Fascist autocratic design embodied in three new laws related to criminal justice system

On 11 August 2023, in the penultimate hours of Monsoon session of the parliament, Amit Shah, Union Home Minister, placed three bills in replacement of, what he called, old colonial rules. He asserted that the three bills would overhaul India's criminal justice system and protect the rights of the Indian citizens. By the time, this issue of Proletarian Era reaches the hands of the readers, the bills now enacted as law would be implemented from 1 July 2024. The bills are:

— The Bharatiya Nyaya Sanhita Bill, 2023 (to replace Indian Penal Code. 1866)

— The Bharatiya Nagarik Suraksha Sanhita Bill, 2023 (to replace The Code Of Criminal Procedure, 1973)

— The Bharatiya Sakshya Bill, 2023 (to replace The Indian Evidence Act, 1872)

The names have been christened with Sanskrit words to pose as if these are Indianized versions, to be exact, 'Hinduanized' editions of law. The bills are stated to be drafted "imbibing the Indian soul, which will bring a big change in our criminal justice system", said Amit Shah, Union Home Minister. Is it so or are the proposed laws are much more stringent in most of the cases, not in the perspective of delivering justice but of coercing the citizens and bullying them to bend before the 'almighty' capitalist state, repressing and oppressing people ruthlessly in every sphere of life? Reality speaks in the affirmative.

Though the government claims that the proposed bills are aimed at modernizing and simplifying the outdated criminal laws and transform them in tune with the Indian spirit and ethos, and in keeping with the changing nature of crime, society, and technology, no sooner were the bills tabled than they courted controversies. Notably, while drafting the bills no representatives from the judiciary, the bar associations, civil society, or the marginalized communities were involved. There was no prior consultation with the public to seek their feedback either. The bills were unilaterally prepared by the BJP government which has already made its mark by taking arbitrary and autocratic decisions detrimental to the interest of the common people. Finally, Rajya Sabha had sent the three Bills to the standing committee on home affairs for examination. Implementation might have been delayed in the process, but the danger does loom large.

Is Sedition abolished?

The BJP government has been clamouring that the word 'sedition' of colonial period has been dropped in the new Nyaya Sanhita bill. But section 150 of the new bill which replaces section 124 A of the Indian Penal Code (IPC) 1860, is in fact greatly enhanced as a tool of oppression. The new section virtually curbs all the fundamental rights by stating that the Government can

take action even against a person who is "dissatisfied or showing dissatisfaction towards the government established by law in India". Further the new bill prescribes punishment for "Acts endangering sovereignty, unity and integrity of India". Naturally the jurisdiction of the proposed law is much wider and since there is no definition of what is exactly meant by the words, "endangering sovereignty, unity and integrity", this is vague and left to any interpretation by the state and government.

Further, the explanation of the section states: "Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtaining their alteration by lawful means without exciting or attempting to excite the activities referred to in this section." In comparison, the Sedition law (Under 124A IPC) had stated: "Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in 3[India], shall be punished with 5[imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine." In its explanation, the new law defines the expression "disaffection" as including disloyalty and all feelings of enmity. The new law, thus, brings into its purview the potential to criminalize protest against any law or any action that incurs displeasure of the government by using the words 'subversive activity' which is a very vague term and can include anything, even a protest. So, the new law is more draconian. Also worth noting is section 111(6)(a) of the new bill which says that a "terrorist" refers to any person who "develops, manufactures, possesses, acquires, transports, supplies or uses weapons, explosives, or releases nuclear, radiological or other dangerous substance, or cause fire, floods or explosions." What does it mean? If there is an outbreak of fire or flood or even accidental explosions (like bursting of gas cylinders, short circuit etc.), anyone can be pronounced guilty and branded as a terrorist? Just the other day, in order to shield the responsibility of the Railway Department for the serious accident of Coromandel Express in Odisha, the Union Railway Minister did the same thing by alluding to "some external interference" for the disaster.

