



# Revamping India's criminal justice system: BNS, BNSS and BSB

The Indian Penal Code (IPC), 1860, the Code of Criminal Procedure (CrPC), 1973, and the Indian Evidence Act (IEA), 1872, govern the overall criminal justice system in India. While the IPC and IEA are both laws from the British era, the Code of Criminal Procedure is more than 50 years old. Thus, there has been a need to revamp these outdated laws in order to enable the criminal justice system to evolve, deliver justice in an efficient, speedy and timely manner, and enforce more stringent punishments for crimes such as threats to national security threats.

Against the above backdrop, three bills were introduced in the Lok Sabha to replace the existing criminal laws in India. Subsequently, the three bills were introduced in the Rajya Sabha on 21 December 2023. Thereafter, on the same day, the Indian Parliament (both houses) passed the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Sakshya Bill, 2023 (BSB), replacing the IPC, 1860, the CrPC, 1973, and the IEA, 1872, respectively.

By introducing these bills, Indian Government seeks to bring about several changes in the existing criminal justice system, including additions to/modification of definitions and revisions in the punishment for certain crimes. Further, the bills were introduced with a clear vision to address the issues and challenges in the existing criminal justice system of India, including the large number of outstanding cases in different courts, lack of human resources and infrastructure, lack of thorough **investigations and prosecution**, and outdated laws and processes to execute a case.

Through these bills, the Indian Government also aims to keep pace with the major technology changes that have taken place in recent years by digitising every step of a criminal investigation – right from registration of a first information report (FIR) through to drawing of charge sheets and delivery of judgements. For instance, under the BNSS, summons can be issued electronically to parties and **testimonies from experts, witnesses, accused and other parties may also be presented through the digitised mode.**

The key features of these three bills are summarised below:

- a. **BNS, 2023:**<sup>1</sup> The BNS replaces the IPC. While the new law retains relevant provisions of the IPC, a few additions have been made to the list of offences. It also removes offences which have been struck down by the apex court and increases punishment for several heinous offences. Further, lawmakers have added community service as a form of punishment and introduced a new offence for acts that threaten the sovereignty, unity and integrity of India. The BNS **also classifies** criminal breach of trust, forgery, **financial scams, Ponzi schemes, mass marketing frauds and cybercrimes, inter alia, as ‘organised crime’**. This is a noteworthy change which will lead to severe penalisation of such organised crimes in India.
- b. **BNSS, 2023:**<sup>2</sup> This law replaces the CrPC. Under the new law, lawmakers promote the use of technology for trials, appeals, recording of submissions and use of video conferencing for every step of legal proceedings. Further, it empowers magistrates to take cognisance of offences based on electronic records such as email, SMS and instant messages, which can facilitate evidence collection and verification process. It is important to note that under the BNSS, lawmakers have introduced a new provision which states that **‘a forensic examination will be mandatory in cases with offences that are punishable with imprisonment of seven years or more which are categorized under heinous offences’**. Further, it is also mandatory under the new law to video record the entire proceeding.

**By introducing this provision**, lawmakers aim to enhance investigative processes and criminal investigations by ensuring that a team of experts conduct an on-site examination and gather evidence in the best possible manner.

- c. **BSB, 2023:**<sup>3</sup> The BSB replaces the IEA. The new law promotes and acknowledges the need for technological modernisation in India’s current legal system. The bill expands the definition of ‘documents’ to include electronic or digital records, including online communication on various personal devices. **The definition is wide and covers any electronic communication such as emails, messages, server logs, user files such as photographs and call recordings, as well as communication devices such as mobile phones, laptops, websites and cameras** and any other electronic device which ‘may be specified by the Government at a later stage’. Further, it is also pertinent to note that as electronic records are classified as ‘documents’, there is a paradigm shift in their perception from secondary to primary evidence.

**By introducing advanced forensic techniques** such as DNA profiling, **digital evidence collection, gathering, examination and acceptance of expert opinions** may play an important role and strengthen the new law’s commitment to an effective and updated legal framework and criminal justice system in India.

India’s criminal justice system has largely remain unchanged, with several laws that date back to the colonial era or are based on local legal traditions. However, the legal system is now seeing significant reforms with the Indian Government recently introducing the Digital Personal Data Protection Act 2023, the Mediation Bill, the Taxation Laws (Amendment) Bill, 2021, as well as the three new criminal law bills. Through **these three new bills, lawmakers have imposed fixed timelines for enforcement agencies to take cognisance of complaints** and mercy petitions, as well as for filing of chargesheets and e-FIR for women, along with timelines for hearings to address contemporary challenges. The laws also allow **admissibility of digital evidence, use of digital forensics, and collaboration between legal counsels, forensic accountants and law enforcement agencies**, thus marking a further step in upholding the principles of fairness, equity and justice.

1 Bill No. 121 of 2023 introduced in Lok Sabha - The Bharatiya Nyaya Sanhita, 2023

2 Bill No. 122 of 2023 introduced in Lok Sabha - The Bharatiya Nagarik Suraksha Sanhita, 2023

3 Bill No. 123 of 2023 introduced in Lok Sabha - The Bharatiya Sakshya Bill, 2023



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## Contact us:



### **Sumit Makhija**

Partner, Forensic Services

Tel: +91 98100 30749

Email: [sumit.makhija@pwc.com](mailto:sumit.makhija@pwc.com)



### **Himanshu Sarpal**

Associate Director, Forensic Services

Tel: +91 97116 67749

Email: [himanshu.sarpal@pwc.com](mailto:himanshu.sarpal@pwc.com)

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