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**OFFENSES AGAINST WOMEN AND CHILDREN UNDER
THE BHARATIYA NYAYA SANHITA, 2023: A
COMPARATIVE AND CRITICAL STUDY OF LEGAL
REFORMS CONCERNING THE INDIAN PENAL CODE, 1860**

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ABSTRACT

The transition from the Indian Penal Code 1860 to Bharatiya Nyaya Sanhita 2023 make a very remarkable shift in the Indian legal framework, from modernizing and decolonizing the criminal justice system. The Indian Penal Code which came into force on October 6th 1860, and is now replaced by the new act Bharatiya Nyaya Sanhita. The bill for the new act was first time introduced in the Lok Sabha on August 11th 2023 and received President assent on December 25th 2023 and finally came in force on July 1st 2024.

Even though the Indian Penal Code of 1860 was superseded by the new panel code, a significant debate about its novelty has been going on in the legal community ever since it went into effect. The reason for this is that a large number of the new panel code's provisions were largely lifted from the previous criminal code.

According to critics, the legislature has neglected to address the fundamental socioeconomic shifts that have brought forth new difficulties, making it more difficult to establish the framework for efficiently resolving complaints and adapting to evolving situations. For instance, acts like murder, preventing suicide, assault, causing great harm, rape, voyeurism, stalking, and demeaning a woman's modesty are all illegal under the Indian Penal Code, 1860.

The new panel code, the Bharatiya Nyaya Sanhita, 2023, also retains these crimes in essentially the same manner. The metaphor emphasizes how important it is to assess whether or not the new panel code has actually taken into account current sociolegal issues in order to stay up to date with the state of society.

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Therefore, this paper analyses these crucial areas and its potential impact and also provides the comparative analysis of these crucial areas like sexual offenses, protection of minors from the prior legislation to the new act.

KEYWORDS: *Offences against women and children; Bharatiya Nyaya Sanhita, 2023; Indian Penal Code, 1860; Criminal Law (Amendment) Act, 2013; Criminal Law (Amendment) Act, 2018.*

I. Introduction

Under the direction of Thomas Babington Macaulay, the Chairman of the First Law Commission of India, the Indian Penal Code (IPC), which was introduced in 1860, is one of the oldest and most comprehensive pieces of criminal legislation in the world. During the time of British colonial control, it went into force on October 6, 1860, with the goal of creating a unified legal framework to handle criminal offenses across the Indian subcontinent. The IPC was designed to replace the disparate legal systems that existed in different areas with a standardized body of legislation based on the concepts of punishment, deterrence, and justice. At first, the IPC covered a wide range of crimes, including property crimes, crimes against the state, and personal offenses like murder, theft, and assault. It underwent a number of revisions over time to address new issues in society, such as child protection, cybercrimes, and gender-based violence. Even so, the IPC has drawn more criticism for its colonial roots, antiquated clauses, and failure to keep up with contemporary socio-legal advancements. The Bharatiya Nyaya Sanhita was introduced by the Indian government in 2023 to address the pressing need for legal reform. It was approved by the President on December 25, 2023, and it became operative on July 1, 2024. The BNS represents a significant departure from the IPC, aiming to modernize India's criminal justice system while preserving the core principles of justice and fairness².

In order to create a legal system that is inclusive, free from colonial influence, and sensitive to the intricacies of contemporary India, the Bharatiya Nyaya Sanhita was created. By incorporating contemporary legal principles, such as gender-neutral language, child-focused provisions, and reforms in the classification and punishment of offenses, it seeks to address the shortcomings of the IPC. The BNS further illustrates India's commitment to adjusting its legal

² Reports focusing on the need for reform in criminal laws, including recommendations that influenced the BNS 2023, Law Commission of India

system to meet evolving social norms and international human rights standards.

A. Significance of Legal Reforms in the Context of Offenses Against Women and Children

It is imperative that the criminal laws in India be changed, especially those that deal with crimes against women and children, given the country's social and legal structure. Both women and children are regarded as vulnerable groups, often experiencing various forms of violence, abuse, and exploitation. Even after revisions, the Indian Penal Code of 1860 has struggled to adequately address the evolving nature of these offenses, frequently failing to provide victims with adequate protection or justice.

A number of significant changes are included in the Bharatiya Nyaya Sanhita, 2023, with the goal of bolstering the legal foundation for safeguarding women and children. Crucially, it highlights the unique vulnerabilities of these groups by combining offenses against them into a single chapter (Chapter 5). Furthermore, the BNS uses gender-neutral vocabulary and provisions aimed at children, demonstrating a more progressive and inclusive approach to justice. These reforms are more than just legal revisions; they symbolise a broader societal trend towards gender equality, child protection, and social fairness.