It is therefore, virtually a declaration of war against the citizens instead of protecting whatever little of their hard-earned civil and democratic rights are still in existence. Way back in 1993, it is pertinent to recall, the UNO had pointed out that the more vague the laws are, the more are they prone to be autocratic in their application. Moreover, the police-military are endowed with unbridled power under these vaguely worded laws to book anyone for acting in detriment to the interest of the state. For example, PM Modi is often found to use the words 'tukre tukre gang' (small groups) or 'urban Naxals' to denote those who dare to oppose any act or measure of the government and the state. Thus, the so called 'tukre tukre gang' is subject to any interpretation. Paradoxically, when, in 2020, it was asked in Parliament under RTI Act who are members of this gang and where are they found, the Union Home Minister for state had stated in a written reply that no fact is available about such gangs. Hence, it is just a coinage of PM Modi to persecute

anyone who voices dissent against his government or party. Thus it can be seen that sedition is not abolished but camouflaged with words and coinages having wider ramifications.

Some other propositions of the Nyaya Sanhita bill

As against 511 sections in Indian Penal Code (IPC), the new Nyaya Sanhita Bill has 356 clauses. However, closer scrutiny would reveal that almost 80% of the sections of the previous acts have been retained in the new 'Indianized' versions rebutting the claim of the BJP government about doing away with old colonial rules. The new bill has provisions for punishment for offences similar to those under the sedition law. For example, section 500 of IPC prescribes penalties for defamation, outlining that: "Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both." Section 354(1 and 2) of the new bill retains the same language and only adds "or with community service" after "with both."

Secondly, it is an accepted judicial principle throughout the world that—

(i) the accused must get due justice within minimum possible time of conduction of judicial procedure.

(ii) the accused must get all opportunities to prove himself or herself as innocent since, as per jurisprudence, the accused is to be considered innocent until he or she is found guilty through due operation of juridical process.

This is ingrained in clause 11 of the charter of International Human Rights to which India is a signatory. But the Nyaya Sanhita bill has been so framed as to give 'inquisitional' process (which is directed at not protecting but convicting the accused) more applicability. That means, someone will be arrested under this or that charge of opposing the government and the state, due process of juridical process will be tampered with, and the accused will be given punishment as deemed fit. Again, in the IPC,1860, Section 302 outlines punishment for culpable homicide. But in the Nyaya Sanhita, section 302 covers theft or snatching also, meaning provision for stringent punishment for such offences as well. So long, Section 420 of IPC dealt with the cases of cheating. Under Section 420, maximum and minimum sentences for offence of cheating could be for seven years and one year respectively. But this section has been removed in Nyaya Sanhita. Instead , a new section 316 has been added. In the new section, the maximum jail term of seven years for cheating has been retained while the minimum jail term has been reduced to six months. If read in between the lines, this is indicative of prescribing milder punishment for cheating.

In Clause 69 of Nyaya Sanhita titled "Offences against Women and Children" are encapsulated in the following words: "Whoever, by deceitful means or making by promise to marry a woman

without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine". The bill defines "deceitful means" as "the false promise of employment or promotion, inducement or marring [sic] after suppressing identity". If one carefully marks the wordings, it would be revealed that this new clause has been included with a definite motive and has wider ramifications. It facilitates criminalizing interfaith relationships by interpreting it as "deceitful means" or "suppressing identity" especially when a Muslim man and a Hindu woman are involved. It is further feared that it might firm up endogamy (the custom of marrying only within the limits of a local community, clan, or tribe) and thus infringe upon freedom of love or curtail right to choice. Moreover, the vagueness and discretionary nature of the new law might be more victimizing for women in the patriarchal society. We have, of late, seen how the criminals guilty of committing brutal gang-rape on Bilkis Banoo during 2002 Gujarat pogrom, were shown amnesty and released prematurely and how a powerful BJP MP has been virtually acquitted despite having been sexually assaulting female wrestlers in his capacity as president of Wrestling Federation of India. Moreover, how the women can get justice by simple rewording of legal provisions while reports of NCRB shows that almost 93 women are raped every day, 49 offences against women per hour is reported and an estimated 5,00,000 girls are lost to female foeticide over the last few years.

Suraksha Sanhita

Suraksha Sanhita Bill, 2023 has 533 sections in place of 478 sections in erstwhile Criminal Procedure Act i.e., an increase of 55 clauses. 175 sections have been changed, 8 new sections added and 22 repealed. But in what way does it improve the criminal procedure? Let us have a cursory glance at some noteworthy clauses.

Section 256 (3) of Suraksha Sanhita says: "If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice". It means the accused might not be granted the right to cross-examine anyone if the judge feels the appeal is 'for the purpose of defeating the ends of justice'—another vague term conferring arbitrary power on the judge in subversion of the hitherto recognized right of the accused to defend himself or herself. Is it extension or wanton curtailment of the democratic rights which do not preclude any criminal or civil trial in the court?

