

New criminal laws: An era of accountability, transparency and justice

firstpost.com/opinion/new-criminal-laws-an-era-of-accountability-transparency-and-justice-13744274.html



New criminal laws in India will transform the country's criminal justice system. Image courtesy BFFF

The Central government has notified that the three new criminal laws, namely the Bhartiya Sakshya Sanhita (BSS), Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS), which aim to replace the colonial era Indian Evidence Act 1872 (IEA), Indian Penal Code 1860 (IPC), and Code of Criminal Procedure 1973 (CrPC), will come into effect from 1 July 2024.

One of the most appreciable measures in the enactment of the new criminal laws has been the insertion of the words “*electronic and digital records*” in the definition of “*document*” in section 2(1)(d) of the BSS. The scope of “documents” in the new BSS has been widened and made futuristic to include server logs, locational evidence, voice mail messages stored on digital devices...etc. In the IEA 1872, the definition of “document” did not specifically include electronic records. For the admissibility of electronic records in evidence, compliance with Section 65B of IEA 1872 was required.

To ease the process further, two new forms have now been included in the schedule of the BSS, which will not only authenticate the collection process but also speed up the appreciation process of digital evidence. These reforms in the domain of “electronic evidence” will help in plugging the loopholes that were present in the IEA 1872.

In CrPC 1973, there was no specific provision for Zero FIR. Zero FIR means an FIR registered by the police in case of a cognisable offence, irrespective of the jurisdiction. Earlier section 154 CrPC provided for the registration of FIR but not Zero FIR expressly. Now, section 173(1) of BNSS explicitly provides that every piece of information disclosing the commission of a cognizable offence, “irrespective of the area where the offence is committed”, may be given orally or through electronic means to the police.

In many instances, the police refuse to register an FIR, citing a lack of jurisdiction, and the helpless victims or complainants have to run from pillar to post to get an FIR registered. The new BNSS, by clearly providing for Zero FIR, will ensure that no common man faces difficulty in getting an FIR registered.

Section 173 further mandates that when such information related to the commission of a cognizable offence is communicated electronically, it shall be *“taken on record by him (police officer) on being signed within three days by the person giving it.”* It will ensure that FIR is registered in a stipulated time without any delay.

Section 105 is a new provision added to the BNSS. Section 105 mandates that search and seizure made by the police, including preparing the list of seized items and signature of witnesses, shall be recorded through audio-video electronic means. It further obliges the police officer to forward such recording “without delay” to the District Magistrate, Sub-Divisional Magistrate, or First-Class Judicial Magistrate. Section 105 of BNSS will ensure more transparency and curb the misuse of police powers by eliminating any likelihood of the police planting fake evidence.

A new sub-section (3) has also been added in section 176 of BNSS, which provides for the procedure for investigation by the police. Section 176 was section 157 in the old CrPC. The newly added sub-section (3) specifically provides that where an offence is punishable with imprisonment of seven years or more, a forensic expert shall visit the crime scene to collect the forensic evidence. It further provides that such process of evidence collection shall be video recorded. It is a noteworthy step towards greater transparency and accountability in evidence gathering by the investigating agencies.

Incorporating technology and forensics into investigations is a positive step towards modernising the criminal justice system in India. It will also help in harnessing the power of scientific technologies. It will improve the quality of evidence and protect the rights of both the accused and victims.

Section 193 of BNSS deals with the filing of police reports on completion of the investigation. Section 193(3)(h)(ii) of the BNSS mandates the police officer to inform the victim or the complainant of the progress of the investigation within ninety days. Police can inform them through any means, including electronic form. Earlier, no provision in the CrPC provided for such communication to the victim or complainant within 90 days.

Under section 235 of CrPC, there was no time limit for pronouncement of the judgment, but section 258 BNSS requires a judge to deliver the judgment within thirty days of completion of arguments.

BNSS encourages the use of technology at all stages, from crime scene visits to investigations and trials. It also establishes accountability by prescribing the stipulated time for the supply of documents, police reports, and even the pronouncement of judgments. In the coming times, these laws will be a game changer in ensuring a speedy trial and bringing transparency to the investigation process.

The author is Assistant Professor at Jindal Global Law School, OP Jindal Global University. Views expressed in the above piece are personal and solely that of the author. They do not necessarily reflect Firstpost's views.