

# Standing Committee Report Summary

## The Bharatiya Nyaya Sanhita, 2023

- The Standing Committee on Home Affairs (Chair: Mr. Brij Lal) submitted its report on the Bharatiya Nyaya Sanhita, 2023 (BNS), on November 10, 2023. The BNS replaces the Indian Penal Code, 1860 (IPC), which is the principal law on criminal offences. The BNS largely retains the provisions of the IPC. The Bill was referred to the Standing Committee on Home Affairs on August 11, 2023. The Committee has recommended changes to certain provisions of the BNS. Eight members of the Committee submitted dissent notes. Key recommendations of the Committee include:
  - **Offences removed by the BNS:** The BNS removes offences related to adultery and same-sex sexual activities (Section 377 of the IPC). The Committee noted that in 2018, the Supreme Court struck down the section on adultery in the IPC. The Court had held that the provision was archaic, arbitrary, and paternalistic as it infringed upon a woman's autonomy, dignity, and privacy. Acknowledging the sanctity of marriage in Indian society, the Committee recommended retaining the section on adultery and applying it to all genders. With respect to Section 377 of the IPC, it noted that omitting it would mean not penalising non-consensual sexual offences against men, transgenders, and bestiality. It recommended including Section 377 into the proposed law.
  - **Mental illness:** Under the IPC, any act performed by a person of unsound mind cannot constitute an offence. The BNS retains this provision, but replaces the term 'unsound mind' with 'mental illness'. The Committee noted that the definition of mental illness is wider compared to unsound mind, as it includes conditions such as mood swings or voluntary intoxication. It recommended reverting to the term 'unsound mind' instead of 'mental illness'.
  - **Organised crime:** The BNS defines organised crime as a continuing unlawful activity carried out by three or more persons acting alone or jointly as members of a crime syndicate or on its behalf. Attempting or committing organised crime will be punishable by death or life imprisonment and a fine of at least Rs 10 lakh, if it causes the death of any person. The Committee opined that there was no distinction between committing an offence and attempting to commit it. It recommended separating the two for clarity and proposed replacing 'group of three or more persons' with 'two or more persons' to widen its scope.
  - **Petty organised crime:** The BNS defines and penalises petty organised crime. These include: (i) forms of theft such as vehicle theft and pick-pocketing, (ii) illegal selling of tickets, and (iii) any other form of organised crimes committed by a gang. These crimes must cause general feelings of insecurity amongst citizens. Experts informed the Committee that the term 'general feelings of insecurity' is vague. The Committee suggested redrafting the provision.
  - **Terrorism:** The BNS adds terrorism as an offence, and defines it as an act that includes threatening the unity, integrity, and security of the country or intimidating the public. Terrorist acts include provoking or intimidating the government in a way that may cause a public servant's death. The Committee suggested defining 'intimidation' to resolve ambiguities in categorising terrorist acts.
  - **Community service:** The Bill introduces community service as a form of punishment. The Committee recommended defining the term and the nature of 'community service'.
  - **Causing death by negligence:** Anyone who causes death by negligence and fails to report the incident may face imprisonment up to 10 years and a fine. The Committee noted that this may violate the fundamental right against self-incrimination. If the provision is to be retained, it recommended limiting it to only motor-vehicle accidents.
  - **Murder by a group:** BNS adds a separate penalty for murder committed by five or more persons on certain grounds. It is punishable with at least seven years imprisonment to life imprisonment, or death. The Committee recommended deleting the imprisonment of seven years after consulting the Attorney General and Solicitor General of India.
  - **Dissent notes:** Observations of the dissenting members include: (i) the Bills are vastly the same as the existing laws, (ii) having Hindi-only names for the Bills may violate the Constitution, and (iii) the proposed Bills lacked sufficient consultation with experts and the public. Recommendations from two members included: (i) deleting the provision on solitary confinement, (ii) decriminalising adultery, and (iii) disallowing the government to commute sentences without a recorded reason.

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