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LEGAL FRAMEWORKS AND CHALLENGES ON SEXUAL OFFENCES AGAINST WOMEN AND CHILDREN UNDER BHARTIYA NYAYA SANHITA

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Abstract

For the first time in comparison to Indian Penal Code is another name of Bhartiya Nyaya Sanhita introducing a new **Chapter V (Offences Against Women And Child Under BNS)** by harsh punishments for the criminals. This research paper aims to explore the principles under the Bhartiya Nyaya Sanhita dealing with new sections on sexual offences against women and children, and exploring their effectiveness in ensuring justice for the victims. Beyond the Protection of Women Voyerism , Stalking , False promises of marriage to women Sexual offences against women and children are a very serious concern in our society. harassment rape cases are increases day by day in our country. This reasearch paper explore that BNS plays a vital role in addressing and new laws on sexual offences Bharatiya Nyaya Sanhita, which keep strong focus against women's violations. How to protect women and children from sexual offences and sexual exploitation.

Keywords: *BNS, Indian Criminal Justice System, IPC, Sexual Offences*

Introduction

The Bhartiya Nyaya Sanhita (BNS)¹ was enacted on December 25, 2023 replacing the Indian Penal Code (IPC) of 1860 to streamline the provisions relating to offences and penalties, which is principal law on criminal offences. The BNS has introduced the significant changes to the criminal justice system It provide first time community service as one of the punishments for petty offences. The offences which are against the women and children, murder or offences against the State have been precedence. The fines and punishments for various offences have

¹ Bhartiya Nyaya Sanhita ,2023 (45 of 2023)

Child offence Act Of BNS 2023, Chapter V of Offences Against Women And Children Under BNS 2023

also been suitably enhanced. The Government also considered to make existing laws relevant to contemporary situation and provide speedy justice to common man. And new offences also have been made like gender neutral. Now BNS introduced new chapter V for protection of women and child from sexual and sexual exploitation offences. The BNS consists of 20 Chapters with the focus on sexual offences against women and children. Sexual offences²³ against women and children are a very serious concern in our society. harassment rape cases are increases day by day in our country. This reasearch paper explore that BNS plays a vital role in addressing and adding new laws on sexual offences Bharatiya Nyaya Sanhita, which keep strong focus against women's violations. How to protect women and children from sexual offences and sexual exploitation. Under a BNS there is new sections added. Now the law has streamlised the criminal justice system by consolidating an offences and reducing the numbers of the sections from 511 to 358.

Offences Against Women

First of all as we know, that violence against women is perhaps the most shameful human violation. Offences against women is very deeply rooted. Women and girls in our country are born into social and cultural system where women facing inequality and discrimination, Girls and Women receiving an unfair share's of opportunities' and attention from society_There are the many reasons Why offences against women are a huge problem in India .The main reason are:

- Restriction by families getting higher studies which come from ancient mindset.
- Unequal child rearing and child practices in our society.
- Education system based on gender biased which lack of education opportunities for girls.
- There is a lack of system to collect crime surveillance data.
- Male dominated power in their families and relationships.
- Partialy in genders in sectors of workplace.
- Family pressure in raising voice against rape cases and sexual harrassment⁴.
- Violence⁵ and sexiast supportive contexts cultures.
- Poverty and middle class families girls mostly suffers in working place.

⁴ It is an illegal act which is against person.

⁵ Violence is the use of physical force to cause harm to people.

- Early marriages of a girl with or without her consent is constituting in a form of offence.
- Genital Mutilation problem in females which lead her life to death with increased physical suffering.
- Women's and girls killing in the honor of families due the various reason such as premarital relationship with or without sexual relation. Like the most highlighted case of **Delhi recent case Murder of Shraddha Walkar Aaftaab Poonawala Case.**
- The custom of Dowry system is still agreed in Indian marriages like recent case **Vismaya Case In Kerala** Women exploitation in favor of unwanted physical relation Request for sexual favor, verbal harassment Intimidating or Threats . Even **Women are not safe at their workplace.** recent case **Kolkata rape case in RG KAR Hospital**

Offences Against women relating to marriages

Dowry⁶ Death⁷ is a very serious concern in our society. India mostly alarming in timelines event as trend of dowry death according to which 20 women die everyday as a result of Dowry Death which leads their life to death, related to harassment either murdered or compelled to suicide.

Dowry Death are those offences in which the husband and his family (in laws) kill or commit suicide as a result of brides unhappiness with dowry demand's shortly after marriage Mostly in majority of the dowry killing cases young women / girl results killing herself because she can no longer stand the abuse torcher harassment and sexually abuse for greediness of dowry.

Rights organization have noted that cultures or customs of granting dowries attempts to create the gender inequalities and fuels the persistently high rates of dowry violence against women's in India. Now Bhartiya Nyaya Sanhita plays an important role by rigorous punishments to the offenders who leads women life to death.

