

The Bharatiya Nagarik Suraksha (Second) Sanhita, 2023

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) was introduced in Lok Sabha on August 11, 2023 to replace the Code of Criminal Procedure, 1973 (CrPC). The Bill was examined by the Standing Committee on Home Affairs. Incorporating some recommendations of the Committee, the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 (BNSS2) was introduced on December 12, 2023. The BNSS was withdrawn. Some of the issues highlighted in the attached Legislative Brief on the BNSS have been addressed in the BNSS2. These include the following.

Powers of detention amended

Act: Section
151
BNSS2: Clause
172 (2)

The BNSS allowed police to detain or remove any person who resists, refuses or ignores directions given by an officer to prevent cognisable offences. Post detention, the detained person may either: (i) be produced in front of a Magistrate, or (ii) in the case of petty cases, be released when the occasion is past. The phrase ‘occasion is past’ was not defined. The Standing Committee (2023) recommended establishing a clear timeframe for detention in such circumstances. The BNSS2 specifies that in petty cases, a person should be released as soon as possible within 24 hours.

The power to use handcuffs may infringe on the accused’s personal liberty

Act: Section
46 (2)
BNSS2:
Clause 43 (3)

The BNSS provides for the use of handcuffs during arrest. It provided that handcuffs may only be used to arrest: (i) a habitual or repeat offender who has escaped custody, or (ii) a person who has committed offences such as rape, acid attack, organized crime, economic offences, acts endangering sovereignty, unity and integrity of India. The provision contravenes judgements of the Supreme Court and guidelines of the National Human Rights Commission.

The Standing Committee (2023) recommended excluding economic offences from the offences where handcuffs may be used. The BNSS2 has removed this category. However, the provision continues to contravene Supreme Court directions as explained in the attached Brief.

Successors deposing for transferred or retired officers

BNSS2:
Clause 336

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 deposes on the document. Officers covered by this provision include public servants, medical officers, and Investigating Officers (IOs). Reasons for unavailability include: (i) death, (ii) transfer, (iii) retirement, and (iv) likeliness to cause delay. While allowing successor officers to depose before the Court may help expedite cases, it may contradict the normal rules of evidence.

The Standing Committee on Home Affairs (2023) noted that IOs 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 IOs from this provision.

The BNSS2 removes the category of IOs from this provision. It adds that no public servant, scientific expert or medical officer must be called to appear before the Court unless their report is disputed by any party. It also adds that the deposition of such successor public servant, scientific expert or medical officer can be allowed through audio-video electronic means.

Act: Section
436A
BNSS2:
Clause 479

Scope of mandatory bail limited in case of multiple charge

In the BNSS, the maximum period for which undertrial prisoner can be detained is mentioned under clause 481. In BNSS 2, it is covered under clause 479.

Drafting issues

The drafting issues listed under Table 2 in the attached Brief (page 6) have been resolved in BNSS2.

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

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