

Standing Committee Report Summary

The Bharatiya Nagarik Suraksha Sanhita, 2023

- The Standing Committee on Home Affairs (Chair: Mr. Brij Lal) submitted its report on the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), on November 10, 2023. The Bill replaces the Code of Criminal Procedure, 1973 (CrPC), which is the principal law on criminal procedure. The BNSS largely retains the provisions of the CrPC. The Bill was referred to the Standing Committee on Home Affairs on August 11, 2023. The Committee recommended changes to certain provisions of the Bill. Eight members of the Committee submitted dissent notes. Key recommendations of the Committee include:
 - **Power to investigate cognisable cases:** Under the BNSS, any officer in charge of a police station may investigate any cognisable case within its jurisdiction without a Magistrate's order. However, for grave offences, the Superintendent of Police (SP) or Deputy Superintendent of Police may be required to investigate the offence. Recognising that the SP is in charge of the district and has a supervisory role, the Committee recommended that subordinate officers should handle such investigations.
 - **Undertrial prisoners:** Under the CrPC, if an undertrial has spent half of the maximum period of imprisonment for an offence in detention, he must be released on his personal bond. This does not apply to offences which are punishable by death. BNSS adds that this provision will also not apply to: (i) offences punishable by life imprisonment, and (ii) persons who have pending proceedings in more than one offence. The Committee suggested that bail be granted to undertrials who have served the maximum sentence for the most serious offence they were charged with. However, this would not apply if there are consecutive sentences for multiple offences.
 - **Police custody:** Under the CrPC, a Judicial Magistrate may authorise the detention of an accused person for up to 15 days. BNSS adds that the 15-day detention period may be carried out in parts during the initial 40, 60, or 90 days. The Committee noted that this clause could be susceptible to misuse by authorities, as it does not clarify why the custody was not taken in the first 15 days. It recommended clarifying the clause with a suitable amendment.
 - **Investigating officer:** The BNSS states that if an officer who prepared a document or report for an inquiry or trial is unavailable, the Court will ensure that their successor officer testifies on the document. Officers covered by this provision include public servants and Investigating Officers. The Committee noted that Investigating Officers possess crucial knowledge of the case under investigation. Their cross-examination is significantly valuable, especially when documents prepared by them are used as evidence. The Committee recommended removing Investigating Officers from this provision.
 - **Audio-video recording:** The BNSS introduces the formal adoption of audio-visual and electronic means to undertake various processes such as recording evidence. The Committee recommended that such recording be done with safeguards.
 - **Special procedure:** The Bharatiya Nyaya Sanhita (BNS), 2023 (which seeks to replace the Indian Penal Code, 1860) introduces the offences of organised crime and terrorism. While assessing the BNS, the Committee recommended adding a provision in the BNSS that requires the senior police officer to decide whether to register a FIR for a terrorist offence under BNSS or the Unlawful Activities Prevention Act, 1967. Further, concerning organised crime, it recommended including a separate procedure for the offence under the BNSS.
 - **Commuting life sentences:** The CrPC allows the appropriate government to commute a life sentence to a maximum of 14 years. The BNSS amends this to allow the government to commute life sentence to at least seven years. The Committee recommended specifying both a minimum and maximum sentence that can be imposed on life convicts to ensure appropriate punishment for the severity of the crime.
 - **Dissent notes:** Observations of the dissenting members include: (i) the Bills are largely identical to the existing laws, (ii) Hindi-only names for the Bills may violate the Constitution, and (iii) the Bills lacked sufficient consultation with experts and the public. Recommendations from two members include: (i) disallowing police custody in a fragmented manner as it infringes on the accused's liberty, (ii) bringing back the rank of Assistant Sessions Judge, and (iii) mandating physical deposition to ensure that a witness is not under duress.

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