



Major Criminal Laws Re-enactment

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Indian Penal Code, Criminal Procedure Code and Indian Evidence Act come in the category of major laws. These laws have been re-enacted as Bharatiya Nyaya Sanhita (formerly IPC), Bharatiya Nagarik Suraksha Sanhita (formerly Cr.P.C.) and Bharatiya Sakshya Adhiniyam (formerly Indian Evidence Act).

The stated purpose of the re-enactment is to revamp the Indian criminal justice system by replacing colonial era laws. The re-enacted laws are stated to be victim centric and more suitable for the new technological era. They are also stated to be better suited for the present requirements of society and national security.

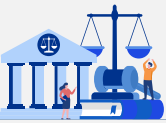
Background



The Government's introduction of these laws stem from the observation that the existing laws were inadequate to address the technological advancements and societal shifts that have occurred over past few decades.



Major changes include revisions in punishment for few crimes, and addressing issues such as the jurisdiction, backlog of cases, insufficient human resources and infrastructure, inadequate investigations and prosecutions, and outdated laws and procedures.



The laws have been presented with a vision to tackle the challenges within India's criminal justice system, with support of advance investigation methodologies and technology.

Key Features

Bharatiya Nyaya Sanhita

In the corporate context, the penal sections of law mostly relate to cases of:

- Cheating
- Criminal misappropriation
- Breach of trust
- Forgery and used of forged documents
- The sections providing for the definitions of these offences largely remain unchanged.

Bharatiya Nagarik Suraksha Sanhita

- Defines additional types of electronic evidence
- Empowers courts and police officers to issue summons in cases where digital evidence is involved
- Clarifies jurisdictions in cheating cases involving electronic modes of deception
- Empowers Courts to ask for electronic filings in cases where documents are voluminous.

Bharatiya Sakshya Adhiniyam

- Expands definition of 'document' to include electronic and digital records and includes examples of such records
- Expands definition of documentary evidence to include electronic/digital records
- Classifies electronic evidence as primary evidence when produced from 'proper custody'
- Broadens the definition of 'Experts' to include more areas of expertise.

Key Takeaways for Corporates

One of the key features of all the three new major Acts is application of law in the digital environment. In this context the corporates would need to focus on the following:

Mechanisms to Secure Data and standardising business processes

- The procedural law in BNSS provides for service of summons to the companies and others in the digital form by Courts. The business process should provide for clearly defined stakeholder for receiving summons
- The Business Continuity Plan (BCP) should provide for proper preservation of evidence as Court cases tend to run for long durations. In the case of expert evidence there would be need for identifying professionals who can present that evidence in cases where the experts who collected the evidence have left the company and whose presence is difficult to secure
- Strong processes around documentation and data organisation, to ensure credibility of records and facilitate easy retrieval
- Establishment of protocols to ensure a proper chain of custody for digital records
- Development of advanced cyber security infrastructure to combat the risks of cyber attacks and data theft.



Integration of Technology

- Utilize secured and trustworthy platforms for electronic / digital evidence and data storage, to ensure legality and validity of records
- Invest in user-friendly and defensible software for managing digital signatures
- Invest in forensic eDiscovery tools and fraud detection platforms, to facilitate efficient digital discovery and forensic investigations
- Utilize forensic accounting techniques and tools to trace the flow of funds and identify any illicit activities or suspicious transactions.



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