

Legislative Brief

The Bharatiya Nyaya (Second) Sanhita, 2023

The Bharatiya Nyaya Sanhita, 2023 was introduced in Lok Sabha on August 11, 2023. It replaces the Indian Penal Code, 1860. The Bharatiya Nyaya (Second) Sanhita, 2023 was introduced on December 12, 2023 after the earlier Bill was withdrawn. The Standing Committee on Home Affairs has examined the earlier Bill.

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Highlights of the Bill

- ◆ The Bharatiya Nyaya (Second) Sanhita (BNS2) retains most offences from the IPC. It adds community service as a form of punishment.
- ◆ Sedition is no longer an offence. Instead, there is a new offence for acts endangering the sovereignty, unity and integrity of India.
- ◆ The BNS2 adds terrorism as an offence. It is defined as an act that intends to threaten the unity, integrity, security or economic security of the country, or strike terror in the people.
- ◆ Organised crime has been added as an offence. It includes crimes such as kidnapping, extortion and cyber-crime committed on behalf of a crime syndicate. Petty organised crime is also an offence now.
- ◆ Murder by a group of five or more persons on grounds of certain identity markers such as caste, language or personal belief will be an offence with penalty life imprisonment or death, and with a fine.

Key Issues and Analysis

- ◆ Age of criminal responsibility is retained at seven years. It extends to 12 years depending upon the maturity of the accused. This may contravene recommendations of international conventions.
- ◆ The BNS2 defines a child to mean a person below the age of 18. However, for several offences, the age threshold of the victim for offences against children is not 18. The threshold for minority of the victim of for rape and gangrape is different.
- ◆ Several offences overlap with special laws. In many cases, both carry different penalties or provide for different procedures. This may lead to multiple regulatory regimes, additional costs of compliance and possibility of levelling multiple charges.
- ◆ The BNS2 removes sedition as an offence. The provision on endangering the sovereignty, unity and integrity of India may have retained aspects of sedition.
- ◆ The BNS2 retains the provisions of the IPC on rape and sexual harassment. It does not consider recommendations of the Justice Verma Committee (2013) such as making the offence of rape gender neutral and including marital rape as an offence.
- ◆ The BNS2 omits S. 377 of IPC which was read down by the Supreme Court. This removes rape of men and bestiality as offences.

PART A: HIGHLIGHTS OF THE BILL

Context

The Indian Penal Code (IPC), 1860 is the principal law on criminal offences in India. Offences covered include those affecting: (i) human body such as assault and murder, (ii) property such as extortion and theft, (iii) public order such as unlawful assembly and rioting, (iv) public health, safety, decency, morality, and religion, (v) defamation, and (vi) offences against the state. Over the years, the IPC has been amended to add new offences, amend existing ones and change the quantum of punishment.¹ Courts have also de-criminalised certain offences such as consensual intercourse between same-sex adults, adultery and attempt to commit suicide.^{2,3,4} Several states have also amended the IPC to provide different punishments for sexual offences, selling minors for prostitution, adulteration of food and drugs and sacrilege of religious texts.^{5,6,7,8} Several Law Commission reports have recommended amendments to the IPC on subjects including offences against women, food adulteration, death penalty.^{9, 10}

The Bharatiya Nyaya Sanhita (BNS) was introduced on August 11, 2023 to replace the IPC. It was examined by the Standing Committee on Home Affairs.¹¹ The Bharatiya Nyaya (Second) Sanhita, 2023 (BNS2) was introduced on December 12, 2023 after the earlier Bill was withdrawn. It incorporates certain recommendations of the Standing Committee. The BNS2 largely retains the provisions of the IPC, adds some new offences, removes offences that have been struck down by courts, and increases penalties for several offences.

