

# A Strenuous and Indefatigable Patrolling from The Indian ‘Penal’ Code to Bharatiya ‘Nyaya’ Sanhita.

**Sumit Kumar Bharti**

Senior Research Fellow and Adjunct Faculty, Department of Political Science, University of Delhi.

## ABSTRACT

The working of the Police System is a crucial indicator to gauge the function of governance and therefore the entire welfare, polity and politics of the country. Policing forms the most vital link between the government and governed; thus, it is the most visible hand of the state's authority, many times the coercive hand where individuals are forced to be free. The police is intricately woven into the fabric of democracy, and the journey of police reforms verve hand in hand with the process of democratisation of the whole gamut of socio-political structures. Police reforms act as a litmus test for the ‘people-friendly and people-centric’ government and transparent governance. No government can claim to be people-centric if its policing is deficient in pro-people orientation. However, policing requires lucid and comprehensive rules and regulations emanating from the nature of polity and structures of society, to be followed in letter and spirit as the guiding principles. The introduction of three bills by the union government in the lower house of parliament to repeal colonial-era criminal laws is the watershed moment of metamorphic conjunction in the criminal reform system, and it may realise the long-cherished aspiration of having democratic policing in democratic India. This research paper endeavours to analyse Police reform as an unremitting process having continuity and change with the changing nature of democratic politics and societal milieu post-independence, with a specific analysis of the newly introduced Criminal Laws amendment bills from the prism of ideals of policing in the democratic domain.

**KEYWORDS:** Police Reforms, Colonial Policing, Democratic Policing, Indian Penal Code, BNS, BNSS & BSA.

## INTRODUCTION

Policing is the symbolism of the progression of civilizational norms, which have taken shape with the evolutionary nation-state system. As noted by French General J. C. P. Lenoir, the Police is the “science of governing men and to do them good”<sup>1</sup>; thus, the original notion of the police was concerned with welfare governance. Social Contractualists based their premise for the formation of the society and state on the prevailing conditions of the “state of nature,”<sup>2</sup> marred primarily with Hobbesian<sup>3</sup> disorder and chaos. One of the important elements of differentiation, segregating the ‘State of Nature’ embodying the doctrine of ‘*Matsya-Nyaya*’<sup>4</sup> from the modern state system, is the formal practices of policing deriving authority from the state to deliver justice to citizens. The authority bestowed on police to discharge their duties and functions is founded on the bedrock principles of service to citizens and the state, and not the regime of the day. Modern democratic states time and again come up with different formations of police reforms,

well-intentional at times and artificial and superficial at others. The saga of police reforms in independent India has both of these components, with numerous attempts to reform the structural-functional aspects of policing; however, without a determined attempt to overhaul its colonial character. The introduction to three bills to replace The Indian Penal Code (IPC), 1860 by Bharatiya Nyaya Sanhita (BNS), 2023, The Code of Criminal Procedure Act (Cr. PC), 1898 by Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 and The Indian Evidence Act (IEA), 1872 by Bhartiya Sakshya Adhiniyam (BSA), 2023 is the monumental of the reforms in the journey from colonial policing to democratic policing in India.

### THE COLONIAL POLICE & IPC

The victory by deceit in the battle of Plassey (1757) and the battle of Buxur (1764) made the East India Company the absolute ruler of then-united Bengal, and the whole gamut of administration underwent radical changes under the camouflage of reforms by destroying any traces of community-oriented decentralised policing.<sup>5</sup> To implement the colonial designs, in 1772, the then Governor-General of Bengal under the East India Company set up “Police Administration in Bengal”<sup>6</sup>. During the Mughal time, ‘Faujdar’ was replaced by ‘Company Bahadur’, and in 1793, under Cornwallis reforms, Zamindars lost their Police functions and Powers.<sup>7</sup> Districts became the epicentre of administrative centralisation, and each district was institutionally divided into “Thanas, each placed under an officer called Daroga appointed and supervised by civilian Magistrates”<sup>8</sup>. The primary objective of the restructuring of police administration was to secure and stabilise the colonial regime by striking “incalculable fear in the minds of the common man”<sup>9</sup>.

The two prominent pillars of the British Raj in India were military might and coercive police, with the former used to gain political control and later being used to sustain and preserve the Raj regime with administrative mechanisms. Thus, it was natural to establish the police, which could terrify the common masses, and the Britishers could keep that terrifying force under their direct control, leaving ground police officers literally redundant. The establishment of a separate police establishment is credited to *Sir Charles Napier*, after the annexation of Sindh in 1843. This colonial model of policing was modelled on the Royal Irish Constabulary, which was more “centralised and coercive than the British police system”,<sup>10</sup> which was not accountable to citizens but to the state. The colonial police, therefore, was given a “more military character”<sup>11</sup> than the civilian, as was the norm in London. The colonial rulers also retained some of the structures and features of the Mughal empire, such as Daroga and Kotwal, with administrative concoctions delineating “benevolent and despotic interventions”<sup>12</sup>. However, the “Torture Commission”<sup>13</sup> of 1854, in its report of 1855 highlights the corruption and abuses of power in the working of the Police and recommended to appoint Superintendents of Police in every single district under Company Raj. This recommendation was approved by the Court of Directors and respective arrangements were made for the post of Superintendent of police at the district level.<sup>14</sup>

The ill-envisioned and half-hearted reforms could not be materialised into reformative deductions, not for the benefit of colonial rulers nor local inhibitors, and the revolt of 1857 had transformed the whole political structure, including the police systems. The misadventures and mis-administrations of the police system, having an anti-people image, more profound discontent, specifically of the ruler population, had converted into an outlook of hatred towards the colonial rulers is also one of the most profound reasons for the revolt. The revolution changed the whole trajectory of the British administration in India, where now they have the dual task of strengthening their hold to avoid any second 1857 and simultaneously pacifying the rising tides of nationalism and discontent by portraying the benevolence of dictatorship.

