

The Bharatiya Nyaya (Second) Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 (BNS) was introduced in Lok Sabha on August 11, 2023 to replace the Indian Penal Code (IPC). The Bill was examined by the Standing Committee on Home Affairs. Incorporating some recommendations of the Committee, the Bharatiya Nyaya (Second) Sanhita (BNS2) was introduced on December 12, 2023 and the earlier Bill was withdrawn. Some of the issues highlighted in the attached Legislative Brief on the BNS have been addressed in the BNS2. These include:

Mental illness

BNS2: Clause 22 The IPC states that any act performed by a person of unsound mind does not constitute an offence. The BNS retained this provision, except that it replaced the term ‘unsound mind’ with ‘mental illness’. The BNS2 reverts to the term ‘unsound mind’, as recommended by the Standing Committee.

Terrorism

BNS2: Clause 113 The BNS added terrorism as an offence. It defined terrorism as an act that intends to: (i) threaten the unity, integrity, and security of the country, (ii) intimidate the general public, or (iii) disturb public order. The BNS2 removes intention to intimidate the general public and disturb public order from the definition. It replaces it with intention to strike terror amongst the general public. It also adds intention to threaten economic sovereignty as a criterion for defining an act as terrorism. The BNS2 adds causing damage to the monetary stability of India by production or smuggling or circulation of counterfeit Indian currency to the provision. The new provision on terrorism is similar to the one in the Unlawful Activities (Prevention) Act, 1967.

Petty organised crime

BNS2: Clause 112 The BNS added petty organised crime as an offence. It includes: vehicle theft, pick-pocketing, selling of public examination question papers, any other form of organised crimes committed by a gang. To be termed as a petty organised crime, it must: (i) create general feelings of insecurity amongst the public, (ii) be committed by organised criminal groups or gangs (including mobile organised crime groups). The BNS2 revises the provision to classify the commission of offences such as vehicle theft and pick pocketing by a group or a gang as petty organised crime. It incorporates the recommendations of the Standing Committee on Home Affairs (2023) and removes vague phrases such as general feelings of insecurity.

However, the distinction is maintained between a person who is a member of a gang and a person committing an offence on his own. For example, the penalty for theft is upto three years imprisonment, whereas if the same act is committed by a gang or group, the penalty is between one and seven years of imprisonment.

Murder by a group on grounds of identity

BNS2: Clause 103(2) The BNS added murder by a group of five or more people on grounds of certain identity markers as an offence. These include race, caste or community, sex, place of birth, language, personal belief, or any other grounds. This offence was punished with imprisonment of seven years or life imprisonment, or with death, and with a fine. The minimum punishment was lower than that of murder. The BNS2 removes imprisonment of seven years from this offence. Thus, the penalty is same as that of murder. It also replaces ‘or any other grounds’ with ‘or any other similar ground’.

Drafting issues

Several drafting errors have been corrected. These include Clause 23 (acting under intoxication) and Clause 150 (152 in the new Bill; act endangering the sovereignty, integrity and of unity of India). Clause 23 has been corrected to exclude actions performed involuntary intoxication from criminal responsibility, whereas Clause 150 has been corrected to exclude lawful disapproval of government measures from the offence of endangering sovereignty, unity and integrity of India.

Please refer to our new brief [here](#).

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