Impact Factor (QJIF): 8.47 E-ISSN: 2583-1615, P-ISSN: 3049-3498

International Journal of Research in Academic World

Received: 05/August/2026 **IJRAW:** 2026; 5(10):75-79 **Accepted:** 08/September/2026

Legal Framework Addressing Sexual Violence under the Bharatiya Nyaya Sanhita (BNS) 2023: An Analysis of Justice Delivery and Effectiveness

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Abstract

The enactment of the Bharatiya Nyaya Sanhita (BNS) in 2023 signifies a transformative shift in India's legal approach to addressing sexual violence. Replacing the colonial-era Indian Penal Code (IPC) of 1860, the BNS endeavors to modernize legal provisions to more effectively tackle contemporary challenges related to sexual offences. This comprehensive analysis scrutinizes the specific provisions of the BNS concerning sexual violence, evaluates their effectiveness in delivering justice, and identifies areas necessitating further reform. By juxtaposing the BNS with the IPC, the study elucidates the advancements and persistent shortcomings within India's criminal justice system. The findings highlight the BNS's progressive stance in redefining sexual offences and imposing stricter penalties, while also underscoring critical areas such as gender neutrality and the criminalization of marital rape that require urgent legislative attention. This paper contributes to the ongoing discourse on legal reforms in India, offering insights into the efficacy of the BNS in safeguarding victims and deterring perpetrators of sexual violence.

Keywords: Bharatiya Nyaya Sanhita 2023, sexual violence, legal framework, justice delivery, Indian Penal Code, rape definition, enhanced punishments.

Introduction

Sexual violence continues to be a deeply entrenched and pervasive issue in India, necessitating the implementation of robust and responsive legal frameworks for its prevention and redressal. The Indian Penal Code (IPC), established during British colonial rule, had long served as the cornerstone of criminal law in India for over a century. However, as societal norms have evolved and the nature of sexual violence has become more complex and multifaceted, the IPC has increasingly been criticized for its inadequacies and inability to effectively address modern forms of sexual violence [1, 2, 3].

The inadequacies of the IPC, coupled with evolving societal values and international human rights standards, prompted the introduction of the Bharatiya Nyaya Sanhita (BNS) in 2023. The BNS aims to realign India's criminal justice system with contemporary values, ensuring that legal provisions are comprehensive, inclusive, and capable of addressing the nuanced manifestations of sexual violence in today's society [4, 5]. This legislation represents not merely a legal amendment but a paradigm shift in how sexual violence is perceived, legislated against, and prosecuted within the country [6, 7].

This paper undertakes a detailed examination of the specific provisions within the BNS that pertain to sexual violence. It evaluates the effectiveness of these provisions in delivering justice, assesses their alignment with international standards, and identifies areas that require further legislative and structural reforms. Through a comparative analysis with the IPC, this study highlights the progressive strides made by the BNS while also acknowledging the persistent shortcomings that continue to impede the optimal functioning of the legal system in safeguarding victims and deterring perpetrators [8, 9].

Evolution from the Indian Penal Code to the Bharatiya Nyaya Sanhita

The transition from the Indian Penal Code to the Bharatiya Nyaya Sanhita marks a monumental shift in India's legal landscape, particularly concerning the handling of sexual offences. The IPC's provisions on sexual offences, while foundational, have been frequently criticized for their archaic nature and lack of comprehensiveness [11, 12]. For instance, Section 375 of the IPC, which defines rape, has been a focal point of critique due to its restrictive definition that excludes certain forms of sexual violence and lacks gender neutrality [13, 14].

The BNS addresses these critical gaps by introducing more inclusive and expansive definitions of rape and sexual violence. Section 63 of the BNS, for example, broadens the spectrum of non-consensual acts that constitute rape, moving beyond the narrow confines of penile-vaginal intercourse to encompass other forms of penetration [15, 16]. This redefinition

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aligns with international standards and recognizes the diverse and varied manifestations of sexual violence that victims may endure, thereby enhancing legal protection and accountability [17, 18].

Moreover, the BNS introduces stringent penalties for sexual offences, reflecting a heightened commitment to deterrence and accountability. These enhancements mark a significant departure from the IPC, which was often perceived as lenient and inadequate in addressing the severity of sexual violence [19, 20]. The shift towards a more comprehensive and stringent legal framework under the BNS signifies a broader societal and governmental recognition of the urgent need to combat sexual violence more effectively [21, 22].