The Indian Penal Code -1860 and the Code of Criminal Procedure-1872 (Act X of 1872) were crafted by the first law Commission under Lord Macaulay mainly to oppress and suppress indigenous dissent. The Indian Penal Code (IPC), 1960 enlists 511 sections, prioritising the Offences against the “State, all Armed forces, the Public Tranquillity, the public servants, the elections, contempt of the lawful authority of public servants”<sup>15</sup>. M. B. Chande mentioned that nothing was innovative in IPC and it was a modified version of the Arthashastra of Kautilya as per the prevailing social, political, religious and administrative conditions;<sup>16</sup> however, the intention was different from that of Kautilya, whose focus was public welfare through maintaining the public order. The Code of Criminal Procedure (CrPC) was enacted in 1898 for the dispensation of justice by trial courts in both civil and criminal cases.<sup>17</sup> The Indian Evidence Act was passed in 1872 to factually prove or refute the ingredients of the offences and allegations, both in civil and criminal matters.<sup>18</sup>

The IPC’s predilection for offences against the state has a full chapter on the Offences against the state, and the explanation of the offences commences with Chapters on “Criminal Conspiracy and Offences against the State”<sup>19</sup> vindicating the colonial preference for the safety and smooth functioning of the imperial regime and not any concern for the masses. The controversial clause of ‘sedition’ was added in 1870 to quell any voice against the state, and is still a colonial hangover in Indian Jurisprudence.<sup>20</sup> Along similar lines, the CrPC (Criminal Procedure Code) accorded preferences to the use of strength by police and military for establishing the ‘peace and public order’ to sustain the raj and the much-needed provision for ‘investigation and criminal trial’ has taken a back seat.<sup>21</sup> The whole structure was so apathetic to civil liberties that the lowest-rank constable could arrest and confine a citizen for 24 hours.<sup>22</sup>

The founding genesis of IPC and CrPC is anti-liberal, anti-democratic and anti-people as they restrain civil liberties and political dissent and do not allow any form of expression even in the first instance. For example, section 151 of the CrPC allows police officers to arrest a person on the suspicion that he might commit a cognisable offence, without a warrant.<sup>23</sup> Again, section 41 of the CrPC empowers police with unlimited authority to arrest any citizen without a warrant on the broadly ambiguous reason of “reasonable complaint, credible information or reasonable suspicion”<sup>24</sup>. Every kid in post-independent India is familiar with section 141 of the IPC under the heading of ‘Offences against the public tranquillity’, due to its rampant use to resist the gathering of five or more individuals.<sup>25</sup> The colonial manifestation of section 124 of the IPC makes a crime against the government an act against the state and awards life imprisonment in the name of sedition.<sup>26</sup> All of these provisions are in direct violation of Article 21 and Article 22 of the Constitution of India, which preserve individual liberty necessary for functional democracy.

The founding principles and premises of colonial policing and various codes of criminal jurisprudence were to make the police the “most effective instrument to state repression”<sup>27</sup> to permanently ‘subjugate Indian people’<sup>28</sup> for the sustenance of the British Raj. The “colonial judicial penal complex”<sup>29</sup>, writes Anupama Roy, created by the new colonial penal regime, created ‘new discourses of detention and physical tortures,’ objectifying the Indians into bodies calculated in terms of pain and suffering. The recruitment of native policemen, usually belonging to the high caste and privileged class, helped the development of the understanding of police as “cultural Institutional”<sup>30</sup> in which native practices of policing were synonymous with perpetuating barbarism and torture, and therefore fundamentally “irrational and prone to excess”<sup>31</sup>. With the advent of the twentieth century and the consolidation of the independence movement, these totalitarian codes were further reinforced by the draconian Colonial Acts, including the Prevention of Seditious Meeting Act- of 1911, the Defence of India Act- of 1915 and the infamous Anarchical and Revolutionary Crime Act -1919 (Rowlatt Act responsible for Jallianwala Bagh

Massacre). Venkat Iyer judiciously notes the situation that the “Britishers made liberal provisions for emergency powers, to establish and consolidate their own hold over the country”<sup>32</sup>.

However, the creation of the British Empire and its sustenance were due to Indians themselves, for example, the maximum chunk of the British Police and Army, and their whole administrative apparatus was manned by Indians. As per Thomas R. Metcalf, India was the centre of the Imperial British Empire, India was not just “another British Colony, or a periphery, or a land of ‘subalterns’”<sup>33</sup>, instead it was an imperial centre, from where “People, Ideas, goods- everything that makes empire possible-radiated outward and so transformed a vast region of the globe”<sup>34</sup>. This colonial Indianness of a sense of authority and command towards the masses among the police ranks and files continued unabated in post-colonial India of colonial police administration. Anandswarup Gupta in his classic ‘The Police in British India: 1861-1947’ categorically mentioned that at the eve of independence, we should have shown the statesmanship wisdom and foresight to have “a body of criminal laws and procedure more effective for the control of crime and a police force shaped truly as the civil defenders of the lives and property of the citizens”<sup>35</sup>.