Section 187 of Suraksha Sanhita Bill further states: "Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded…. The Judicial Magistrate to whom an accused person is

forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration the status of the accused person as to whether he is not released on bail or his bail has not been cancelled, authorize, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be". The Supreme Court in a judgement in 1992 categorically said that retention in police custody should not exceed 15 days (1992, 3 SCC 141). Retention in police custody for 90 days will facilitate more torture to bully someone into confession by third degree and even custodial deaths, which are already on the rise.

Section 43(3) of the same bill further stipulates: "The police officer may, keeping in view the nature and gravity of the offence, use handcuff while effecting the arrest of a person who is a habitual, repeat offender who escaped from custody, who has committed offence of organized crime, offence of terrorist act, drug related crime, or offence of illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency notes, human trafficking, sexual offences against children, offences against the State, including acts endangering sovereignty, unity and integrity of India or economic offences". This very prescription of "use of handcuffs" overrules a Supreme Court judgement to the contrary. Supreme Court way back in 1978 held: "…it must be realized that these barbaric relics of a bygone era offend against the letter and spirit of the constitution".

Section 173 of the Suraksha Sanhita is by far one of the most shocking sections whereby the police is empowered to arrest a person in any cognizable case and detain such person without making any preliminary enquiry. Further investigation as stated in the Section 193 permits an investigating officer to conduct further investigation without taking prior permission from the court.

Under the black MCOCA (Maharashtra Control of Organized Crime Act) and the UAPA [Unlawful Activities (Prevention) Act], there is a provision that before filing of FIR there has to be an approval by a senior police officer. Secondly, the investigation can only be carried out by an officer of a particular rank pending which the trial cannot proceed, but even such stipulations are missing in the proposed law. The new law only also proscribes mentioning of the the name of the interrogating officer, the place where the accused person is arrested or detained and the right of the accused to be medically examined in 48 hour. Astoundingly, there is also no mention of legal aid to be given to the accused person in case he is unable to hire a lawyer to defend himself.

Section 33 of the Suraksha Sanhita is a troubling section where the police can harass or even detain innocent person on the ground that they may have information regarding any offence.

Sakshya Sanhita

Similarly, Sakshya Bill comprises 170 sections in place of 167 in the Evidence Act. 23 sections have been changed, one new section has been added and five have been repealed.

Section 115 of the Sakshya Sanhita reads as follows:

"Where a person is accused of having committed any offence specified in sub-section (2), in— (a) any area declared to be a disturbed area under any enactment for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or (b) any area in which there has been, over a period of more than one-month, extensive disturbance of the public peace, and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence. (2) The offences referred to in sub-section (1) are the following, namely:- (a) an offence under section 145, section 146, section 147 or section 148 of the Bharatiya Nyaya Sanhita, 2023; (b) criminal conspiracy or attempt to commit, or abetment of, an offence under section 147 or section 148 of the Bharatiya Nyaya Sanhita, 2023". It means that the accused himself or herself will have to prove that charges framed against himself or herself is false. But the jurisprudence stipulates that anyone who brings an allegation against another person is liable to prove the charges to be true. So, the new Sanhita virtually approves this provision in violation of long held principles of jurisprudence, to be incorporated in various black acts. Trial and proceedings to be held in electronic mode. With such flat sanction of admissibility of electronic mode, there could be possibility of tampering with digital data and breach of privacy. Moreover, despite all tall talks of 'digital India', a huge part of Indian population still remains technically challenged. Old advocates or judges might not have clear understanding of digital evidence or digital record. There may be errors on their part.

Concluding remarks

There are many other points which we are omitting for brevity's sake. If one delves into the details, the fascist autocratic design behind framing the new bills would be evident. Palpably in the lines or subtly between the lines, there has been a cunning move to concentrate more and more autocratic power to the Executive thereby diluting the authority of the Judiciary in justice delivery system. The government argues that elected legislators should have last say in the matter of law. But that is pronouncement of the yesteryears when legislatures did enjoy sovereignty contingent upon sovereignty of the people.

