

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION [CRIMINAL] NO. _____ OF 2024

[Under Article 32 of the Constitution of India read with Order
XXXVIII, Rule 12 (1) (d) & 2 of The Supreme Court Rules,
2013)

BETWEEN:

1. Anjale Patel
D/o Gurudev Singh
Acharya Niketan
Mayur Vihar
Phase 1
Delhi 91

... Petitioner No.1

2. Chhaya
D/o Ravi Shankar Mishra
Add. 14/276 Tirlok Puri Patparganj
East Delhi
District Delhi ,

...Petitioner No. 2

VERSUS

1. Union of India
Through Secretary
Ministry of Law
and Justice 4th
Floor, A-Wing,

Shastri Bhawan
New Delhi-110
001.

.....Respondent No. 1

2. Union of India

Through Secretary

Ministry of Home
Affairs, North Block,
Central Secretariat,
New Delhi, Delhi
110001.

.....Respondent No 2

ALL CONTESTING RESPONDENTS

A PETITION IN THE NATURE OF PUBLIC INTEREST LITIGATION FILED UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA PRAYING FOR A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRITS SEEKING ISSUANCE OF SPECIFIC DIRECTIONS, POLICIES AND REGULATIONS INITIATE GUIDELINES AND DIRECTIONS TO IMMEDIATELY CONSTITUTE AN EXPERT COMMITTEE ON THIS TO ASSESS, IDENTIFY THE VIABILITY OF THE THREE NEW AMENDED CRIMINAL LAWS NAMES AS “ THE BHARATIYA NYAYA SANHITA, 2023”, “THE BHARATIYA NAGRIK SURAKSHA SANHITA, 2023” AND “THE BHARATIYA SAKSHYA ADHINIYAM, 2023”

**WITH THE AIM TO OVERHAUL THE CRIMINAL LAWS OF
THE COUNTRY AND ABOLISH, INDIAN PENAL CODE 1860,
CODE OF CRIMINAL PROCEDURE AND INDIAN EVIDENCE
ACT, 1872)**

To,

THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICE OF THE
SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-

1. The present Public Interest Litigation is being filed under the Article 32 of the Constitution of India, against the New Amended Criminal Law Bills introduced by the Union Home Minister on August 11, 2023, i.e. "The Bharatiya Nyaya Sanhita, 2023 ", "The Bharatiya Sakshya Adhinyam, 2023" and "The Bharatiya Nagarik Suraksha (Second) Sanhita", 2023 introduced on December 12, 2023 (Bharatiya Nagarik Suraksha Sanhita, 2023 was withdrawn), with the aim to overhaul the criminal laws of the country and to abolish the Indian Penal Code 1860, Code of Criminal Procedure and Indian Evidence Act, 1872. The proposed Bills suffers from many defects and discrepancies. The above proposed Bills were withdrawn and New Bills were produced with some changes, these were passed by the Parliament on 21st December 2023 and were published in Gazette Notification on 25th December 2023 and all of them have now assumed the position of an Act.

1. FACTS OF THE CASE:

The Brief Facts giving rise to the present petition are as follows:

18.12.2023 That when Hon'ble LOK SABHA Speaker has denied to participate in the debate proceedings regarding the New Amendment Criminal Laws then Hon'ble Members of the Parliament belonging from the opposition parties have objected in the Parliament then they have suspended 146 Hon'ble Members of the Parliament belonging from the opposition parties by the Hon'ble Speaker and this news was published in the Hindu newspaper 18.12. 2023. A true Copy of the excerpts taken from the Hindu News Paper, showing the suspension of the 146 opposition MPs. is *annexed herewith and marked as Annexure -P-1 at Pages 42-44.*

21.12.2023 That when Hon'ble LOK SABHA Speaker has denied to participate in the debate proceedings regarding the New Amendment Criminal Laws then Hon'ble Members of the Parliament belonging from the opposition parties have objected in the Parliament then they have suspended 100

by the Hon'ble Speaker and this news was published in the Hindu Newspaper 18.12. 2023, A true Copy of the excerpts taken from the NDTV News, showing the suspension of the 100 opposition MPs *is annexed herewith and marked as Annexure –P-2 at Pages 45* .

25.12.2023 That lastly Her Excellency President Of India has given her consent and signed on it on 25.12.2023, on the Amendment Criminal Law Namely “The Bharatiya Nyaya Sanhita , 2023” A true Copy of the Index of Bhartiya Nagrik Surakhsha Sanhita dated 25.12.2023. *is annexed herewith and marked as Annexure –P-3 at Pages 46-70*

25.12.2023 That lastly Her Excellency President Of India has given her consent and signed on it on 25.12.2023, on the Amendment Criminal Law Namely “the Bhartiya Nagrik Surakhsha Sanhita 2023”. A true Copy of Bhartiya Sakhshya Adhinyam dated 25.12.2023, *is annexed herewith and marked as Annexure –P-4 at Pages 71-87*.