Key Features

Key changes in the BNS2 include:

- **Offences against the body:** The IPC criminalises acts such as murder, abetment of suicide, assault and causing grievous hurt. The BNS2 retains these provisions. It adds new offences such as organised crime, terrorism, and murder or grievous hurt by a group on certain grounds.
- **Sexual offences against women:** The IPC criminalises acts such as rape, voyeurism, stalking and insulting the modesty of a woman. The BNS2 retains these provisions. It increases the threshold for the victim to be classified as a major, in the case of gangrape, from 16 to 18 years of age. It also criminalises sexual intercourse with a woman by deceitful means or making false promises.
- **Sedition:** The BNS2 removes the offence of sedition. It instead penalises the following: (i) exciting or attempting to excite secession, armed rebellion, or subversive activities, (ii) encouraging feelings of separatist activities, or (iii) endangering the sovereignty or unity and integrity of India. These offences may involve exchange of words or signs, electronic communication, or use of financial means.
- **Terrorism:** Terrorism includes an act that intends to: (i) threaten the unity, integrity, security or economic security of the country, or (ii) strike terror in the people or any section of people in India. Punishment for attempting or committing terrorism includes: (i) death or life imprisonment, and a fine, if it results in death of a person, or (ii) imprisonment between five years and life, and a fine.
- **Organised crime:** Organised crime includes offences such as kidnapping, extortion, contract killing, land grabbing, financial scams, and cybercrime carried out on behalf of a crime syndicate. Attempting or committing organised crime will be punishable with: (i) death or life imprisonment and a fine of Rs 10 lakh, if it results in death of a person, or (ii) imprisonment between five years and life, and a fine of at least five lakh rupees.
- **Mob lynching:** The BNS2 adds murder or grievous hurt by five or more people on specified grounds, as an offence. These grounds include race, caste, sex, language, or personal belief. The punishment for such murder is life imprisonment or death.
- **Rulings of the Supreme Court:** The BNS2 conforms to some decisions of the Supreme Court. These include omitting adultery as an offence and adding life imprisonment as one of the penalties (in addition to the death penalty) for murder or attempt to murder by a life convict.

PART B: KEY ISSUES AND ANALYSIS

Age specifications for offences

Minimum age of criminal responsibility higher than several other jurisdictions

Age of criminal responsibility refers to the minimum age at which a child can be prosecuted and punished for an offence. Advances in understanding of how brain biology affects adolescent behaviour has raised questions about how responsible children should be held for their actions.¹² Under IPC, nothing is considered an offence if committed by a child below the age of seven years. The age of criminal responsibility increases to 12 years, if

the child is found to not have attained the ability to understand the nature and consequences of his conduct. The BNS2 retains these provisions. This age is lower than the age of criminal responsibility in other countries. In 2007, a UN Committee recommended states to set the age of criminal responsibility to above 12 years.¹³

The age of criminal responsibility varies across countries. For instance, in Germany, the age of criminal responsibility is 14 years, whereas in England and Wales, it is 10 years.^{14,15} In Scotland, the age of criminal responsibility is 12 years.¹⁶

Age threshold of the victim for similar offences against children varies

Bill: Clause 143(4), 144(1), 295, 96, 98

The BNS2 provides for higher penalties in case of offences against children. In most cases, it provides that a victim below the age of 18 years be treated as a child. The penalty for rape and gang rape of women and children is different. However, the threshold for minority of the victim for different offences of rape and consequently the penalty, varies. For gang rape, the penalty differs based on whether the victim is above or below 18 years of age. However, for rape, the penalty is different based on whether the victim's age is below 12 years, between 12 and 16 years, or above. This is inconsistent with the Protection of Children from Sexual Offences Act, 2012, which classifies all individuals below the age of 18 as minors.

Bill: Clause 65,93, 97,141

Additionally, under BNS2, age threshold of the victim for certain offences against children is not 18 years. For example, kidnapping or abducting a child with the intent to steal from a parent applies only to a child under 10 years. This implies that the punishment for kidnapping an 11-year-old is the same as that of kidnapping an adult. Further, the BNS2 retains from the IPC the age of 21 years for the offence of importing a foreign woman from another country. However, for boys, it adds the age threshold of 18 years. The Standing Committee on Home Affairs (2023) has recommended defining a child as a person below the age of 18.¹¹

Overlap between the BNS2 and special laws

Duplication of offences with other special laws

When the IPC was enacted, it encompassed all criminal offences. Over time, special laws have been enacted to address specific subjects and related offences. Some of these offences have been removed from the BNS2. For example, offences related to weights and measures were incorporated in the Legal Metrology Act, 2009 and have been removed from the BNS2. However, several offences continue to be retained (see Table 1 below for some illustrations). The BNS2 also adds certain new offences such as organised crime and terrorism which are already covered under special laws. Such overlap in laws may cause additional compliance burden and costs. It may also lead to multiple laws providing varying penalties for the same offences. Deleting such offences could remove duplication, possible inconsistencies, and multiple regulatory regimes.