Section 80 says that where the death of women is caused by burns or bodily injury or occurs otherwise than normal circumstances within seven years of her marriage it is soon before her death , she was subjected to cruelty or harassment by her husband or any relative of her husband

⁶ Dowry means property or money paid by the brides family to groom or his family at the time of marriage

⁷ Dowry Prohibition Act 1961

for or in connection with any demand for dowry such death shall be call “dowry death”⁸ and such husband or relative shall be deemed to cause her death.

Punishment for Dowry Death under BNS: Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Relevant Dowry Death Cases: Kans Raj vs State of Punjab & Ors on 26 April 2000, Pawan Kumar & Ors vs State of Haryana on 9 February 1998, Kamesh Panjiyar @ Kamesh Panjiyar vs State of Bihar on 1 February 2005

Offences Against Child

Offences against children is concerned very seriously all over globally. Because children are flowers who don't have knowledge of cleverness cruelty, Since child ages have been victimized abuse, harassed by others. As we look in to our society mostly children's are pressurized by crime offenders for their misuse in case of exploitation pressurized for begging, theft, robbery and sale of drugs. As though out child ages recent also have been bought exploited and killed. Procuration⁹ of child is very serious crime in nature Children's are so pure and innocent in nature as they are misused by others. Especially at that time when offence¹⁰ evolve it will be shameful at the time which society hate it's Government implemented various policies laws and order to protect the children from sexual exploitation, Sexual harrasment under age of 18 , sexually abuse, mentally abuse .In India mostly children who are suffer from lower society they are misused by other for the sake of their benefit by involving them in criminal activities , by making them criminal mind set in society .And also rapes cases against children in India have increases day by day , through which mostly minor child's are suffers .As we observe that increasing rate of crimes against children's assumes that “Children's are not safe in India “Through Bhartiya Nyaya Sanhita¹¹ strictly focuses on child offences by providing rigorous punishments to the offenders in new criminal laws.

Through in its legal framework new laws and punishment terms are introduced for providing

⁸ Dowry Death presumption as to, (sec.118, BSA) ,p.550

⁹ Procuration means The authority to act on one's behalf

¹⁰ Offence means A criminal or an illegal activity prohibited by law

¹¹ Bhartiya Nyaya Sanhita is legal framework, direction of law to save person from punishment or property from forfeiture .

protection to children.

Offencesⁱ Against Children Under The Bhartiya Nyaya Sanhita 2023¹²

BNS aims to discourage and penalize individuals who involves children in criminal activities, emphasizing a strict and deterrent punishments to protect well being of minors and prevent their exploitation for unlawful purposes. As Section 117(3) of Bhartiya Nyaya Sanhita introduces a stringiest provision.

- **Child Exploitation** - Over 80% of child abuse and exploitation perpetrators are between the ages of 18 and 14. .Whenever hiring a child or employing a child to commit an offence including sexual pornography falls under punishment of Section 98 of BNS which deals with Child Exploitation .
- **Abandoned and Concealment** – In India heartless parents are mostly doing such crime against newborn and unborn child , causing of miscarriage , injuries to unborn child , abandoned and exposure of infants mostly who are from middle class secretly disposal of infant bodies such a serious offence falls under Section 93 and Section 94 of Bhartiya Nayay Sanhita.
- **Procuration** – It is also a major problem in India that ,selling and buying of girls , procuration of minor reported 100 cases a day in India .To prevent such crimes BNS introduce new law falls under Section 96 which deals with procuration of child illicit purpose Mostly child belong to lower class are suffering because of poverty in India
- **Kidnaping-** the alarming rise in India mostly in cases of kidnapping with human trafficking cast a dark shadow over nation’s future were reported every single hour during a year according to National Crime Bureau Record which is unlawful including in Section 137 of BNS which addressing kidnapping in 2 kidnapping¹³¹⁴ from unlawful guardianship and kidnap a person beyond Indian border without a consent .

Research Problems: As we all know that research on rape is immeasurable Issue Because it has a very wide concept , As we look into past cases also The most highlighted cases in India are Nirbhaya Case , Shakti Mill gang rape case, Kolkata Rape Case ,Research Problem: Sexual

¹² Hiring, employing or engaging to commit an offence (sec.95, BNS), p.393
Kidnapping or abduction of, (sec.97, BNS),p.393 procuration of ,(sec.96,BNS),.393
Selling for purposes of prostitution etc.,(sec.98, BNS),p.393