25.12.2023 That lastly Her Excellency President Of India has given her consent and signed on it on 25.12.2023, on the Amendment Criminal Law Namely “ The Bharatiya Nagarik Surakshya Sanhita, 2023,” A true Copy of Bhartiya Sakhshya Adhiniyam dated 25.12.2023.*is annexed herewith and marked as Annexure –P-5 at Pages 88-94.*

27.03.2023 That Letter has been Written by the Hon’ble Member of the Bar Council Of Delhi in which they have made their objection on the Amendment Criminal Laws vide dated 27.03.2023, A true web copy of the letter date 27/03/2024, written by the Vice Chairmen, Hony. Secretary of the Bar Council of Delhi. *is annexed herewith and marked as Annexure –P-6 at Pages 95-101.*

19.06.2024 That Letter has been Written by the Hon’ble Chief Minister of Tamil Nadu to the Hon’ble Home Minister of Union of India in which they have made their objection on the Amendment Criminal Laws vide dated 19.06.2024, A true Copy of the excerpts taken from the Hindu Newspaper, dated 19.06.2024 showing the

objections by Hon'ble CM of Tamil Nadu. *is annexed herewith and marked as Annexure -P-7 at Pages 102.*

22.06.2024 That Letter has been Written by the Hon'ble Chief Minister of West Bengal to the Hon'ble Prime Minister of Union of India in which they have made their objection on the Amendment Criminal Laws vide dated 22.06.2024, A true Copy of the excerpts taken from the Hindu Newspaper, dated 22.06.2024 showing the objections by Hon'ble CM of West Bengal. *is annexed herewith and marked as Annexure -P-8 at Pages 103.*

23.06.2024 That one of the Expert Member namely Ms. Alisha Dutta has made her views regarding Under Section 377 of IPC of the Old Act, Which has not been interduce in new Amendment Criminal Laws “The Bharatiya Nyaya Sanhita , 2023” which was publish in the Hindu News Paper on 23.06.2024,.

A true Copy of the excerpts taken from the Hindu Newspaper, dated 23.06.2024 showing the objections

regarding U/s 377 of IPC (Old Act) which has not been mention in the BNS (Newly Amendment Criminal Laws, *is annexed herewith and marked as Annexure –P-9 at Pages 104.*

GROUND:

The Petitioner seeking relief on the following grounds: -

- A. Because the present Public Interest Litigation before this Hon'ble Court is maintainable as the Petitioner do have the locus standi to approach this Court as such individual is a public-spirited citizen and not a mere busybody or a meddlesome interloper. The Supreme Court in the case of **S.P. Gupta vs. Union of India** [AIR 1982 SC 149] observed that any member of the public having sufficient interest can maintain an action for the judicial redress of the public injury caused due to any sovereign action.
- B. Because such petition also stands maintainable and comes under the scope of Public Interest Litigation as there requires the intervention of the Writ Court for the enforcement of the fundamental right or to seek a remedy concerning the public importance. This Hon'ble Court in the case of **Janata Dal vs. H.S. Chowdhury & Ors** [1992 (4) SC 305] held that the PIL can be initiated in the appropriate Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary or other interest by which their legal rights or liabilities

are affected. The Petitioner being a public spirited citizen has approached this Hon'ble Court to enforce the rights in the name of public rights and interest against the negligent government project.

- C. Because for the first time at such level changes have been made in criminal laws. It is said that the old colonial law has been changed. The main symbol of colonial rule is the police system which is continuing since British times. It needs reforms to be carried out implemented.
- D. Because In construing statutes the cardinal rule is to construe its provisions literally and grammatically giving the words their ordinary and natural meaning. This rule is also known as the plain meaning rule. According to the primary rule, the words, phrases and sentences of a statute are to be understood in their natural, ordinary or popular and grammatical meaning, unless such a construction leads to an absurdity or the statute suggests a different meaning. The title of the present Bills being Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 and Bharatiya Sakshya Adhinyam are not accurate as per to Interpretation of Statutes, the title of these proposed bills does not speak about the statute and its motive but the present names of Acts are ambiguous in nature.