Table 1: Illustrative list of overlap between and IPC, BNS2 and Special Laws

BNS2	Special Law
Adulteration of food or drink for sale	
Imprisonment up to 6 months, fine up to Rs 5,000, or both. Non-Cognizable, bailable. (IPC Sec. 272, 273; BNS2 Clause 274, 275)	The Food Safety and Security Act, 2006: Imprisonment up to life, and a fine up to Rs 10 lakh for manufacture, storage, sale of unsafe food. Sentence proportionate to damage caused. (Sec. 59)
Adulteration of drugs, and sale of adulterated drugs	
Adulteration penalised with imprisonment up to a year, fine up to Rs 5,000, or both. Sale of adulterated drugs penalised with imprisonment up to 6 months, fine up to Rs 5,000 or both. Non-Cognizable, bailable. (IPC Sec. 274, 275; BNS2 Clause 276, 277)	The Drugs and Cosmetics Act, 1940: Consumption of adulterated drugs causing death or grievous hurt penalised with imprisonment between 10 years and life, and fine of at least Rs 10 lakh, or 3 times the value of the seized drugs, whichever is higher. In other cases, penalty is imprisonment of 3-5 years, and fine of at least Rs 1 lakh, or 3 times the value of the seized drugs, whichever is more. (Sec. 27)
Unlawful compulsory labour	
Imprisonment up to one year, fine, or both. Cognizable, Bailable. (IPC Sec. 374; BNS2 Clause 146)	The Bonded Labour System (Abolition) Act, 1976: Imprisonment up to 3 years and fine up to Rs 2,000. (Sec. 16, 17, 18).
Abandoning a child	
Parent or guardian abandoning a child below the age of 12 is punishable with imprisonment up to 7 years, fine, or both. Cognizable, bailable. (IPC Sec. 317; BNS2 Clause 93)	The Juvenile Justice Act, 2015: Abandoning or procuring a child for abandonment is punishable with imprisonment up to 3 years, fine up to Rs 1 lakh, or both. Biological parents abandoning a child due to circumstances beyond their control are exempt. (Sec. 75)
Rash driving	
Punishable with imprisonment up to 6 months, fine up to Rs 1,000 or both. Cognizable, bailable, non-compoundable. (IPC Sec 279; BNS2 Clause 281)	The Motor Vehicles Act, 1988: Punishment for first offence: imprisonment up to 6 months, and/or fine up to Rs 5,000. Subsequent offence within three years: imprisonment up to 2 years and/or a fine up to Rs 10,000. Cognizable, bailable, compoundable. (Sec. 184)

Sources: IPC; BNS2; Various Special Laws; PRS.

Addition of crimes related to organised crime and terrorism

Bill: Clause 111, 113

Currently, organised crime and acts of terrorism are not covered under IPC. Acts of terrorism are covered under the Unlawful Activities (Prevention) Act, 1967 (UAPA). Organised crime is covered by state laws such as the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), and similar laws enacted by Karnataka, Gujarat, Uttar Pradesh, Haryana and Rajasthan.¹⁷ Offences related to both organised crime and terrorism have been added in the BNS2. The provision on terrorism in BNS2 is similar to the one in UAPA. Adding organised crime as an offence in the BNS2 fills a gap as these crimes may occur across all states, including those which have not enacted a special law. However, this also creates duplication of laws in states which already have such special laws.