### POST-INDEPENDENCE CHANGE OF POLICE LABELS

The grand Historical event of the Independence of India was analysed by some scholars as the transfer of power from imperial Britishers to the “New Mughals”<sup>36</sup>, the politicians of independent India having the luxurious lifestyle of modern Britishers in an improvised nation and absolutism of medieval Mughals in the democratic constitution, never hesitated to bring the police force under their strict control. Whereas during the first half of the 20<sup>th</sup> century the status of police reform remained status-quoist due to imperialist needs and financial requirements of the Britishers, the second half of the 20<sup>th</sup> century couldn’t see the light of police reforms at the end of the tunnel despite the inroads of liberal egalitarian democratic philosophy in freedom movement between 1903 to 1947, due to political expediency and general apathy of the emerging political Mughals.<sup>37</sup>

The midnight of August 14, 1947, with its historical ‘Tryst with destiny’ definitely changed the destiny of the new ruling political class which filled the power vacuum created by the withdrawal of Britishers, however, despite the adoption of the Sovereign democratic republic constitution, the colonial police, colonial administrative structure and Judicial working retained its colonial origin and character, the only difference was that now it has serving the new ‘Masters’, not the ‘We the people’. The new regime in post-independent India, both at the union and state levels, continued with the same old colonial tactics and methods to suppress any dissent or civil unrest.<sup>38</sup> K. G. Kannabiran has given expression to the real ground situation when he writes that “The courts never saw the inauguration of the Constitution as a severance, on January 26, 1950, with the transfer of power, no new institution arose, old institutions were continued with a slight renaming”<sup>39</sup>.

The National Police Commission in 1977 categorically defined the Ethos of Democratic policing in a democratic society as 1) Safeguarding the constitutional and legal rights of the citizens and upholding their dignity, and 2) safeguarding the fabric of society and preserving the Unity and Integrity of the nation.<sup>40</sup> However, the deficiency of political determination and expediency of vested interests helped this ethos remain in a perpetual state of dormancy. The landmark judgement of the Supreme Court of the land in the *Prakash Singh v. UOI* case of 2006<sup>41</sup>, which advocated for radical police reforms to establish police accountability, responsiveness, integrity, impartiality and transparency, could not be implemented in letter and spirit. The root cause of the relative failure of police reforms in post-independent India lies in the roots

of the foundations of the police in the Indian Police Act of 1861 and three colonial codes of IPC, CrPC and Evidence Act, having colonial souls.

## BNS AND FOUNDATIONAL REFORMS

The role and functions of police extend beyond crime control and maintaining public order, but the police have now become an operational agent for safeguarding the “*essentials of civilised life and a touchstone for testing the spirit and quality of civil administration*”<sup>42</sup>. As the first point of reference of contact between the state and the individual in distressing circumstances, the police function becomes the litmus test of civil administration and democratic polity. In India, both before and after independence, the notion, perceptions and actions of the police have always been conceived as anti-people and pro-establishment, having a complex nexus of criminals, politicians, corporations and bureaucrats acting against the ‘principles of justice’. Towards establishing the ‘rule of law’ and order of justice, the government of India has decriminalised the colonial penal laws in two stages. In the first stage, the Jan Vishwas (Amendment of Provision) Act- 2023 was passed to rectify 42 central legislations associated with the colonial-era Indian Post Office Act- 1898, the Railways Act- 1898, and the Cinematograph Act- 1952. At the second subsequent stage the colonial system of jurisprudence of penal laws of susceptibilities- the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 were shed out and replaced by domestically legislated Bharatiya Nyaya Sanhita (BNS), 2023, Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 and Bhartiya Sakshya Adhiniyam (BSA), 2023 respectively. This is in accordance with the various reports of the Law Commission of India, 146<sup>th</sup> Report (2010) report of the Department-related Parliamentary Standing Committee on Home Affairs, the Bezbaruah Committee, the Vishwanathan Committee, the Malimath Committee, the Madhava Menon Committee and various other committees and Commissions. After the passage of three bills from the Lok Sabha and Rajya Sabha, they were notified in the Gazette of India on December 25, 2023, after getting the presidential assent, and became operational from July 1, 2024.