- E. Because The Bharatiya Nyaya Sanhita retains most offences from the Indian Penal Code, 1860. It adds community service as a form of punishment. Sedition is no longer an offence. Instead, there is a new offence for acts endangering the sovereignty, unity and integrity of India. The Bharatiya Nyaya Sanhita adds terrorism as an offence. It is defined as an act that intends to threaten the unity, integrity, and security of the country, intimidate the general public or disturb public order. Organised crime has been added as an offence. It includes crimes such as kidnapping, extortion and cyber-crime committed on behalf of a crime syndicate. Petty organised crime is also an offence now. Murder by a group of five or more persons on grounds of certain identity markers such as caste, language or personal belief will be an offence with penalty of seven years to life imprisonment or death.
- F. Because Major issues with Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, is that The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, allows up to 15 days of police custody, which can be authorised in parts during the initial 40 or 60 days of the 60 or 90 days period of judicial custody. This may lead

to denial of bail for the entire period if the police have not exhausted the 15 days custody. Because Section 187(3) of the Bill, which corresponds to Section 167 (2)(a) of the CrPC ,does not contain the phrase ‘otherwise than in the custody of the police’ — implying that the prescribed 15-day-period of police custody can now be an aggregate of shorter periods of custody sought over the entire period of investigation lasting 60 or 90 days (depending on the nature of the offence.) Flagging that the provision could be misused since people, particularly those hailing from marginalised backgrounds, may be subjected to extreme custodial violence, the panel underscored that, “there is a concern that this clause could be vulnerable to misuse by authorities, as it does not explicitly clarify that the custody was not taken in the first fifteen days either due to the conduct of the accused or due to extraneous circumstances beyond the control of the investigating officer. The committee recommends that a suitable amendment may be brought to provide greater clarity in the interpretation of this clause.:

Notably, the precedent set by the Supreme Court in *Central Bureau of Investigation v. Anupam J. Kulkarni* (1992), limiting police custody to the first 15 days of arrest, has been recently referred to a larger bench for reconsideration

while dismissing Tamil Nadu Minister V. Senthil Balaji's plea against custody by the Enforcement Directorate. In *Kulkarni*, the top Court said that any further remand during investigation beyond the initial 15 days of arrest can only be in judicial custody.

- G. Because there remains irregularity in the passing of Bills in the Parliament as many members of Parliament were suspended with very less people participation in the passing of the Bills, such action has led to no debate on the elements of the Bills with no challenges. The former Honorable Chief Justice of India Honorable Justice N V Ramana, spoken at the occasion of unfurling the National Flag on the Independence Day 2021 at Supreme Court premises with reference to the enacting of laws in the Parliament. Expressing his concern regarding enacting laws without debate in the Parliament, Justice said that it leaves ambiguity in legislation and leads to a lot of litigation. Parliamentary debate is a fundamental part of democratic lawmaking. In parliament, members' debate bills before they vote on them. Because debates are public, they provide Members of Parliament (MPs) an opportunity to represent the views of constituents on the floor and give voice to voters' concerns. The parliamentary discussions and debates are paramount for legislative portrayal because it generates relationships between people and their representatives and also provides an opportunity to discuss government policy, proposed new laws and current issues. Debates and discussions are helpful to make necessary adjustments and amendments to a bill so

that it can effectively fulfill its purpose. These can be helpful in Courts while interpreting laws. There is a lot of ambiguity in making laws. There is no clarity in the laws. We do not know what purpose the laws are being made at, which is creating a lot of litigation, inconvenience to the public and government and loss to the government.” These remarks of CJI carry our memory to the three ‘Agriculture Laws’: The Farmers’ Produce Trade and Commerce (Promotion and Facilitation) Act, The Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Act and The Essential Commodities (Amendment) Act that were enacted by Parliament on 27th of September 2020 but invited hue and cry and protests on large scale from farmers community labeling the bills to be against the interests of the farmers. As per claims of Samyukta Kisan Morcha, the protests claimed 702 deaths and lasted for 333 days. The said bills were stayed by Supreme Court on 12 January 2021 and their withdrawal was announced by the Prime Minister in a televised address on 19 November 2021 as such on 1 December 2021, the laws were formally repealed. During the monsoon session of 2021, 20 bills have passed in both Houses of Parliament, either without discussion or minimal, limited to treasury bench MPs speaking on the legislation. The Rajya Sabha has passed nine bills since the House convened on July 19 and clocked nearly 17 minutes per bill for discussion. The Lok Sabha passed 11 bills, each on an average talking about eight minutes. Most of these bills were