The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 (BNSS2) and the Bharatiya Sakshya (Second) Bill, 2023 (BSB2) which replace the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872, respectively, do not provide for a separate criminal procedure for these offences. The special laws on organised crime and terrorism have several departures from ordinary criminal procedure. They remove some safeguards for the accused, such as the conditions for bail and the admissibility of police confessions. Cases under UAPA are tried under the National Investigation Agency Act, 2008, which establishes Special Courts to try such cases.¹⁸ Under the BNSS2, cases of terrorism will be tried in Sessions Courts. This would result in varying investigation and trial procedures for similar offences. The Standing Committee on Home Affairs (2023) had recommended providing special criminal procedures for organised crime in the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS).¹¹

Penalty for crime by member of a gang differs from that by an individual

Bill: Clause 112

The BNS2 defines petty organised crime as an offence. It includes: vehicle theft, pick-pocketing, selling of public examination question papers, any other similar criminal act. To qualify as petty organised crime, such offences must be committed by members of a group or gang. This offence is penalised with imprisonment of one to seven years, and a fine. This penalty creates a distinction between an offence committed by 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.

Offences against women

The BNS2 retains the provisions of IPC related to rape. It has not addressed several recommendations made by the Justice Verma Committee (2013) and Supreme Court on reforming offences against women. We mention some of these below.

Table 1: Recommendations related to offences against women

Recommendations	Whether incorporated in BNS2
Rape (IPC s.375) – Rape should not be limited to penetration of the vagina, mouth or anus. Any non-consensual penetration of a sexual nature should be included in the definition of rape. Exception to marital rape should be removed. ⁹	No. Original provision retained in Clause 63.
Words, gesture, or act intended to insult modesty of woman (IPC s.509) - the section should be repealed. The offence of 'eve-teasing' can be charged under s.354 of the IPC (s.73). Remove the terminology 'modesty of women' from the IPC. ⁹	No. Original provision retained in Clause 79.
Assault or use of criminal force on woman with intent to disrobe (IPC s.354B) - penalty should be increased to imprisonment for at least five years up to 10 years. ¹⁹	No. Penalty is imprisonment for at least three years up to seven years (Clause 76).
Adultery (IPC s.497) – the section violates Articles 14 and 21. It creates a distinction between men and women based on gender stereotypes, and is arbitrary. Adultery should not be treated as an offence as it violates the right to privacy. ³	Yes. Adultery has been omitted. However, BNS2 retains s.498 of the IPC (Clause 84) which penalises a man for enticing the wife of another man so that she may have intercourse with any person.

Sources: See endnotes; PRS.

Aspects of sedition retained

Act: Section 124A
Bill: Clause 152

The IPC defines sedition as bringing or attempting to bring hatred, contempt, or exciting disaffection towards the government. The Supreme Court has put the offence of sedition on hold until a Constitution bench examines it.²⁰ The BNS2 removes this offence. Instead, it adds a provision that penalises: (i) exciting or attempting to excite secession, armed rebellion, or subversive activities, (ii) encouraging feelings of separatist activities, or (iii) endangering sovereignty or unity and integrity of India. These offences may involve exchange of words or signs, electronic communication, or use of financial means. It may be argued that the new provision retains certain aspects of the offence of sedition and broadens the range of acts that could be seen as threatening the unity and integrity of India. Terms like 'subversive activities' are also not defined, and it is unclear what activities will meet this qualification.

In 1962, the Supreme Court limited the application of sedition to acts that carry the intention or tendency to create public disorder or incite violence.²¹ Note that the BNS2 refers to ‘seditious matters’ in BNS2 (clauses 150, 195, 297), despite the word sedition not appearing in BNS2.

Solitary confinement may violate fundamental rights

The IPC permits solitary confinement for offences that are penalised with rigorous imprisonment. Such offences include criminal conspiracy, sexual harassment, kidnapping or abducting to murder. The BNS2 retains these provisions. The Prisons Act, 1894, which also permits solitary confinement, has been adopted by many state laws.²² Provisions on solitary confinement are not in line with Court rulings and expert recommendations.