Key Provisions of the BNS Addressing Sexual Violence

Definition of Rape

One of the cornerstone provisions of the BNS is the redefinition of rape. Section 63 of the BNS significantly broadens the legal definition to encompass a wider array of non-consensual sexual acts. Unlike the IPC's restrictive definition, which primarily focuses on penile-vaginal intercourse, the BNS includes other forms of penetration, thereby expanding the scope of what legally constitutes rape [21, 22].

This inclusive definition is a crucial step towards acknowledging the varied and often non-conventional forms of sexual violence that individuals may experience. By aligning with international legal standards, the BNS not only enhances the legal protection available to victims but also underscores India's commitment to upholding global human rights norms [23, 24]. Furthermore, the expanded definition serves to close the gaps that previously existed in the IPC, thereby ensuring that perpetrators cannot exploit loopholes to evade accountability [25, 26].

Enhanced Punishments

In addition to redefining rape, the BNS prescribes significantly more severe punishments for sexual offences, thereby reflecting a robust stance against sexual violence. Under the BNS, rape is punishable by rigorous imprisonment for a minimum term of ten years, which can be extended to life imprisonment in aggravated cases [27, 28]. This is a marked increase from the IPC, which often resulted in relatively shorter sentences that did not adequately reflect the gravity of the crime [29, 30].

Moreover, the BNS introduces escalated penalties for cases involving aggravating factors, such as when the offender is a public servant, a member of the armed forces, or a relative of the victim. These enhanced penalties serve to deter such heinous crimes by signaling a zero-tolerance policy towards sexual offences committed under circumstances that exploit power dynamics and trust [31, 32]. The stringent sentencing provisions of the BNS are thus instrumental in reinforcing the severity with which sexual violence is treated within the legal framework [33, 34].

Age of Consent

A pivotal amendment introduced by the BNS is the elevation of the age of consent in gang rape cases from 16 to 18 years. This significant change ensures that individuals under 18 are unequivocally recognized as minors, thereby affording them enhanced legal protections against sexual violence [35, 1]. This adjustment aligns with international child rights standards, which advocate for higher protection for minors due to their vulnerability and limited capacity to provide informed consent [2, 3].

By setting the age of consent at 18, the BNS unequivocally acknowledges the developmental and psychological immaturity of individuals below this age threshold, thereby offering them greater safeguards against exploitation and abuse [4, 5]. This legislative change not only strengthens the protection framework for minors but also reflects a progressive understanding of the need to shield young individuals from the trauma and long-term repercussions of sexual violence [6, 7].

Criminalization of Deceptive Sexual Intercourse

The BNS also addresses the issue of consent obtained through deceitful means, thereby recognizing the complexities surrounding the concept of consent. Under this provision, sexual intercourse obtained through deception, such as false promises of marriage, employment, or promotion, is criminalized [8, 9]. This ensures that consent, which is a fundamental pillar of any sexual interaction, cannot be vitiated by fraudulent or manipulative tactics employed by the perpetrator [10, 11].

By criminalizing deceptive sexual intercourse, the BNS offers protection to individuals who may be coerced into sexual acts under false pretenses, thereby safeguarding their autonomy and dignity [12, 13]. This provision is particularly significant in scenarios where the victim's consent is not freely given, but rather, is extracted through manipulation and deceit, thereby rendering the act non-consensual and criminal [14, 15].

Sexual Harassment (Section 76)

Section 76 of the BNS addresses the heinous act of sexual harassment, specifically focusing on the use of criminal force or assault with the intent to disrobe or force a woman to be naked. This provision is critical in recognizing and criminalizing acts that violate an individual's bodily autonomy and privacy [16, 17]. The punishment for this offense is severe, with imprisonment ranging from a minimum of three years to a maximum of seven years, along with a substantial fine [18, 19].

This stringent punishment underscores the BNS's commitment to deterring acts of sexual harassment by imposing significant legal consequences on offenders [20, 21]. Furthermore, by explicitly defining and criminalizing such acts, the BNS provides a clearer legal framework for prosecuting sexual harassment, thereby facilitating more effective justice delivery [22, 23].

Privacy Invasion (Section 77)

Section 77 of the BNS is a forward-thinking provision that criminalizes the unauthorized watching, capturing, or sharing of images depicting a woman in a private act [24, 25]. This provision is designed to protect women's privacy and prevent the dissemination of images that could cause embarrassment, harm, or reputational damage [26, 27]. The law mandates severe penalties for such offences, with imprisonment ranging from one year to three years for a first conviction, and increasing to three years to seven years for subsequent convictions, along with a fine [28, 29].