passed without discussion. The CJI in his address carried us to the debates of the gone by days in the Houses that used to be very wise and constructive. The Houses used to debate threadbare any legislation which they were making. Lawmakers used to discuss elaborately what would be the consequences of any law under enactment, how it will affect the working class. Same way different laws were discussed and deliberated. Elaborate debates in the Houses always brought clarity to the object and intent behind legislations or amendments to existing laws. The CJI recalled the contribution of the legal community, led by lawyers such as: Mahatma Gandhi, Sardar Patel, Jawaharlal Nehru and Babu Rajendra Prasad to the freedom struggle and reminded advocates that the first Lok Sabha, Rajya Sabha and assemblies were filled with lawyers active in public life. Presently we find law breakers under Representation of Peoples Act as well as heinous crimes under Indian Penal Code are law makers. Traced out from ADR data, we find that the percentage of tainted in Parliament is ever increasing. When 2009 Lok Sabha was having 26 per cent tainted MPs, in 2014 it increased to 34 per cent, and nearly half of the newly-elected Lok Sabha members in 2019 have criminal charges against them, a 26 per cent increase as compared to 2014, according to the Association of Democratic Reforms (ADR). Similarly at present in Rajya Sabha 71 (31 per cent) have declared criminal cases against themselves and 37 (16 per cent) have declared serious criminal cases. Nothing more can be shameful for the

democracy of the country. We well remember how the Supreme Court five-member bench struck down the NJAC Act and deemed it as unconstitutional in 2015. The Supreme Court, on 20th July 2021, in Union of India vs Rajendra N Shah, struck down most parts of the 97th Constitutional Amendment. In 2022, a three-judge Bench led by Chief Justice N.V. Ramana, declared as unconstitutional Sections 3(2) and 5 introduced through the Benami Transactions (Prohibition) Amendment Act of 2016. In 2021, the Centre told the Supreme Court that independence of the judiciary cannot be invoked to test the validity of a law passed by the Parliament as a matter of policy. At the same we come across that in 2020, the present incumbent CJI has said that ‘High Courts Have Power to Strike down Central Acts’ while hearing a petition challenging ‘Epidemic Act’ and directing the petitioner challenging ‘Epidemic Act’ to move the High Court. (Source: State Times <https://statetimes.in/parliamentary-debatefundamental-part-of-democratic-law-making>)

- H. Because The Bharatiya Nyaya Sanhita, 2023, defines petty organised crime as an offence. It includes: vehicle theft, pick-pocketing, selling of public examination question papers, any other form of organised crimes committed by a gang. To be considered as such, these must: (i) cause a general feeling of insecurity amongst citizens, and (ii) be committed by organised

criminal groups or gangs (including mobile organised crime groups). Such offences are punishable with imprisonment between one and seven years, and a fine. It is unclear what is meant by general feelings of insecurity. In addition, the BNS does not define terms such as ‘gang’, ‘anchor points’ and ‘mobile organised crime groups’. The Standing Committee on Home Affairs (2023) has suggested redrafting the provision.

- I. Because The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, seeks to replace the Criminal Procedure Code, 1973 (CrPC). The CrPC provides for the procedure for arrest, prosecution, and bail. Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, 2023 mandates forensic investigation for offences punishable with seven years of imprisonment or more. Forensic experts will visit crime scenes to collect forensic evidence and record the process. All trials, inquiries, and proceedings may be held in electronic mode. Production of electronic communication devices, likely to contain digital evidence, will be allowed for investigation, inquiry, or trial. If a proclaimed offender has absconded to evade trial and there is no immediate prospect of arresting him, the trial can be

conducted and judgement pronounced in his absence. Along with specimen signatures or handwriting, finger impressions and voice samples may be collected for investigation or proceedings. Samples may be taken from a person who has not been arrested.

- J. Because The power to attach property from proceeds of crime does not have safeguards provided in the Prevention of Money Laundering Act. The CrPC provides for bail for an accused who has been detained for half the maximum imprisonment for the offence. The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, 2023 denies this facility for anyone facing multiple charges. As many cases involve charges under multiple sections, this may limit such bail. The use of handcuffs is permitted in a range of cases including economic offences, contradicting Supreme Court directions. The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, allows evidence collected by retired or transferred investigating officers to be presented by their successors. This violates normal rules of evidence when the author of the document can be cross examined. Recommendations of high level committees on changes to the CrPC such as reforms in

sentencing guidelines and codifying rights of the accused have not been incorporated in the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023.