The Supreme Court (1979) has held that measures such as pushing prisoners into solitary cells deprives them of their right to life and liberty under Article 21.²³ In 1971, the Law Commission recommended removing solitary confinement from the IPC. It observed that such confinement is out of tune with modern thinking and should not exist as a punishment for any criminal court to enforce.²⁴ In 1978, the Supreme Court recognised the Law Commission’s recommendation and held that solitary confinement must be enforced only in exceptional cases.²⁵

The scope of community service is unclear

The BNS2 adds community service as a punishment. It extends this punishment to offences such as: (i) theft of property worth less than Rs. 5,000, (ii) attempt to commit suicide with the intent to restrain a public servant, and (iii) appearing in a public place intoxicated and causing annoyance. The BNS2 does not define what community service will entail and how it will be administered. The Standing Committee on Home Affairs (2023) recommended defining the term and nature of ‘community service’.¹¹

Drafting issues

There are several drafting issues in the BNS2. We illustrate a few below:

Table 2: Some examples of missing offences, drafting issues and obsolete illustrations

Missing offences	
IPC sections 375 and 377	Section 375 specifies rape of a woman as an offence. Section 377 specifies “intercourse against the order of nature against any man, woman or animal” an offence; the Supreme Court read this down to exclude consensual sex between adults. This meant that forced intercourse with an adult male is an offence, so is intercourse with an animal. Rape of children, regardless of gender is an offence under the POCSO Act, 2012. The BNS2 does not retain section 377. This implies that rape of an adult man will not be an offence under any law, neither will having intercourse with an animal. The Standing Committee on Home Affairs (2023) has recommended re-introducing this provision.
Obsolete references (may need to be updated with examples from modern life)	
129	Illustrations: (b) Z is <i>riding in a chariot</i> . A lashes Z’s horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z’s consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z. Other illustrations relate to palanquins (illustration c in clause 127) and cannons (illustration d in clause 100).

Sources: BNS, IPC; PRS.

- The Criminal Law ([Amendment](#)) Act, 2018, The Criminal Law ([Amendment](#)) Act, 1983, The Criminal Law ([Amendment](#)) Act, 2013.
- WP (Criminal) No. 76 of 2016, [Navtej Singh Johar & Ors vs. Union of India](#), Supreme Court, September 6, 2018.
- WP (Criminal) No. 194 of 2017, [Joseph Shine vs. Union of India](#), Supreme Court, September 27, 2018.
- 1994 AIR 1844, R. Pathinam vs. Union of India, Supreme Court, April 26 1994.
- The Indian Penal Code ([Tamil Nadu Amendment](#)) Act, 2021.
- The Indian Penal Code ([Andhra Pradesh Amendment](#)) Act, 1991.
- Criminal Laws ([Rajasthan Amendment](#)) Bill, 2018
- Indian Penal Code (Punjab Amendment) Bill, 2018.
- Report of the Committee on Amendments to Criminal Law, 2013 (Verma Committee).
- [Report 264](#), Law Commission of India, 2017; [Report 262](#), Law Commission of India, 2015.
- [Report No. 246](#), The Bharatiya Nyaya Sanhita, Standing Committee on Home Affairs, Rajya Sabha, November 10, 2023
- PostNote 588, [Age of Criminal Responsibility](#), Parliamentary Office of Science and Technology, The United Kingdom, June 2018.
- [Report of the Committee on Rights of the Child](#), United Nations.
- Section 19, [The German Criminal Code](#), 1998.
- “[Age of criminal responsibility](#)”, The Government of the United Kingdom.
- “[If a young person gets in trouble with the police](#)”, The Government of Scotland.
- [Maharashtra Control of Organized Crime Act, 1999](#), [Gujarat Control of Terrorism and Organised Crime Act, 2015](#).
- [National Investigation Agency Act, 2008](#).

19. [Report No. 167](#), The Criminal Law (Amendment) Bill, 2012, Standing Committee on Home Affairs, Rajya Sabha, March 4, 2013.
20. Writ Petition (Civil) No. 682/2021, [SG Vombatkere vs. Union of India](#), Supreme Court, September 12, 2021.
21. 1962 AIR, [Kedar Nath Singh vs. State of Bihar](#), Supreme Court, January 20, 1962.
22. Section 29, [Prisons Act](#), 1894.
23. 1980 AIR 1579, [Sunil Batra\(II\) vs. Delhi Administration](#), Supreme Court, December 20, 1979.
24. [Report No. 42](#), Law Commission of India, 1971.
25. 1978 AIR 1675, [Sunil Batra vs. Delhi Administration and Ors](#), Supreme Court, August 30, 1978.

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