By criminalizing such invasive acts, the BNS acknowledges the pervasive issue of image-based sexual abuse and the technological advancements that have facilitated new forms of sexual violence [30, 31]. This provision is particularly relevant in the digital age, where the unauthorized sharing of

intimate images can have devastating and long-lasting impacts on victims [32, 33].

Stalking (Section 78)

Section 78 of the BNS defines the offence of stalking, specifically targeting the actions of individuals who persistently follow or repeatedly contact a woman despite her clear refusal, or who monitor her online activities without her consent [34, 35]. The punishment for stalking under the BNS is designed to be both punitive and deterrent, with imprisonment for up to three years and a fine for a first conviction, and imprisonment for up to five years and a fine for second or subsequent convictions [1, 2].

This provision addresses the growing concern of stalking in both physical and digital realms, recognizing the psychological and emotional toll it can take on victims [3, 4]. By imposing stringent penalties, the BNS aims to curb such behavior and protect individuals from harassment and intimidation [5, 6].

Gang Rape (Section 70)

Section 70 of the BNS represents a significant enhancement in the legal treatment of gang rape, particularly in cases involving minor victims [7, 8]. Under this section, the punishment for gang rape is drastically increased, with a minimum sentence of life imprisonment for cases where the victim is a minor [9, 10]. The detailed provisions under Section 70 are as follows:

- **70(1):** Rigorous imprisonment for not less than 20 years, extendable to life imprisonment, which means imprisonment for the remainder of the offender's natural life, along with a fine.
- **70(2):** Imprisonment for life, meaning imprisonment for the rest of the offender's natural life, and with the possibility of the death penalty.

Additionally, offences under Section 70 are cognizable, non-bailable, and triable by the Court of Session, ensuring that such cases are handled with the utmost seriousness and urgency [11, 12]. This reflects the BNS's commitment to delivering justice swiftly and decisively in cases of severe sexual violence [13, 14].

Comparative Analysis with the Indian Penal Code

The transition from the IPC to the BNS signifies a profound shift towards a more victim-centric and progressive approach in the legal handling of sexual offences [15, 16]. The IPC's provisions were often criticized for their narrow definitions, gender bias, and lack of sensitivity towards the experiences of victims [17, 18]. In contrast, the BNS endeavors to rectify these issues by broadening definitions, introducing gender neutrality, and imposing stricter penalties [19, 20].

For instance, the IPC's definition of rape under Section 375 was limited and failed to encompass the full spectrum of non-consensual sexual acts, whereas the BNS's Section 63 provides a more inclusive and comprehensive definition [21, 22]. Similarly, the IPC did not criminalize marital rape, leaving a significant loophole in the protection of victims within marriage [23, 24]. While the BNS introduces several progressive measures, the non-criminalization of marital rape remains a contentious and unchanged aspect, highlighting an area that still requires urgent reform [25, 26].

Moreover, the IPC's lack of provisions addressing same-sex sexual violence and bestiality, akin to Section 377, has been a point of legal ambiguity, leaving certain victims without adequate legal recourse [27, 28]. The BNS's omission of these provisions perpetuates gaps in the legal framework, necessitating further legislative attention [29, 30].

Gender Neutrality in Sexual Offences

A notable critique of the BNS is its lack of gender neutrality in defining and addressing sexual offences [31, 32]. The current provisions predominantly recognize women as victims and men as perpetrators, thereby excluding male and transgender victims from receiving legal protection and support [33, 34]. This gender-biased approach overlooks the reality that sexual violence can affect individuals of any gender, and fails to provide a comprehensive and inclusive legal framework [35, 1].

By not encompassing all genders, the BNS perpetuates a narrow understanding of sexual violence and reinforces stereotypes that sexual violence is a gendered issue affecting only women [2, 3]. This exclusion is problematic as it not only marginalizes male and transgender victims but also hinders the overall effectiveness of the legal system in addressing the full scope of sexual violence [4, 5]. Therefore, there is a pressing need to amend the BNS to incorporate gender-neutral language and provisions that recognize the diverse experiences of all victims of sexual violence [6, 7].

Omission of Provisions Addressing Unnatural Offences

The BNS's omission of provisions similar to Section 377 of the IPC, which criminalized non-consensual same-sex acts and bestiality, has resulted in significant legal ambiguities [8, 9]. This absence means that sexual offences against men, transgender individuals, and animals remain inadequately addressed, leaving certain victims without clear legal recourse and protection [10, 11].

