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OFFENCES AGAINST WOMEN UNDER THE BHARATIYA NYAYA SANHITA, 2023: A LEGAL ANALYSIS

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Abstract

Crimes against women continue to pose one of the most enduring and complex socio-legal challenges in present-day India. These offences are not isolated incidents but are embedded within a broader social structure shaped by long-standing patriarchal attitudes and power imbalances. The recurring nature of crimes such as rape, sexual assault, domestic violence, dowry-related deaths, acid attacks, stalking, and online harassment highlights not only their prevalence but also the systemic conditions that enable their persistence. A significant part of this problem lies in the culture of silence and under-reporting, where victims—particularly in rural and semi-urban regions often refrain from seeking legal recourse due to fear of social stigma, retaliation, or insensitive treatment by authorities.

Although India has witnessed considerable legislative reform in recent years, including stricter penal provisions and procedural safeguards, these measures have not fully translated into meaningful protection or justice for women. The gap between the existence of laws and their effective implementation is evident. This gap is not merely a matter of inadequate legal drafting; rather, it reflects deeper institutional shortcomings. Deficiencies in police investigation, lack of proper forensic support, delays in evidence collection, and inconsistencies in judicial interpretation often weaken the criminal justice process. Additionally, the absence of a gender-sensitive approach within enforcement and adjudicatory mechanisms further compounds the difficulties faced by survivors.

This Paper defines the constitutional framework as in current functioning legal structure of statutes formed for protection of women from various types of crimes with relevant case laws as established by various High Courts of Judicature as well as Supreme Court of India.

CHAPTER 1

Introduction

India's criminal justice framework has entered a new and consequential phase with the enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaces the colonial-era Indian Penal Code of 1860. This legislative shift is not merely a symbolic departure from the past but represents a conscious attempt to recalibrate criminal law in accordance with present-day societal needs, constitutional morality, and the expectations of a rapidly evolving democracy. The Indian Penal Code, though historically significant, had often been criticized for its outdated structure, colonial underpinnings, and limited responsiveness to contemporary forms of crime and victimization. In contrast, the BNS seeks to introduce a more accessible, streamlined, and contextually relevant legal framework. One of the most notable aspects of this reform is its pronounced emphasis on the protection of vulnerable groups, particularly women and children, whose rights and safety have increasingly become central to public discourse and policy formulation. Within this framework, Chapter V of the BNS assumes special importance, as it consolidates provisions dealing with offences against women and children, signaling a legislative intent to prioritize gender justice and ensure a more victim-centric approach to criminal law.

The BNS introduces a wide range of structural, procedural, and substantive changes designed to strengthen the legal response to crimes against women while making the justice delivery process more effective and sensitive. Among these changes is the inclusion of gender-neutral language in certain offences maintaining a clear focus on protecting women as a historically disadvantaged group. Additionally, the law prescribes enhanced punishments for grave offences, aiming to create a stronger deterrent effect and convey the seriousness with which such crimes are treated. Procedurally, there is a greater emphasis on improving evidentiary mechanisms, including safeguards that seek to minimize the trauma faced by victims during investigation and trial. These reforms are intended to address longstanding issues such as underreporting, delays in justice, and low conviction rates. At the same time, the BNS retains its core commitment to safeguarding the dignity, bodily integrity, and autonomy of women, ensuring that these fundamental values continue to guide the interpretation and application of criminal law in India.

CHAPTER 2

Nature and Classification of Offences Against Women under the Bharatiya Nyaya Sanhita, 2023

The **Bharatiya Nyaya Sanhita, 2023** (BNS) adopts a structured and comprehensive approach in classifying offences against women under a dedicated chapter, thereby recognizing gender-based crimes as a distinct category requiring focused legal treatment. This classification reflects both continuity with the earlier Indian Penal Code, 1860 and progressive adaptation to emerging forms of criminality.