The new Criminal laws, with the specified objective to “decolonise the Indian Justice System”, have introduced new offences to steer the democratic wheels of the nation and march in consonance with the fast-changing times and complexities of crimes like organised crimes, terrorism, financial and cyber frauds. Emphasising on priority to protect women and control the menace of ‘Love Jihad’ and other deceitful means to obtain consensus, the BNS 2023 under clause 69 punishes “sexual intercourse by employing deceitful means”<sup>43</sup> shall be punished with “imprisonment of either description for a term which may extend to ten years”<sup>44</sup> with fines. This clause explicitly defines deceitful means as “an inducement for, or false promise of employment or promotion, or marrying by suppressing identity”<sup>45</sup>. Clause 111 explicitly and comprehensively deals with the attempt to commit organised crime, distinguished based on the factor of whether death is caused or not. Under the subsection of 111, the encompassing terms “organised crime syndicate”<sup>46</sup>, “continuing unlawful activities”<sup>47</sup>, and “economic offences”<sup>48</sup> have been explained in detail to leave no legal ambiguity. For more lucidity, section 112 contains the punishment for ‘Petty organised crimes’<sup>49</sup> with a sub-section including modern-day crimes under the category of ‘theft’. Another noticeable change is the introduction of punishment for threatening a public servant, inducing a person to refrain from applying for protection to the public servant or restraining the exercise of lawful power by attempting to commit suicide under sections 224, 225 and 226 of BNS-2023.<sup>50</sup>

Indian democratic polity and social cohesion face insurmountable challenges from the fringe elements, both from within and outside of territorial boundaries. Apart from introducing new penal laws, the BNS



introduced strict provisions for crimes against society and the state, like mob lynching, fake news, sedition and terrorism. To implement the honourable supreme court guidelines of 2018 to frame a separate law for lynching, the Union government has introduced the penal provision under section 103 (2) and section 117 (4) of BNS- 2023, which states that “when a group of five or more persons acting in concert commits murder...each member shall be punished with death or life imprisonment for life”<sup>51</sup> with fine. To control the rising menace of fake news gaining potential from the digital revolution, section 353 categorically penalises the statements conducing to public mischief for circulating or publishing false information, unverified reports or rumours with imprisonment up to 3 years or a fine or with both.<sup>52</sup> India is a country devastated by terrorism, as the state policy of its western neighbour is to bleed India into a thousand cuts. To make stringent provisions for terror, the government has borrowed the comprehensive definition of terrorism from the Anti-Terrorism Act-2020 of the Philippines and the legal part from the strict Unlawful Activities (Prevention) Act (UAPA), 1967. Section 113 of the BNS- 2023 specifies that any act which intends to “threaten or likely to threaten the Unity, integrity, sovereignty, security, or economic security of India or with the intent to strike terror...in the people in India or any foreign country”<sup>53</sup> shall be severely punished with death or life imprisonment. A dedicated chapter VII titled “Of Offences Against the State”<sup>54</sup> was inserted, which comprehensively penalises the offences against the state under sections 147, 148, section 149, section 150, section 151, section 152, section 153, section 154, section 155, section 156, section 1157 and under section 158.

The process of decolonisation in the erstwhile colonised countries of Asia, Africa and Latin America usually connotes the deletion or rewriting of the colonial provisions from the statute books. Along similar lines, the new penal code of independent India has completely repealed the many obsolete and discriminatory colonial sections like Section 377 of the IPC that criminalised homosexuality and Section 310 of the IPC, which presaged Indians as ‘Habitual Offenders’, thus dignifying the equal human existence of aboriginals.<sup>55</sup> Another welcoming change is that of making penal provisions relating to children gender neutral, where sections dealing with the procurement of a girl for illicit intercourse and kidnapping of minors with different age limits of 18 years for females and 16 years for males had been tweaked for gender gender-neutral age of 18 years. Dr Neeraj Tiwari of National Law University remarked that new penal laws epitomise a shift from ‘Danda to Nyaya’ as the notion of punishment has been changed from deterrence and retribution to reformation.<sup>56</sup> The reformatory approach of ‘Nyaya’ is reflected in the award of ‘community service’ as prescribed punishment for some petty crimes. The new codes also enhance legislative effect on judicial interpretations by giving legislative words to various judicial pronouncements, bringing conformity between the age of consent and the POCSO Act-2012 at the age of 18 years, being one such case.<sup>57</sup> To streamline the judicial system with the new realities Section 6 of the BNSS abolished the erstwhile posts of Metropolitan Magistrate, Assistant Session Judge, and Judicial Magistrates, thus now there are four classes of Criminal Courts in India, i.e. Court of Session, Judicial Magistrates of the first class, Judicial Magistrates of the second class, and Executive Magistrates, to provide justice at a relatively faster rate.<sup>58</sup>

## OLD CHALLENGES TO NEW DECOLONISATION

Legal expert Professor B. B. Pande called for a curb to the disillusionment with the traditional rule of law and hoped that the enforcement of new decriminalised penal laws would rebuild the “credibility of crisis”. However, Scholars like Maitreyi Mishra accused the new Acts of “*an expansion of suppression*”<sup>59</sup> and “*hollow decolonisation*”, for example, the BNSS, which replaced the CrPC, 1973, increased the power of

police by allowing police custody comparatively for a longer time. She also accused the new legislation of providing no scope for police reforms, making the call for decolonisation only vacuous, as BNS, while increasing the terms of punishment, expanded the police powers by plagiarising heavily from the logic of colonial criminal laws. Advocate at the Supreme Court of India Shahrukh Alam fears that the new laws could promote police encounters and violence as they enhance the discretionary powers of police, like the right to handcuff and arrest a woman even after sunset under exceptional circumstances, and the employment of “any force and means”<sup>60</sup> required to arrest a person.