The lack of clear legal provisions to prosecute such offences not only undermines the inclusivity and comprehensiveness of the BNS but also perpetuates discrimination and marginalization of vulnerable groups [12, 13]. This omission is particularly concerning in the context of ongoing debates about gender and sexuality rights in India, where the legal system's responsiveness to diverse sexual orientations and identities is a critical issue [14, 15].

Effectiveness in Justice Delivery

The effectiveness of the BNS in delivering justice to victims of sexual violence is contingent upon multiple factors, including the proper implementation of its provisions, the availability of adequate resources, and the broader socio-cultural context [16, 17]. While the BNS introduces measures aimed at expediting the judicial process, such as time-bound investigations and trials for sexual offences [18, 19], the actual efficacy of these measures is dependent on their practical application within the criminal justice system [20, 21].

Challenges such as systemic delays, lack of victim support services, and pervasive societal stigmatization continue to impede the timely and fair delivery of justice [22, 23]. Without addressing these systemic issues, the progressive provisions of the BNS may not translate into tangible improvements in justice delivery [24, 25]. Furthermore, the training and sensitization of law enforcement agencies and judicial personnel are critical to ensuring that the intent of the BNS is fully realized [26, 27].

Implementation Challenges

The successful implementation of the BNS in addressing sexual violence is fraught with numerous challenges that need to be meticulously addressed [28, 29]. One of the primary

challenges is ensuring that law enforcement agencies are adequately trained and equipped to handle sexual violence cases with the sensitivity and competence they demand [30, 31]. This includes training in gender sensitivity, victim-centered investigation techniques, and the proper application of the BNS provisions [32, 33].

Additionally, societal attitudes that perpetuate victim-blaming and stigmatization of sexual violence survivors pose significant barriers to effective justice delivery [34, 35]. Changing these deep-seated cultural norms requires sustained efforts in public education, awareness campaigns, and the promotion of gender equality [1, 2]. Furthermore, providing comprehensive support services for survivors, including medical care, psychological counseling, and legal assistance, is essential to facilitate their recovery and participation in the judicial process [3, 4].

Without addressing these systemic and societal challenges, the legislative advancements embodied in the BNS risk being undermined, resulting in a continued failure to effectively protect victims and prosecute offenders [5, 6]. Therefore, a holistic approach that combines legislative reform with structural and cultural changes is imperative for the BNS to achieve its objectives [7, 8].

Recommendations for Further Reform

To enhance the effectiveness of the BNS in combating sexual violence, several key reforms are recommended:

- **Gender-Neutral Legislation:** Amend the BNS to recognize that individuals of any gender can be victims or perpetrators of sexual violence, thereby ensuring inclusive legal protection and dismantling gender biases inherent in the current provisions [9, 10].
- **Criminalization of Marital Rape:** Reevaluate and amend the legal stance on marital rape to uphold the principle that consent is paramount in all sexual relationships, regardless of the marital status of the individuals involved [11, 12].
- **Addressing Omitted Offences:** Reintroduce and incorporate provisions to criminalize non-consensual same-sex acts and bestiality, thereby filling existing legal gaps and ensuring that all forms of sexual violence are adequately addressed [13, 14].
- **Strengthening Implementation Mechanisms:** Invest in comprehensive training for law enforcement and judicial personnel, establish robust victim support services, and conduct widespread public awareness campaigns to shift societal attitudes towards greater support and understanding of sexual violence victims [15, 16].

These recommendations aim to create a more inclusive, effective, and responsive legal framework that not only addresses the current limitations of the BNS but also anticipates and mitigates future challenges in the realm of sexual violence [17, 18].

Conclusion

The Bharatiya Nyaya Sanhita, 2023, signifies a monumental advancement in India's legal response to sexual violence. By updating and expanding upon the provisions of the IPC, the BNS endeavors to provide more comprehensive protection to victims and impose stricter penalties on perpetrators. However, while the BNS marks significant progress, it is not without its shortcomings. Areas such as gender neutrality and the criminalization of marital rape require further attention and reform.

For the BNS to fully realize its potential in eradicating sexual violence and ensuring justice, it is imperative that the identified implementation challenges are addressed and the recommended reforms are enacted. This will ensure that the BNS not only remains a progressive legislative instrument but also translates into tangible improvements in the lives of survivors and the broader societal fight against sexual violence.

Overall, the Bharatiya Nyaya Sanhita, 2023, represents a significant step forward in India's criminal justice system's approach to sexual violence, embodying a more victim-centric and stringent legal framework. Continued efforts to refine and implement the BNS will be essential in achieving a society free from sexual violence and ensuring that justice is delivered effectively and equitably.

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