1. Sexual Offences

Sexual offences constitute the core category under the BNS, encompassing acts that violate bodily integrity and sexual autonomy. Section 63 defines rape, retaining the essential elements of absence of consent, coercion, misrepresentation, or abuse of authority. The law also recognizes aggravated forms of rape, including custodial rape and gang rape (Section 70), prescribing stringent punishments.

The emphasis on “consent” aligns with evolving jurisprudence that recognizes consent as an active and voluntary agreement rather than mere absence of resistance. This reflects a shift towards a rights-based approach rooted in bodily autonomy.

2. Offences Affecting Modesty and Dignity

The BNS retains and elaborates upon offences such as:

- Assault with intent to outrage modesty (Section 74)
- Sexual harassment (Section 75)
- Disrobing (Section 76)
- Voyeurism (Section 77)
- Stalking (Section 78)
- Insulting modesty (Section 79)

These provisions address both physical and non-physical forms of harassment, including digital and technological intrusions. The inclusion of voyeurism and stalking demonstrates legislative recognition of cyber-enabled crimes against women.

3. Matrimonial and Domestic Offences

The BNS continues to criminalize cruelty by a husband or his relatives, dowry-related violence,

and dowry death. These offences reflect the socio-cultural realities of domestic violence in India and are supported by statutory presumptions that shift evidentiary burdens in appropriate cases.

- Dowry Death (Section 80)
- Marrying Again During Lifetime of Husband or Wife (Bigamy) (Section 81)
- Marriage Concealing Former Marriage (Section 82)
- Fraudulent Marriage (Section 83)
- Cruelty by Husband or Relatives (Section 85)
- Abetment of Suicide (Section 108)

4. Reproductive and Bodily Harm Offences

Sections dealing with causing miscarriage, injuries to unborn children, and related acts protect reproductive rights and maternal health. These provisions must be read in harmony with medical termination laws and women's reproductive autonomy.

- Causing Miscarriage (Section 88)
- Causing Miscarriage Without Consent (Section 89)
- Causing Death of Unborn Child (Section 90)
- Act Causing Death of Quick Unborn Child (Section 91)
- Exposure and Abandonment of Child (Section 92)

CHAPTER 3

Key Substantive Offences: Sexual Crimes, Cruelty, and Protection Mechanisms

The substantive provisions of the BNS dealing with offences against women are designed to ensure both deterrence and victim protection. These provisions combine penal sanctions with procedural safeguards.

1. Rape and Sexual Assault

Section 63 of the BNS defines rape in a detailed and inclusive manner. It criminalizes acts performed:

- Without consent
- Under fear, coercion, or deception
- Where consent is obtained through abuse of authority

The provision also clarifies that consent must be unequivocal and voluntary. The punishment provisions under Sections 64 - 66 prescribe severe penalties, including life imprisonment. The recognition of aggravated forms, such as gang rape (Section 70), reflects legislative intent to impose stricter accountability for collective crimes.

2. Sexual Harassment

Section 75 criminalizes unwelcome sexual behaviour, including:

- Physical advances
- Requests for sexual favours
- Sexually coloured remarks

This provision builds upon the jurisprudence developed in **Vishaka v. State of Rajasthan**, which first recognized workplace sexual harassment as a violation of fundamental rights.

3. Outraging Modesty and Related Offences

Section 74 penalizes acts intended to outrage the modesty of a woman. Courts have interpreted “modesty” as an attribute associated with female dignity and decency.

Sections 77 and 78 address voyeurism and stalking respectively, marking a significant advancement in addressing modern forms of harassment, particularly in digital spaces.

4. Cruelty and Dowry Death

The BNS retains provisions analogous to Section 498A IPC, criminalizing cruelty by a husband or his relatives. Dowry death provisions impose strict liability where death occurs under suspicious circumstances within a specified period of marriage.

These provisions are reinforced by presumptions under evidentiary law, ensuring that victims are not burdened with proving systemic abuse.