Pertinent to the security and integrity of India, Section 113 of BNS- 2023, which elaborately defines and penalises the terror act, has originated the UAPA- 2020, but hasn’t replaced that. It is a matter of legal debate in which two similar Acts will deal simultaneously with a similar offence. Similarly, the upheavals over the implementation of Section 106 (2) of the BNs which penalise “whoever causes the death of any person by rash and negligent driving of vehicle”<sup>61</sup> with a maximum of 10 years of imprisonment and fine, vindicates that the new legal codes lacked the public deliberations before final formulations and their applications are still suspended. The new section of ‘petty organised crimes’ under section 112 of the BNS mentions crimes such as ‘unauthorised selling of tickets’ or ‘selling of public examination question paper’ are not defined, nor linked to any special act.<sup>62</sup> The sub-section (2) of Section 303 of the BNS- 2023 concerning the theft of value of less than five thousand rupees, although it reduces the burden of police by making it non-cognisable, but deepens the rich-poor divide, as this amount may not caste stern to a well-off person but shall be daunting on a marginalised and poor household.<sup>63</sup> Section 303 of the hitherto IPC related to ‘punishment for murder by life-convict’ was held unconstitutional and struck down by the Supreme Court in *Mithu v. State of Punjab*, 1983, as it violated Article 21 of the Indian Constitution, and has been restored in a new incarnation under section 104 of the BNS-2023.

Prakash Singh, a known veteran police officer and crusader of police reform in India, supports the implementation of the new laws but worries that the changed numbers of important sections from IPC to BNS, like Section 302 of the IPC for murder have been changed to section 101 of the BNS, and section 420 of IPC and cheating has become the section 316 of BNS, not only creates technical problems in the National Crime Record Bureau and Crime Tracking Network and System, nonetheless will affect the retained public and police consciousness.<sup>64</sup> However, the futility of BNS without proper police training and sensitisation can be ascertained by the statement of the National Police Commission, 1979, second report in which the commission categorically mentioned the analogy of the situation that new legislation without proper police training would be like that of “*planning and executing a very large number of irrigation dams and giant reservoirs without simultaneously planning and executing an efficient canal system for orderly distribution*”<sup>65</sup>. Police reforms are the pre-requisite for implementation and execution of the ‘Democratic Codes for Democratic Policing’, without which the whole exercise shall be futile and fragile to ‘colonial corruption’, leading to the ‘crisis of credibility’.

## CONCLUSION

The Supreme Court of India, in one of its judgements on July 18, 2022, categorically mentioned that “*Democracy cannot be ‘a police state’*”<sup>66</sup>. True to its essence, however, no democratic state could exist and sustain a police force dedicated to the principles of democracy and impartially working towards the welfare of the public. The binary created between the police and the public due to the colonial construct of divisive antagonism for maintaining the interest of the colonial state creates a deep gulf between the

visible organ of the state and society. India, after 75 years of its independence, on the call of Prime Minister Narendra, from the ramparts of the Red Fort, has finally taken the substantive step towards decolonising the administration of justice by abolishing the colonial codes and replacing them with the people's codes. BNS are the 'people's codes' as the manifestation of the superiority of citizens in the 'social contract' as mentioned in the preamble of the constitution as 'we the people'. These codes not only decolonise the judicial prudence but also nationalise the procedures of administration of justice towards the welfare of the citizens. However, as stated by the Vice-Chancellor of National Law University, G.S. Bajpai, the real test of the new laws will be ascertained by their impact on the standing of victims, the vulnerable and the poor.<sup>67</sup>

Steven Box in his celebrated 'Power, Crime and Mystification' stated that "for too long too many of us have been socialised to see crime and criminals through the eyes of the state"<sup>68</sup>, emphasising the need of having a social audit for checking 'undesirable' behaviour of members of the society. The shift from 'Victorian morality' to 'Constitutional Morality' in consonance with Indian values can't be realised without the required reform of the colonial mindset controlling and directing the working of the police in India. The mind and soul of the police need to fully democratise to achieve the cherished dream of having democratic police, and new criminal laws are the commencement of the process.

## BIBLIOGRAPHY

### BOOKS

1. Bandyopadhyay, S. (2009). From Plassey to Partition and After, 2<sup>nd</sup> ED. Sangam BOOK (India) Private Limited, Hyderabad. P. 102
2. Box, S. (1983). Power, Crime and Mystification. Routledge, London and New York, p.168
3. Chandavarkar, R. (1998). Imperial Power and Popular Politics: Class, Resistance and the State in India, c. 1850-1950. Cambridge University Press, New York, P. 184
4. Chande, M. B. (1997). The Police in India. Atlantic Publishers and Distributors, New Delhi, p. 81
5. Coatman, J. (1959). Police, Oxford University Press, London, quoted in Police Reforms in India, An Analytical Study, K. Alexander, Discovering Publishing House, New Delhi, 2006, p. 3
6. Cohn, S. B. (1961). The Development and Impact of British Administration in India. Indian Institute of Public Administration, New Delhi, P.8
7. Das, Dilip. K. & Verma, Arvind. (2003). Police Mission: Challenges and Responses. The Scarecrow Press, Inc., Lanham, Maryland, and Oxford, London
8. Dhillon, K. (2005). Police and Politics in India Colonial Concepts, Democratic Compulsions: Indian Police, 1947-2002, Manohar Publishers & Distributors. PP. 107-108
9. Gupta, A. (1979). The Police in British India, 1861- 1947. Concept Publishing Company, New Delhi, p. 563
10. Gupta, D. (2019). The Steel Frame, A history of the IAS. Roli Books Pvt. Ltd. New Delhi, p. 27
11. Iyer, V. (2000). State of Emergency: The Indian Experience. Butterworths India, New Delhi P. 70
12. Jefferson, T. (1990). The Case against Paramilitary Policing, Buckingham. Oxford University Press, England
13. Kannabiran, K. G. (2004). The Wages of Impunity: Power, justice and Human Rights. Orient Longman, New Delhi, P.60
14. Kapur, D. and Bhanu Mehta, P. (2005). Public Institutions in India Performance and Design. Oxford University Press, New Delhi, P.