Election process was relatively free and fair and persons having some obligation to the people used to be elected. Gone are those days. Now election has turned into a farce being 'monitored and conducted' by money-muscle-media-administrative powers. What other kind of people's representatives do such monitored elections produce? Mostly moneyed people of the country, monopolists-industrialists, profit-hungry sharks, heartless apologists of capitals and capitalists

of the country and abroad, high-browed former bureaucrats, mafia 'dons', infamous serial murderers, rapists, arch communalists, people submerged head to foot in utter corruption, shameless flatterers and such other 'elites' of the society subservient to the ruling bourgeoisie now turned utter corrupt and reactionary. The list also includes distinguished individuals with records of sexual debauchery and all kinds of perverse acts often performed using their privilege of being members of parliament. 251of sitting MPs have declared criminal cases against them. 170 have serious criminal cases including rape, murder, attempt to murder, kidnapping and crimes against women, according to the Association of Democratic Reforms (ADR) report. (Business Standard 06-06-24) Crossing of floors after being elected, poaching of opposition MLAs with lure of lucre and ministry, wanton curtailment of the role of opposition, absence of any minimum debate on policy matters, use of ordinance route to promulgate new laws—all are rampant. They have no scruples, nor principles, nor even a semblance of democratic conduct. Parliament, which once, as an institution, was the concrete expression of the bourgeois parliamentary democracy is now virtually a stooge of the ruling class, and hence stripped of its essence once envisaged in bourgeois democracy. In this dangerous nefarious game being played by the ruling class to degrade the legislature, not only all major bourgeois parties, national or regional, play the same tune in the symphony, even the social democrats, still passing for 'Marxists-leftists' do not fall back. So, what can one expect from such a legislature other than deception, coercion and perpetrators of repressive regressive legislations?

A Marxist-Leninist approach clearly and easily shows that this change is coeval with and runs parallel to the growth and development of capitalist society. As capitalism grew from its laissez faire or stage of free competition to moribund stage, as laissez faire or free competitive economy developed into monopoly stage, it was marked by consolidation and concentration. Economy and economic power emanating from it were gradually concentrated and consolidated in the hands of a few, the ruling monopolists, with the ruled-over majority losing out more and more, getting impoverished and powerless. And parallel to it was more and more concentration and consolidation of power in the hands of the Executive (legislators and bureaucracy) which is also making every effort to undermine the relative autonomy of the Judiciary as well, and many eminent jurists are miffed because of that. Floating of the three black bills are also aimed at arrogating brute power to the Executive to muffle voice of protest, give the vestiges of democratic codes, norms and practices still existing a decent burial and firm up grip of fascism in the country with a facade of dysfunctional parliamentary system. It is in fact a mockery of the much touted criminal justice system.

It is pertinent to recall that late Justice V. R. Krishna Iyer once remarked that the "cult of occult is not a rule of law". While delivering judgment in a case of passing laws in Parliament by sheer brute majority, a 5-Judge Supreme Court division bench which included Justice Iyer also held in 1978 that "the thought that a decision taken at a secret recess of a chamber to which the public knows nothing, can nevertheless affect their lives, their liberty and property by mere passing a resolution without anything is abhorrent to civilized men. It shocks conscience". That

observation is now finding concrete expression in the BJP regime serving the decadent moribund rotting capitalist system with unflinching loyalty.

Comrade Shibdas Ghosh, Founder General Secretary, SUCI(C) and an outstanding Marxist thinker of the era, had also pointed out long back that there has been a persistent attempt to create a committed judiciary which would endorse the stand of the fascist autocratic government. This is a feature of fascist autocracy which is glaringly manifested today when judges ruling against the government or any of its functionaries are meted out punitive actions like punishment transfer, even overnight, while some judges who capitulate to the omnipotent Executive are rewarded with plum post-retirement appointments. Now, conflicts between Judiciary and Executive are also manifested on various issues like the Collegium system of appointment of judges. Long back, Comrade Shibdas Ghosh observed that "Fascism is manifesting itself in diverse forms more markedly than before in the state structure and administrative set-up of all capitalist countries, developed or backward." (On War, Peace and Peaceful co-existence, SW Vol. I)

And then, fascism comprises "…mainly economic centralization, maximum concentration of political power in the state, rigid firmness in administration—all this leading to more and more identification of the interest of the monopolists with that of the state-and cultural regimentation." ('Call of the Hour', SW Vol. II) The three Black criminal laws are part of that design.