- K. Because The Bill, Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, expands the powers of the police and makes them absolute. The CrPC governs the powers of the police to maintain public order, prevent crimes, and undertake criminal investigations. These powers include arrests, detention, search, seizure, and use of force. These powers are subject to restrictions to safeguard individuals from misuse of police powers leading to excessive use of force, illegal detentions, custodial torture, and abuse of authority. The Supreme Court has also issued various guidelines to prevent such arbitrary exercise of police powers. The Bill amends the provisions related to detention, police custody and use of handcuffs, which will present issues.
- L. Because The Constitution and CrPC prohibit detention in police custody beyond 24 hours. The Magistrate is empowered to extend it up to 15 days in case investigation cannot be completed within 24 hours. He may further extend judicial custody beyond 15 days if he is satisfied that adequate

grounds exist to do so. However, overall detention cannot exceed 60 or 90 days (depending on the offence). The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, 2023 modifies this procedure. It adds that the police custody of 15 days can be authorised in whole or in parts at any time during the initial 40 or 60 days out of the 60 or 90 days period. This could lead to bail being denied during this period if the police argue that they need to take the person back in police custody. This differs from laws like the Unlawful Activities (Prevention) Act, 1976, where police custody is limited to the first 30 days. The Supreme Court has held that as a general rule, police custody should be taken in the first 15 days of remand. The extension of 40 or 60 days should be utilised as an exception. The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, does not require the investigating officer to provide reasons when seeking police custody for someone in judicial custody.

M. Because Following differing opinions of coordinate benches on the subject, the Supreme Court recently in the case of *V. Senthil Balaji v. State*, had referred the question as to “*whether the 15*

days period of custody in favour of the police should be only within the first 15 days of remand or spanning over the entire period of investigation – 60 or 90 days, as the case may be”, to a larger bench. Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 now clarifies and provides that police custody can be sought for a maximum period of 15 days. However, it provides that the same may be taken either all at once or in a staggered manner. It further empowers the police to seek custody when it is sought in tranches for an extended period which may be at any time during the initial forty days or sixty days, as the case may be. A serious concern with this provision is that the investigating agency will be able to negate the bail granted to an accused by seeking custody in tranches. The prolongation of the period during which police custody can be sought also creates a problem as there is no criteria or guideline for exercise of such a power.

N. Because Powers of detention amended. Article 22 of the Constitution requires a person in police custody to be produced before a judicial Magistrate within 24 hours. The CrPC also provides this. The Bharatiya Nagarik Suraksha (Second)

Sanhita, 2023, retains this provision. It adds that police may detain or remove any person who resists, refuses or ignores directions given by an officer to prevent cognisable offences. Post detention, the detained person may either: (i) be produced in front of a Magistrate, or (ii) in the case of petty cases, be released when the occasion is past. The phrase ‘occasion is past’ is not defined.

O. Because The power to use handcuffs may infringe on the accused’s personal liberty. The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023, provides for the use of handcuffs during arrest. Handcuffs may only be used to arrest: (i) a habitual or repeat offender who has escaped custody, or (ii) a person accused of offences such as rape, acid attack, organised crime, economic offences, acts endangering sovereignty, unity and integrity of India. The provision contravenes judgements of the Supreme Court and guidelines of the National Human Rights Commission. The Supreme Court has held that the use of handcuffs is inhumane, unreasonable, arbitrary, and repugnant to Article 21. In extreme cases, when handcuffs have to be used, the escorting authority must record reasons to do so.

Further, it has ruled that no prisoners undergoing trial can be handcuffed without obtaining judicial consent. The Court has therefore left the discretion to decide use of handcuffs on the trial court.

P. Because The Bharatiya Nagrik Suraksha (Second) Sanhita Bill, 2023, was tabled in parliament last month, to replace the Code of Criminal Procedure (CrPC), 1973. The main thrust of BNSS is to “decolonise” India’s criminal procedures and make them citizen-centric. The CrPC, 1882, was enacted against the backdrop of extreme political unrest and rebellions against British colonial rule. The code, therefore, was designed to quell dissent and suppress any form of political opposition. This intention was evident in the code's provisions for preventive arrests, prohibiting public gatherings, and restrictions on bail. Post-Independence, the criminal justice system in India underwent a substantial change with the adoption of the Constitution and the establishment of a new hierarchy of courts. The criminal procedures were amended to harmonise them with the principles of the Constitution, culminating in the enactment of CrPC in 1973. The basic structure of the code, however, remained the same. Rooted in the colonial

understanding of crime prevention and policing, CrPC, 1973, imported most of the provisions as they were. Section 144, for instance, which empowers District Magistrates to issue orders in urgent cases of nuisance or apprehended danger, was retained from the 1882 code. The provision was originally intended as a tool to clamp down on any protests, public gatherings or assemblies that posed potential threats to the colonial administration. However, it is now disproportionately used even for non-essential purposes. A report titled 'Use and Misuse of Section 144 CrPC' revealed that in Delhi alone, around 6,100 orders were issued under Section 144 in one year. Out of the 5,400 orders that were analysed 43% were for regulating business 25.6% were for CCTV installation and only 1.5% were for regulating public order. Similarly, the provisions that granted unbridled power for surveillance and control to the police were imported as they were. The provision for preventive action by the police (Section 151) and imposition of security for keeping good behaviour (Section 107-110) grants unfettered discretion to arrest people with minimal oversight. NCRB data shows that out of the total 1,48,20,298 arrests made in 2021, 89,00,174 (60.5%) were made under these provisions.