15. Kumar, K. (2016). Police and Counter Insurgency. Sage Publication, New Delhi, P.5
16. Metcalf, Thomas R. (2002). Empire Recentred: India in the Indian Ocean Arena. In Colonialism and the Modern World, Ed. Gregory Blue, Martin Bunton and Ralph Croizier, M. E. Sharpe, New York, United States of America, P. 26
17. Prasher, DR. R. (1986). Police Administration, Organisation & Structure, Recruitment & Training, Unionism & Public Relations. Deep and Deep Publications, New Delhi. PP. 28-30
18. Singh, P. (2022). The Struggle For Police Reforms In India: Rulers Police To People's Police, Rupa Publications India Pvt. Ltd, New Delhi, P. 29
19. Subramaniam, K.S. (2007). Political Violence and Police in India. Sage Publications, New Delhi

## ARTICLES

1. Arnold, D. (1977). The Armed Police and Colonial Rule in South India, 1914-1947. *Modern Asian Studies*, 11(1), 101–125. <http://www.jstor.org/stable/311887>
2. Bajpai, G. S. (2023). New Bills and a principled course for criminal law reforms. *The Hindu*, New Delhi, August 17, 2023
3. Deana, H. (2021) *Colonial Terror: Torture and State Violence in Colonial India* (Oxford, 2021; online edition, Oxford Academic, 22 Apr. 2021), <https://doi.org/10.1093/oso/9780192893932.003.0003>, accessed 30 Sept. 2023.
4. <https://www.indiancurrents.org/article-democracy-is-not-police-state-cedric-prakash-1280.php>
5. Kumar, M. (2013). Accountability Of Indian Police: A Historical Appraisal. *The Indian Journal of Political Science*, 74(4), 733–742. <http://www.jstor.org/stable/24701169>
6. Merriam, C. E. (1906). Hobbes's Doctrine of the State of Nature. *Proceedings of the American Political Science Association*, 3, 151–157. <https://doi.org/10.2307/3038543>
7. Mishra, M. (2023). Criminal Law Bills and a Hollow Decolonisation. *The Hindu*, October 3, 2023.
8. Prakash. C. (2022). Democracy is not Police State. *Indian Current*.
9. RAGHAVAN, R. K. (1986). An Anatomy of The Indian Police. *The Indian Journal of Political Science*, 47(3), 399–412. <http://www.jstor.org/stable/41855254>
10. Read, J. H. (1991). Thomas Hobbes: Power in the State of Nature, Power in Civil Society. *Polity*, 23(4), 505–525. <https://doi.org/10.2307/3235060>
11. Sarkar, B. K. (1921). The Hindu Theory of the State. *Political Science Quarterly*, 36(1), 79–90. <https://doi.org/10.2307/2142662>
12. Sharma, A. (2004). Police In Ancient India. *The Indian Journal of Political Science*, 65(1), 101–110. <http://www.jstor.org/stable/41855800>
13. Tiwari, N. (2024). Decoding the Bharatiya Nyaya Sanhita 2023: Indianization of the Colonial Penal Law, in Special Edition of New Criminal Laws, *Indian Police Journal*, Volume 71, Number 1 & 2, January – June 2024, p. 32
14. Vij, R. K. (2024). Revisit these sections of the Bhartiya Nyaya Sanhita. Editorial, *The Hindu*, New Delhi, April 5, 2024

## CONVERSATIONS

- Saigal S. (2023). Is there a need to replace the IPC, the CrPC and the Evidence Act? *The Hindu*, new Delhi, August 18, 2023.

**REPORTS**

National Police Commission- 1977

**CODES**

CrPC, Section 151. <https://indiankanoon.org/doc/1228992/>

CrPC, Section 41. <https://indiankanoon.org/doc/1899251/>

IPC- 1960, Section 141. <https://www.indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>

IPC – 1960, Section 124. <https://www.indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>

BNS- 2023, No. 45 of 2023, Legislative Department, Ministry of Law and Justice, December 25, 2023. [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf)

**JUDGEMENTS**

Prakash Singh and Ors v. UOI. Writ Petition (Civil) 310 of 1996

**ENDNOTES**

---

<sup>1</sup> Kumar, K. (2016). Police and Counter Insurgency. Sage Publication, New Delhi, P.5

<sup>2</sup> Read, J. H. (1991). Thomas Hobbes: Power in the State of Nature, Power in Civil Society. *Polity*, 23(4), 505–525. <https://doi.org/10.2307/3235060>