Offences Against Women and Children under the Bhartiya Nyaya Sanhitaⁱⁱ Sexual offences against women and children have been a pressing issue in India for man-years. The Bhartiya Nyaya Sanhita, also known as the Indian Penal Code, is the primary legislation that governs criminal law in the country. However, despite the existence of laws aimed at protecting women and children from sexual violence, the prevalence of such offences remains alarmingly high. According to a report by the National Crime Records Bureau,¹⁵ there were over 32,000 cases of rape reported in India in 2019, with a significant number of victims being women and children. This highlights the urgent need for research to understand the factors contributing to the high incidence of sexual offences and to identify effective strategies for prevention and prosecution¹⁶. Now As I observed in our society women's are facing these challenges relating to sexual offences which are really today expand as a big impact on women's medical health issue due to which the innocent victims are suffered which cause intention in our society that to stop women from doing anything whatever they want to do It's a biggest challenges that women's are facing . As according to my research I observed that in society women's and minors are afraid forward for justice, because of the national rape rate is high. As relevancy of my thoughts BNS really take a changes in criminal justice which sures women's for their justice.

Challenges: The Bharatiya Nyaya Sanhita (BNS) has arrived and is applicable as of 1 July 2024, bringing significant changes to India's criminal justice system. Under the new provisions, if someone engages in intercourse or lures another person for sexual favors under the pretense of employment, this act is now criminalized and equated with rape. While this aims to provide stronger protection, it also raises concerns since such offenses have traditionally been treated as civil issues rather than criminal ones. Now BNS role in challenges for safety of women and child. The only good thing is that age of marriage and age of consent have been made uniform, as the Court had decreed **Independent Thought v UOI**. Now we have removed the window of 15-18 years and amended the statutory provision to make rape of a girl below 18 years of age a crime, irrespective of her marital status and relationship with the accused¹⁷. Crimes against the women and children deeply impact on society by instilling fear, disrupting family structures, and causing severe psychological and physical trauma. These crimes undermine social stability, hinder economic progress, and strain healthcare and legal

¹⁵ National Crime Bureau Record is an investigating agency that collects data and analyzing crime data . The NCRB was established in 1986 and its headquarter situated in Delhi.

¹⁶ Prosecution is an act of prosecuting something especially in criminal cases.

¹⁷ to say that somebody has done something wrong or broken the law

systems. Addressing them necessitates focused protection, support services, and legal measures to ensure safety and justice. Amidst India's evolving legal landscape, the Bhartiya Nyaya Sanhita (BNS) emerges as a beacon of hope, promising enhanced protection and justice for women and children through comprehensive and modern reforms. The new criminal law reforms in India are designed to update and decolonize the legal system inherited from British rule. The reforms under the new criminal law represent a comprehensive and modern approach to enhancing the safety and protection of women and children in India. By addressing gaps in the IPC, introducing stringent punishments, and incorporating technological advancements, the BNS aims to create a more effective and responsive legal framework. These changes reflect a commitment to justice and a recognition of the unique vulnerabilities faced by women and children, offering them greater protection and support within the criminal justice system.

Conclusion:

The key changes in Bhartiya Nyaya Sanhita 2023 highlight a shift towards modernization and responsiveness to the needs. The Bhartiya Nyaya Sanhita has robust provision to protect the women and children from sexual offences by strict the punishments for rape, gang rape and acid attacks, prohibition of dowry and acid attacks and domestic violence etc. The BNS take provisions to protecting women from sexual harassment and stalking and safeguards child under (POCSO Act¹⁸) provide restriction on child labor and child marriage .BNS is taking steps forward for women's rights by providing Triple Talaq Act 2019 and by amending the POCSO Amendment Act .BNS plays a vital role in safeguarding women's and child's right by ensuring their protection and empowerment .BNS played their collaborative efforts between government NGO¹⁹ 's and civil society .By implementing these measures , India can create a safer and peaceful more just society for women and children .Protecting women's and child in India is remains a top priority that BNS providing us a powerful framework for ensuring justice and empowerment for women .BNS taking necessary steps for fast justice providing to women and children for their safety and securing their life .Rape is a severe crime that damages to the individuals and erodes societal values and safety. While India's legal framework strives to support and protect victims, significant challenges persist. To foster a safer society, it is crucial to enforce laws rigorously, educate the public, and transform societal attitudes towards sexual violence. Ensuring justice for survivors and holding perpetrators accountable is vital for

¹⁸ POCSO in act providing for the protection of children

¹⁹ NGO is nonprofit voluntary group of individuals established to fix the issue of social structure, kids, the poor, the environment etc.

creating a more just and secure environment for all women.

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ⁱ of·fense [ə'fens]

Noun a breach of a law or rule; an illegal act: *neither offense violates any federal law*

ⁱⁱ The **Bharatiya Nyaya Sanhita (BNS)** (**IAST**: *Bhāratīya Nyāya Saṃhitā*; lit. 'Indian Justice Code') is the official criminal code in India. It came into effect on 1 July, 2024 after being passed by the parliament in December 2023 to replace the Indian Penal Code (IPC), which dated back to the period of British India.