A similar trend can be seen in the preceding years as well. The colonial approach to the administration of criminal justice in India was characterised by the need to control the native population. This led to empowering the police and the courts with excessive power and discretion, thus creating a 'Police State'. Regrettably, the Bharatiya Nagrik Suraksha (Second) Sanhita Bill, 2023 fails to make a substantial departure from this colonial legacy. The Bharatiya Nagrik Suraksha (Second) Sanhita Bill, 2023 leaves Section 144 almost untouched, thereby preserving the magistrate's extraordinary authority to issue urgent orders, except to, counter intuitively (if prevention of violence or crime is the objective), remove Section 144A, which gave the magistrate the authority to prohibit the carrying of arms in any procession or drill. The Bharatiya Nagrik Suraksha (Second) Sanhita Bill, 2023 has also expanded the use of handcuffs, allowing them to be used in cases involving grave offences such as murder, rape, and acid attack or when the accused is a repeat or habitual offender. This is a significant departure from the current law established through judicial precedents, which only permits the use of handcuffs in exceptional cases where there is a risk of escape or harm. This

new provision is likely to have a significant impact on the dignity and human rights of the accused. Furthermore, a provision has been added to permit the continuation of trial and delivery of a judgement even if the accused's attendance cannot be obtained. While expediting trials to reduce delays is the need of the hour, it should not come at the cost of compromising the fairness of the trial and the accused's rights. While the Bharatiya Nagrik Suraksha (Second) Sanhita Bill, 2023 has not adequately shed the colonial vestiges. There is no substantial attempt to regulate and curtail police authority or to mitigate the overarching control the State exercises over its citizens. All things considered, the Bharatiya Nagrik Suraksha (Second) Sanhita Bill, 2023 falls far short of the proclaimed 'decolonisation' as it continues to give power to police and suppressing the rights of the Citizens and make a 'Police State' just like Colonial Period.

- Q. BecauseThe Bharatiya Sakshya Adhinyam, 2023 replaces the Indian Evidence Act, 1872. It retains most provisions of the Indian Evidence Act, 1872 including those on confessions, relevancy of facts, and burden of proof. The Indian Evidence Act, 1872 provides for two kinds of evidence - documentary and oral.

Documentary evidence includes primary (original documents) and secondary (that proves the contents of the original). The Bharatiya Sakshya Adhiniyam, 2023 retains the distinction. It includes electronic records in the definition of documents. Under the Indian Evidence Act, 1872, electronic records are categorized as secondary evidence. The Bharatiya Sakshya Adhiniyam, 2023 classifies electronic records as primary evidence. It expands such records to include information stored in semiconductor memory or any communication devices (smartphones, laptops). Under the Indian Evidence Act, 1872, secondary evidence may be required under various conditions, such as when the original is in the possession of the person against whom the document is sought to be proved or has been destroyed. The Bharatiya Sakshya Adhiniyam, 2023 adds that secondary evidence may be required if the genuineness of the document itself is in question.

- R. Major issues with Bharatiya Sakshya Adhiniyam, 2023 are that The Supreme Court has recognised that electronic records may be tampered with. While the Bharatiya Sakshya Adhiniyam, 2023 provides for the admissibility of such records, there are no safeguards to prevent the tampering and contamination of such records during the investigation process. Currently, electronic

records must be authenticated by a certificate to be admissible as documents. The Bharatiya Sakshya Adhiniyam, 2023 retains these provisions for admissibility. The Bharatiya Sakshya Adhiniyam, 2023 also classifies electronic evidence as documents (which may not need certification). This creates a contradiction. Under the Indian Evidence Act, 1872, a fact discovered due to information received from an accused in police custody may be provable. The Bharatiya Sakshya Adhiniyam, 2023 retains this provision. Courts and Committees noted that facts may be discovered in police custody by coercion, and without adequate safeguards. The Indian Evidence Act, 1872 (and the Bharatiya Sakshya Adhiniyam, 2023) allows such information to be admissible if it was obtained when the accused was in police custody, but not if he was outside. The Law Commission recommended removing this distinction. The Law Commission has made several recommendations, which have not been incorporated. These include the presumption that the police officer caused the injuries if an accused was injured in police custody.