5. Procedural Safeguards and Victim Protection

Under the Bharatiya Nagarik Suraksha Sanhita, 2023 & Bharatiya Sakshya Adhiniyam, 2023, read with Bharatiya Nyaya Sanhita, 2023-

Registration and Recording Stage

- Recording of FIR by Woman Officer, under Section 173 BNSS
- Recording of Statement of Victim by Magistrate (audio-video, woman magistrate preferred), under Section 183 BNSS

- Recording Statement of Disabled Victim at Residence/Chosen Place, under Section 173 Proviso BNSS

Medical and Forensic Safeguards

- Medical Examination of Rape Victim (within 24 hours, with consent), under Section 184 BNSS
- Use of Forensic Evidence in Serious Offences - Relevant BNSS provisions (investigation procedures)

Privacy and Dignity Protection

- Non-Disclosure of Identity of Victim: Section 72 BNS
- In-Camera Trial for Sexual Offences: Section 366 BNSS

Evidence Law Protections

- Irrelevance of Past Sexual History of Victim: Section 48 BSA
- Victim Testimony Sufficient for Conviction: General evidentiary principle under BSA

Trial and Investigation Safeguards

- Time-bound Investigation and Trial: Section 346(1) BNSS and related provisions

Victim Assistance and Compensation

- Victim Compensation Scheme: Section 396 BNSS
- Right to Free Legal Aid: Article 39A of Constitution of India (read with Legal Services Authorities framework)

Technology-Based Safeguards

- Audio-Video Recording of Statements and Evidence: Sections 180 & 183 BNSS

CHAPTER 4

Judicial Interpretation and Case Law Analysis

Judicial interpretation has played a transformative role in shaping the scope, meaning, and enforcement of statutory provisions relating to offences against women in India. While legislation such as the Bharatiya Nyaya Sanhita, 2023 (BNS) provides the formal framework, it is the judiciary that has infused these provisions with substantive content, ensuring that they are applied in a manner consistent with constitutional guarantees of equality, dignity, and personal liberty. Over time, courts—particularly the Supreme Court—have adopted a purposive and progressive approach, expanding the ambit of protection available to women and addressing gaps left by legislative text.

A foundational decision in this regard is *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241,

where the Supreme Court for the first time explicitly recognized sexual harassment at the workplace as a violation of fundamental rights under Articles 14, 15, and 21 of the Constitution. In the absence of specific legislation, the Court laid down the Vishaka Guidelines, drawing from international conventions such as CEDAW. These guidelines not only filled a legislative vacuum but also established the principle that gender equality includes protection from sexual harassment, a principle that continues to inform the interpretation of similar provisions under the BNS.

Another landmark judgment is *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1, arising out of the infamous 2012 Delhi gang rape case. The Supreme Court upheld the death penalty for the convicts, emphasizing the brutality of the offence and the need for a strong deterrent. The judgment underscored the seriousness of crimes against women and reinforced the idea that such offences strike at the core of human dignity. It also influenced subsequent legislative reforms, including stricter punishments and broader definitions of sexual offences.

Judicial pronouncements have also significantly clarified the concept of consent in sexual offence jurisprudence. In *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384, the Court stressed the need for sensitivity in rape trials and recognized the trauma faced by victims. Later, in *Kaini Rajan v. State of Kerala*, (2013) 9 SCC 113, the Court held that consent must be an active, reasoned, and voluntary agreement, not mere submission. Further, *Anurag Soni v. State of Chhattisgarh*, (2019) 13 SCC 1, clarified that consent obtained under a misconception of fact, such as a false promise of marriage vitiates valid consent. Courts have consistently held that silence or lack of physical resistance does not imply consent, and that a woman's past sexual history is irrelevant, as affirmed in *State of Uttar Pradesh v. Pappu*, (2005) 3 SCC 594.

In the domain of evidence, judicial developments have strengthened the position of victims. In *State of Maharashtra v. Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550, the Supreme Court held that the sole testimony of a prosecutrix, if credible and trustworthy, is sufficient to sustain a conviction without corroboration. This principle has been reiterated in several later cases. Courts have also increasingly recognized the importance of medical, forensic, and digital evidence in establishing guilt, while cautioning against undue reliance on outdated notions such as the "two-finger test," which was declared unconstitutional in *Lillu v. State of Haryana*, (2013) 14 SCC 643.