<sup>3</sup> Merriam, C. E. (1906). Hobbes's Doctrine of the State of Nature. *Proceedings of the American Political Science Association*, 3, 151–157. <https://doi.org/10.2307/3038543>

<sup>4</sup> Sarkar, B. K. (1921). The Hindu Theory of the State. *Political Science Quarterly*, 36(1), 79–90. <https://doi.org/10.2307/2142662>

<sup>5</sup> Sharma, A. (2004). Police In Ancient India. *The Indian Journal of Political Science*, 65(1), 101–110. <http://www.jstor.org/stable/41855800>

<sup>6</sup> Kumar, M. (2013). Accountability Of Indian Police: A Historical Appraisal. *The Indian Journal of Political Science*, 74(4), 733–742. <http://www.jstor.org/stable/24701169>

<sup>7</sup> Bandyopadhyay, S. (2009). From Plassey to Partition and After, 2<sup>nd</sup> ED. Sangam BOOK (India) Private Limited, Hyderabad. P. 102

<sup>8</sup> Ibid. No.6

<sup>9</sup> Raghavan, R. K. (1986). An Anatomy Of The Indian Police. *The Indian Journal of Political Science*, 47(3), 399–412. <http://www.jstor.org/stable/41855254>

<sup>10</sup> Jefferson, T. (1990). The Case against Paramilitary Policing, Buckingham. Oxford University Press, England

<sup>11</sup> Arnold, D. (1977). The Armed Police and Colonial Rule in South India, 1914-1947. *Modern Asian Studies*, 11(1), 101–125. <http://www.jstor.org/stable/311887>

<sup>12</sup> Cohn, S. B. (1961). The Development and Impact of British Administration in India. Indian Institute of Public Administration, New Delhi, P.8

<sup>13</sup> Deana, H. (2021) *Colonial Terror: Torture and State Violence in Colonial India* (Oxford, 2021; online edition, Oxford Academic, 22 Apr. 2021), <https://doi.org/10.1093/oso/9780192893932.003.0003>, accessed 30 Sept. 2023.

- <sup>14</sup> Singh, P. (2022). The Struggle For Police Reforms In India Rulers Police To People's Police, Rupa Publications India Pvt. Ltd, New Delhi, P. 29
- <sup>15</sup> Chande, M. B. (1997). The Police in India. Atlantic Publishers and Distributors, New Delhi, p. 81
- <sup>16</sup> Ibid, No. 15
- <sup>17</sup> Ibid No. 15, P. 82
- <sup>18</sup> Ibid, No. 17
- <sup>19</sup> Gupta, D. (2019). The Steel Frame, A history of the IAS. Roli Books Pvt. Ltd. New Delhi, p. 27
- <sup>20</sup> Singh, P. (2022). The Struggle For Police Reforms In India Rulers Police To People's Police, Rupa Publications India Pvt. Ltd, New Delhi, P. 29
- <sup>21</sup> Ibid. No. 20
- <sup>22</sup> Ibid. NO.20
- <sup>23</sup> CrPC, Section 151. <https://indiankanoon.org/doc/1228992/>
- <sup>24</sup> CrPC, Section 41. <https://indiankanoon.org/doc/1899251/>
- <sup>25</sup> IPC- 1960, Section 141. <https://www.indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>
- <sup>26</sup> IPC – 1960, Section 124. <https://www.indiacode.nic.in/bitstream/123456789/4219/1/THE-INDIAN-PENAL-CODE-1860.pdf>
- <sup>27</sup> Chandavarkar, Rajnarayan. (1998). Imperial Power and Popular Politics: Class, Resistance and the State in India, c. 1850-1950. Cambridge University Press, New York, P. 184
- <sup>28</sup> Das, Dilip. K. & Verma, Arvind. (2003). Police Mission: Challenges and Responses. The Scarecrow Press, Inc., Lanham, Maryland, and Oxford, London,
- <sup>29</sup> Rao, Anupama. (2004). Problems of Violence, State of Terror: Torture in Colonial India, in Postcolonial Passages Contemporary History writing on India, Ed. Saurabh Dube, Oxford University Press, New York, p.91
- <sup>30</sup> Ibid. No. 29. P. 93
- <sup>31</sup> Ibid No. 29
- <sup>32</sup> Iyer, V. (2000). State of Emergency: The Indian Experience. Butterworths India, New Delhi P. 70 [https://books.google.co.in/books/about/States\\_of\\_Emergency.html?id=FXGbAAAAMAAJ&redir\\_esc=y](https://books.google.co.in/books/about/States_of_Emergency.html?id=FXGbAAAAMAAJ&redir_esc=y)
- <sup>33</sup> Metcalf, Thomas R. (2002). Empire Recentred: India in the Indian Ocean Arena. In Colonialism and the Modern World, Ed. Gregory Blue, Martin Bunton and Ralph Croizier, M. E. Sharpe, New York, United States of America, P. 26
- <sup>34</sup> Ibid, No.34
- <sup>35</sup> Gupta, A. (1979). The Police in British India, 1861- 1947. Concept Publishing Company, New Delhi, p. 563
- <sup>36</sup> Dhillon, K. (2005). Police and Politics in India Colonial Concepts, Democratic Compulsions: Indian Police 1947-2002, Manohar Publishers & Distributors. PP. 107-108
- <sup>37</sup> Prasher, DR. R. (1986). Police Administration, Organisation & Structure, Recruitment & Training, Unionism & Public Relations. Deep and Deep Publications, New Delhi. PP. 28-30
- <sup>38</sup> Subramaniam, K.S. (2007). Political Violence and Police in India. Sage Publications, New Delhi
- <sup>39</sup> Kannabiran, K. G. (2004). The Wages of Impunity: Power, justice and Human Rights. Orient Longman, New Delhi, P.60