- S. The admissibility of electronic records as evidence. Under the Indian Evidence Act, 1872, documentary evidence can be classified as primary or secondary evidence. Primary evidence refers to the original document, while secondary evidence includes documents that can prove the contents of the original. Secondary evidence may be required under various conditions, such as when the original has been destroyed, or is with the person against whom the document must be proved. Documents include

writing, maps, and caricatures. The Bharatiya Sakshya Adhiniyam, 2023 retains these provisions and adds electronic records to the definition of documents. The Indian Evidence Act, 1872 allows electronic records to be admitted as secondary evidence and specifies the procedure to admit such evidence. The Bharatiya Sakshya Adhiniyam, 2023 amends this to clarify that electronic records produced from proper custody will be considered primary evidence, unless disputed. If electronic records are stored in multiple files, each file will be considered as primary evidence. It also expands the definition of electronic records to include information stored in semiconductor memory or smartphones (including emails, location and voice mails). On September 18 2014, Civil Appeal No. 4226 of 2012, Anvar P.V vs. P.K Basheer, the Hon'ble Supreme Court recognised that electronic records are susceptible to tampering and alteration. It stated that *without adequate safeguards, if the whole trial is based on proof of electronic records, it may lead to a travesty of justice.* The Bharatiya Sakshya Adhiniyam, 2023 provides for the admissibility of electronic records and gives the Court discretion to consult an Examiner of Electronic Evidence to form an opinion on such evidence. However, no safeguards have been provided to ensure that electronic records are not tampered with during the search and seizure or investigation process. On March 12, 2021, Writ Petition No. 11759 of 2020, Mr. Virendra Khanna v. State of Karnataka, the Karnataka High Court introduced guidelines for minimum safeguards during the search and seizure of electronic records. These include: (i) ensuring that a qualified forensic examiner accompanies the search team, (ii) prohibiting the

Investigating Officer from using the seized electronic device during search and seizure of electronic records, and (iii) seizing any electronic storage device (such as pen drives or hard drives) and packing them in a Faraday bag. Faraday bags block the transmission of electromagnetic signals, which can disrupt or destroy data stored in the device.

- T. The admissibility of electronic records may be ambiguous. The Bharatiya Sakshya Adhiniyam, 2023 includes electronic records in the definition of documents. It retains the provision from the IEA that all documents must be admissible as primary evidence, unless it qualifies as secondary evidence (original has been destroyed, or is with the person against whom the document must be proved). However, it also retains the provision that requires a certificate authentication of all electronic records be admissible as documents. This has overriding effects over other provisions. These changes may raise an ambiguity regarding the admissibility of electronic records.
- U. Because The introduction of new criminal bills can potentially impact lawyers in various ways, posing a range of challenges. Here are some problems that lawyers may face with the introduction of new criminal bills: **Increased Workload:** New criminal bills may lead to a surge in legal cases, thereby increasing the workload for lawyers. This can lead to stretched resources and potential challenges in providing timely and effective legal representation. **Complexity and Ambiguity:** The introduction of new criminal bills

may bring about complex legal provisions, ambiguous language, or intricate procedural requirements. Lawyers may face challenges in interpreting and navigating these complexities, potentially leading to delays and legal uncertainties.

Continuing Legal Education: Lawyers may need to invest additional time and resources to stay abreast of the new criminal laws, necessitating continuing legal education and training to ensure competence in handling cases under the new legal framework.

Impact on Legal Practice: The introduction of new criminal bills may necessitate adjustments in legal practice, requiring lawyers to adapt their strategies, case preparations, and advocacy techniques to align with the evolving legal landscape.

Increased Legal Scrutiny: Lawyers representing clients in criminal cases may face heightened scrutiny and accountability under the new bills, potentially facing challenges related to ethical considerations, client confidentiality, and adherence to the revised legal standards.

Resource Constraints: Small and mid-sized law firms, as well as individual practitioners, may face resource constraints in terms of updating legal libraries, accessing updated case law references, and acquiring the necessary resources to effectively represent clients under the new criminal bills.