Contemporary judicial trends reflect a marked shift towards a more victim-centric and rights-based approach. In *Independent Thought v. Union of India*, (2017) 10 SCC 800, the Court read down the marital rape exception in cases involving minor wives, thereby prioritizing bodily autonomy over archaic social norms. Similarly, in *Shakti Vahini v. Union of India*, (2018) 7

SCC 192, the Court recognized honour-based violence as a serious violation of women's rights and issued preventive guidelines.

Overall, judicial interpretation has not merely supplemented legislative provisions but has actively shaped a more robust, sensitive, and constitutionally aligned framework for addressing offences against women. Through these decisions, the judiciary continues to play a pivotal role in ensuring that the objectives of laws like the BNS are meaningfully realized in practice.

CHAPTER 5

Constitutional Mandate and Inter-linkages with Other Criminal Laws

The legal framework governing offences against women is deeply rooted in constitutional principles and supported by a network of complementary statutes.

1. Constitutional Foundations

The **Constitution of India** provides the normative foundation for gender justice:

- **Article 14** ensures equality before law
- **Article 15(3)** permits special provisions for women and children
- **Article 21** guarantees the right to life and personal liberty, including dignity and bodily autonomy

Judicial interpretation has expanded Article 21 to include the right to live with dignity, making it central to laws addressing violence against women.

2. Inter-linkages with Other Laws

(a) Domestic Violence Law

The **Protection of Women from Domestic Violence Act, 2005** provides civil remedies such as protection orders, residence rights, and monetary relief, complementing criminal provisions under the BNS.

(b) Dowry Prohibition Law

The **Dowry Prohibition Act, 1961** works alongside criminal provisions addressing dowry-related offences.

(c) Workplace Harassment Law

The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** codifies the Vishaka guidelines and operates in tandem with Section 75 BNS.

3. Harmonious Interpretation

Courts adopt a harmonious approach to ensure:

- No conflict between civil and criminal remedies
- Maximum protection for victims
- Effective enforcement of rights

4. Role of International Law

India's obligations under international conventions, such as CEDAW, influence domestic interpretation and reinforce commitments to gender equality.

5. Challenges and the Way Forward

Despite a robust legal framework, challenges remain:

- Underreporting of crimes
- Delays in investigation and trial
- Societal stigma

Addressing these issues requires not only legal reform but also institutional and societal change.

Conclusion

In conclusion, the enactment of the Bharatiya Nyaya Sanhita, 2023 represents a significant advancement in India's criminal law framework, particularly in addressing offences against women. By replacing the Indian Penal Code, 1860, the legislation reflects a deliberate effort to modernize criminal jurisprudence in line with constitutional principles and contemporary societal needs. The BNS strengthens the legal regime by adopting a more structured and comprehensive approach, emphasizing the protection of dignity, bodily integrity, and autonomy of women.

The discussion highlights that the BNS not only preserves core legal principles but also introduces important substantive and procedural reforms. The clear classification of offences, coupled with enhanced punishments and improved evidentiary safeguards, demonstrates a shift toward a more victim-centric justice system. Additionally, the integration of procedural protections under allied statutes such as the Bharatiya Nagarik Suraksha Sanhita, 2023 and the Bharatiya Sakshya Adhiniyam, 2023 ensures a more effective and sensitive handling of cases involving crimes against women.

Judicial interpretation continues to play a vital role in reinforcing these statutory provisions by expanding their scope and aligning them with constitutional mandates. At the same time,

challenges such as underreporting, delays in justice delivery, and societal stigma persist, limiting the full realization of legal protections. Therefore, while the BNS provides a robust framework, its success ultimately depends on effective implementation, institutional efficiency, and increased societal awareness. A coordinated approach is essential to ensure meaningful access to justice and the protection of women’s rights in India.

