviction. It also urged trial courts to avoid subjecting rape survivors to humiliating and intrusive questioning and to conduct proceedings in camera to protect their privacy.

Gurmit Singh is significant because it reflects a shift away from colonial-era evidentiary skepticism about women's testimony and towards a more rights-respecting, victim-centred approach in sexual offence cases. Its reasoning influenced later decisions and informed legislative reforms in 1983 and 2013.

[1949] Jammu & Kashmir High Court (n.d.). *D.K. Basu v. State of West Bengal (1997)*. Retrieved March 7, 2026, from chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://jkhighcourt.nic.in/upload/judgments/2023/sci/S_1997_3_219_223.pdf

[1950] Jammu & Kashmir High Court (n.d.). *The State Of Punjab vs Gurmit Singh & Ors on 16 January, 1996*. Judicial Academy Jharkhand. Retrieved March 7, 2026, from https://jajharkhand.in/wp/wp-content/judicial_updates_files/13_Evidence_Act/17_rape_victim/The_State_Of_Punjab_vs_Gurmit_Singh_&_Ors_on_16_January,_1996.PDF

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Prakash Singh v. Union of India (2006)

The Prakash Singh litigation arose from concerns about pervasive politicisation, corruption, and abuse of power in the police, rooted in the colonial Police Act 1861 and perpetuated in post-independence practice. The petitioners argued that unless the police were insulated from political control and made professionally accountable, constitutional guarantees in criminal justice would remain illusory.

In its 2006 judgment, the Supreme Court accepted the need for systemic reform and issued seven directives to all states and union territories, including the creation of independent State Security Commissions, fixed tenures for senior officers, separation of investigation from law and order functions, establishment of Police Complaints Authorities, and merit-based selection processes for Directors General of Police.

Although these directives marked an important assertion of judicial leadership in transforming a core colonial institution, subsequent monitoring by civil society and government reports indicate that full compliance has been rare, and many states have enacted laws that formally satisfy but practically weaken the Court's prescriptions. As a result, the promise of democratic, accountable policing remains only partially realised.

Contemporary Debates: Decolonisation, Human Rights and Efficiency

Decolonising Criminal Law or Renaming Colonial Structures?

The replacement of the IPC, CrPC and Evidence Act with the BNS, BNSS and BSA has revived debates about what it truly means to "decolonise" criminal law. Proponents argue that the new statutes reduce archaic provisions, introduce modern offences, foreground victims' rights, and symbolically sever ties with colonial nomenclature and ideology.

Critical scholarship, however, points out that many substantive offences, sentencing structures, and institutional arrangements are carried over with limited change, and that expanding executive and police powers in the name of security may reproduce colonial patterns of control. For example, while the sedition section is formally repealed, the new "sovereignty" offence may be invoked against dissent in similar ways, raising concerns about continuity under a decolonising veneer.

From a criminal justice perspective, genuine decolonisation would require not only revising statutory language but also transforming policing culture, prison conditions, judicial attitudes, and access to legal aid, especially for marginalised communities disproportionately impacted by the system.

Balancing Victims' Rights, Accused's Rights and Public Order

Another central debate concerns how to balance the rights of victims, the rights of the accused, and the interests of public order and security. Reform proposals and legislative changes since the Malimath Committee have often emphasised strengthening victims' position and improving conviction rates, sometimes by relaxing evidentiary standards or increasing police powers.

[1951]Human rights advocates caution that undermining presumption of innocence, permitting broader admissibility of confessions, or extending police custody can erode core due process guarantees hard-won through constitutional jurisprudence. Instead, they advocate reforms that improve investigation quality, forensic capacity, witness protection, and victim support without diluting fair trial standards.

The challenge is to ensure that the system does not revert to a colonial-style paradigm where efficiency and control override individual rights, while at the same time addressing legitimate

[1951] IJRRA (n.d.). *Recognizing and Balancing the Rights of the Victims within the Indian Justice System*. International Journal of Recent Research Aspects. Retrieved March 7, 2026, from https://www.ijrra.net/Vol8issue2/IJRRA-08-02-04.pdf

public concerns about impunity, repeat offending and systemic delays.

Technology, Forensics and the Future of Criminal Justice

Recent reforms, including the BNSS and BSA, place heavy emphasis on digitisation of records, electronic evidence, and mandatory forensic investigation in serious offences. These changes are intended to modernise investigation, improve evidentiary reliability, and reduce delays through better case management and coordination among police, prosecution and courts.

However, studies on the right to speedy trial and expeditious investigation caution that technology is not a panacea; without adequate training, infrastructure, and safeguards against misuse, digital tools can entrench new forms of inequality and surveillance. Ensuring that technological modernisation goes hand in hand with privacy protection, transparency and accountability will be a key test for the future evolution of India's criminal justice system.

Conclusion

The evolution of the criminal justice system in India illustrates a complex interplay between continuity and change. British colonial rule introduced codified, centralised and ostensibly "modern" criminal laws and institutions, but these were designed primarily to secure imperial control, often at the cost of individual rights and community-based justice. Independence and the adoption of the Constitution reoriented the normative horizon of criminal justice towards equality, liberty, and human dignity, and the Supreme Court's expansive interpretation of Article 21 has gradually infused due process and human rights values into the inherited legal framework.

At the same time, the durability of colonial codes and institutions—police, prisons, and procedural structures—has meant that many authoritarian legacies persist, manifesting in custodial violence, delayed trials, undertrial incarceration and unequal access to justice, particularly for the poor and marginalised. Statutory reforms, including gender-justice oriented amendments, the 1973 CrPC, the Malimath Committee-inspired changes, and the recent BNS–BNSS–BSA package, represent serious attempts to adapt criminal law to contemporary needs, but they have not fully resolved tensions between security, efficiency and rights.

Looking ahead, the path towards a truly decolonised and rights-respecting criminal justice system in India will require more than new statutes or symbolic renaming. It demands deep structural reforms in policing, prosecution and judiciary; robust implementation of constitutional safeguards; meaningful participation and protection of victims; and a sustained commitment to addressing social and economic inequalities that shape who becomes entangled in the criminal process. Only by confronting and transforming both the colonial legacy and contemporary distortions can India realise the constitutional promise of fair, humane and effective criminal justice.

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