Impact on Legal Aid and Pro

Bono Work: The introduction of new criminal bills may impact access to legal aid and pro bono services, potentially leading to challenges in offering comprehensive legal assistance to marginalized and underserved populations. **Procedural Changes and Court Practices:** New criminal bills may necessitate changes in court procedures, filing requirements, and evidentiary standards, potentially requiring lawyers to adapt to revised court practices and rules of evidence. **Potential for Legal Advocacy Restrictions:** Lawyers' ability to engage in vigorous advocacy on behalf of their clients may face restrictions or limitations under certain provisions of new criminal bills, impacting their ability to provide robust legal representation. **10. Financial Implications:** Compliance with new criminal bills may lead to increased operational costs for law firms, including investments in legal technology, research tools, and specialized expertise required to effectively handle cases under the revised legal framework. It's important to note that these problems are potential challenges that lawyers may encounter with the introduction of new criminal bills, and the specific impacts can vary based on the nature and scope of the legislation. In addition to these problems the new criminal bills does not bring any new changes from the previous ones. It a way to create confusion

among citizen and provide more power to police and suppress the fundamental rights of people. The main motive of the bills were to decolonise the indian laws, but in contrary the same laws are being repeated with no new explanations with additional powers granted to the police to rule people out of fear and depriving the fundamental rights.

4. DECLARATION OF REPRESENTATION MADE & CONCERNED GOVERNMENT AUTHORITY APPROACHED IF ANY & ITS RESULT:

The relief mainly sought in the present W.P. (Criminal) against the Government Authority respondents through respondent Authorities which are clear violation of Fundamental Rights that is guaranteed by the Constitution under Article 14, 19, and Article 21, 348 .

5. AFFIDAVIT OF NO PERSONAL GAIN OR MOTIVE:

The Petitioners have filed an affidavit stating that there is no personal gain, private motive or oblique reason in filing the Public Interest Litigation with this petition. The Petitioner further states that the petitioner has spent his own money for this PIL Writ Petition.

6. COURT MAY IMPOSE EXEMPLARY COSTS IF ANY:

The issue involved in the present W.P. (Crl.) is a purely a legal issues and it is filed in the larger public interest and to protect their fundamental rights to liberty and equality. The Court may impose

costs on the petitioner(s) if it finds that the petition was frivolous or instituted with oblique or mala fide motive or lacks bona fides. The Petitioners have not involved in any civil, criminal or revenue litigation in legal nexus with the issue(s) involved in the Public Interest Litigation:

7. **DECLARATION:**

That the petitioners' states before this Hon'ble Court that the present Writ Petition (Crl.) (PIL) had not filed any petition before any other Court except this Hon'ble Court. The Petitioners further states that they have filed their affidavit stating that there is no personal gain, private motive or oblique reason in filing the Writ Petition, and there are no litigation pending against petitioners and have no private motive through this Public Interest Litigation (PIL) with this petition. The Petitioners further states that the petitioners have spent his own money for this PIL Writ Petition.

8. That Petitioners have not been approached before any concern State Authority / Respondent Authorities.
9. That the Details of the **Petitioner No. 1** as under Name Anjale Patel D/o Gurudev Singh R/o D-10 Acharaya Niketan Mayur Vihar Phase 1 Delhi 91, E-mail anjale.kgangwar@gmail.com Mobile No 7701932016 Occupation Social Worker , PAN No HRJPK4939R and Aadhar No 370800895115. And **Petitioner No 2.** Name Chhaya D/o Ravi shanker Mishra R/o 14/276 tirlok puri , Patparganj East Delhi 110091, E-mail chhayamishra9194@gmail.com Mob.

9968525187, Occupation House wife PAN No. AWXPC9607L and Aadhar No 877866131765.

11. PRAYER:

In view of the facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may be pleased to : -

- a) Please Issue Notice A Writ Of Mandamus Or Any Other Appropriate Writs Seeking Issuance Of Specific Directions, Policies And Regulations Initiate Guidelines And Directions To Immediately Constitute An Expert Committee On This To Assess, Identify The Viability Of The Three New Amended Criminal Laws Names As “The Bharatiya Nyaya Sanhita, 2023”, “The Bharatiya Nagrik Suraksha Sanhita, 2023” And “The Bharatiya Sakshya Adhiniyam, 2023” With The Aim To Overhaul The Criminal Laws Of The Country And Abolish, Indian Penal Code 1860, Code Of Criminal Procedure And Indian Evidence Act, 1872)
- b) Issue writ of mandamus/directions in the interest of justice to Stay the Operation and Implementation of Three new Criminal laws being Bharatiya Nyaya Sanhita 2023, Bharatiya Nagrik Suraksha Sanhita 2023 and Bharatiya SakshyaAdhiniyam 2023
- c) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY

Kunwar Siddhartha

Place: New Delhi

Drawn on: 26.06.2024

Filed On: 26.06.2024

FILED BY

SANJEEV MALHOTRA