- <sup>40</sup> National Police Commission, 1977
- <sup>41</sup> Prakash Singh and Ors v. UOI. Writ Petition (Civil) 310 of 1996. <https://indiankanoon.org/doc/1090328/>
- <sup>42</sup> Coatman, J. (1959). Police, Oxford University Press, London, quoted in Police Reforms in India, An Analytical Study, K. Alexander, Discovering Publishing House, New Delhi, 2006, p. 3
- <sup>43</sup> Clause 69, BNS- 2023, No. 45 of 2023, Legislative Department, Ministry of Law and Justice, December 25, 2023. [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf)
- <sup>44</sup> Ibid.
- <sup>45</sup> Ibid.
- <sup>46</sup> Section 111, BNS- 2023, No. 45 of 2023, Legislative Department, Ministry of Law and Justice, December 25, 2023. [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf)
- <sup>47</sup> Ibid.
- <sup>48</sup> Ibid.
- <sup>49</sup> Section 112, BNS- 2023, No. 45 of 2023, Legislative Department, Ministry of Law and Justice, December 25, 2023. [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf)
- <sup>50</sup> Section 224, 225 and 226. BNS- 2023, No. 45 of 2023, Legislative Department, Ministry of Law and Justice, December 25, 2023. [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf)
- <sup>51</sup> Section 103 (2), BNS- 2023, No. 45 of 2023, Legislative Department, Ministry of Law and Justice, December 25, 2023. [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf)
- <sup>52</sup> Section 353, BNS- 2023, No. 45 of 2023, Legislative Department, Ministry of Law and Justice, December 25, 2023. [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf)
- <sup>53</sup> Section 113, BNS- 2023, No. 45 of 2023, Legislative Department, Ministry of Law and Justice, December 25, 2023. [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf)
- <sup>54</sup> BNS- 2023, No. 45 of 2023, Legislative Department, Ministry of Law and Justice, December 25, 2023. [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf)
- <sup>55</sup> Section 310- IPC of 1860. <https://indiankanoon.org/doc/362686/#:~:text=Thug.,with%20murder%2C%20is%20a%20thug.>
- <sup>56</sup> Tiwari, N. (2024). Decoding the Bharatiya Nyaya Sanhita 2023: Indianization of the Colonial Penal Law, in Special Edition of New Criminal Laws, Indian Police Journal, Volume 71, Number 1 & 2, January – June 2024, p. 32
- <sup>57</sup> Ibid.
- <sup>58</sup> Yadav, A. K. (2024). Overview of New Criminal Major Acts, 2003, in in Special Edition of New Criminal Laws, Indian Police Journal, Volume 71, Number 1 & 2, January – June 2024, p. 8
- <sup>59</sup> Mishra, M. (2023). Criminal Law Bills and a Hollow Decolonisation. The Hindu, October 3, 2023. <https://www.thehindu.com/opinion/op-ed/criminal-law-bills-and-a-hollow-decolonisation/article67373127.ece>
- <sup>60</sup> Saigal S. (2023). Is there a need to replace the IPC, the CrPC and the Evidence Act? The Hindu, new Delhi, August 18, 2023. <https://www.thehindu.com/opinion/op-ed/is-there-a-need-to-replace-the-ipc-the-crpc-and-the-evidence-act/article67207159.ece>
- <sup>61</sup> Section 106 (2), BNS- 2023, No. 45 of 2023, Legislative Department, Ministry of Law and Justice, December 25, 2023. [https://www.mha.gov.in/sites/default/files/250883\\_english\\_01042024.pdf](https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf)

<sup>62</sup> Vij, R. K. (2024). Revisit these sections of the Bhartiya Nyaya Sanhita. Editorial, The Hindu, New Delhi, April 5, 2024. <https://www.thehindu.com/opinion/lead/revisit-these-sections-of-the-bharatiya-nyaya-sanhita/article68029299.ece>

<sup>63</sup> Ibid.

<sup>64</sup> Saigal S. (2023). Is there a need to replace the IPC, the CrPC and the Evidence Act? The Hindu, new Delhi, August 18, 2023.

<sup>65</sup> Second Report of the National Police Commission, 1979, p. 62

<sup>66</sup> Prakash. C. (2022). Democracy is not Police State. Indian Current. <https://www.indiancurrents.org/article-democracy-is-not-police-state-cedric-prakash-1280.php>

<sup>67</sup> Bajpai, G. S. (2023). New Bills and a principled course for criminal law reforms. The Hindu, New Delhi, August 17, 2023. <https://www.thehindu.com/opinion/op-ed/new-bills-and-a-principled-course-for-criminal-law-reforms/article67202560.ece>

<sup>68</sup> Box, S. (1983). Power, Crime and Mystification. Routledge, London and New York, p.168