II. Historical Context And Evolution Of Offenses Against Women And Children In India

Although it provided a foundation for Indian criminal law, the Indian Penal Code of the 1860's³ original provisions were inadequate to address the complexity of contemporary crimes, especially those that target women and children. Colonial biases and a lack of awareness of the complexities of gender violence were reflected in the IPC's early restrictive classifications of crimes like assault (Section 354), kidnapping (Section 366), and rape (Section 375).

For instance, rape was defined by Section 375 as acts of penile-vaginal intercourse, excluding other types of sexual violence like object insertion, anal sex, or oral sex. Additionally, the legal framework overlooked the vulnerabilities of children and the part that custodial authority plays in facilitating crimes like gang rape and custodial rape.

³ The Indian Penal Code, 1860 (Act 45 Of 1860).

B. The criminal law (amendment) act, 2013⁴: a turning point

The Nirbhaya Case (2012)⁵ marked a major shift in India's legal response to sexual violence. The government later passed the Criminal Law Amendment Act of 2013, which significantly updated several IPC sections to enhance protections for women and children.

Among the significant modifications were:

A. Expanded Definition of Rape (Section 375)

This amendment removed the requirement for "sexual intercourse" and broadened the definition to include oral sex, anal sex, and penetration by objects. It also added a new category: circumstances where a woman is unable to give consent.

B. More severe Penalties

Section 376A of the law amended the rape sentence to include life in prison as the default and the death penalty as a last resort in cases of extreme violence.

C. New offenses are introduced

A number of additional offenses were added, such as:

- Sexual harassment, Section 354A
- Section 354B: Women's undressing
- Section 354C: Voyeurism;
- Section 354D: Stalking;
- Section 326A & 326B: Acid attacks;
- Section 376-C: Custodial rape;
- Section 376-D: Gang rape; Section 3
- 304B: Death by dower; and
- Section 498A: Cruelty by a spouse or family member

These changes recognized the complicated realities of crimes against women and children and represented a move toward gender-sensitive legislation.

C. The impact of India's 2018 Criminal Law (Amendment) Act on gender-based violence

The Criminal Law (Amendment) Act of 2018 was passed in response to two horrifying

⁴ The Criminal Law (Amendment) Act, 2013 No. 3 Of 2013

⁵ [2020] 1 S.C.R. 761

incidents—the Unnao rape case⁶ and the Kathua rape case⁷—that not only shocked the country but also made clear how urgently legal reforms were needed to address sexual assault, particularly against children. A nationwide outcry was generated by these horrifying events, demanding more significant legal actions to bring victims justice and deter future offenders. Stronger penalties, procedural changes, and expanded definitions of sexual offenses—particularly those against minors—are some of the ways that the 2018 amendments aim to improve the legal system.

D. Key Amendments Introduced by the Criminal Law (Amendment) Act, 2018⁸

The Act significantly amended four important pieces of legislation:

1. The Indian Penal Code (IPC), 1860
2. The 1973 Code of Criminal Procedure (CrPC)
3. The 1872 Indian Evidence Act (IEA)
4. The 2012 Protection of Children from Sexual Offenses Act (POCSO)

These amendments primarily focused on enhancing the severity of punishments for sexual offenses, expediting trial procedures, and strengthening the protection of children from sexual exploitation.

Significant Modifications to the Criminal Law (Amendment) Act of 2018

- i. *Section 376(1) of the Indian Penal Code (IPC) Amendments*
According to the amendment, rape carries a minimum sentence of 10 years in rigorous prison, with the possibility of life in prison, as well as a fine.
- ii. *Section 376(3)*
This new law imposed a harsher punishment for rapes committed against women under the age of sixteen. The minimum sentence was 20 years of rigorous imprisonment, with the possibility of life in prison, in addition to a fine.
- iii. *Section 376 AB*
This provision specifically addresses the rape of girls under the age of twelve and stipulates a minimum sentence of 20 years in prison, with the possibility of an extension to life in prison, as well as the possibility of the death penalty or a monetary fine.

⁶ CRL.A. 539/2020

⁷ Writ Petition (Criminal) No.85/2018

⁸ The Criminal Law (Amendment) Act, 2018 No. 22 Of 2018

iv. *Section 376 DA*

This section addressed cases where a group of individuals acting in concert to accomplish a shared goal raped a female under the age of sixteen. Every offender faces a fine and life in prison.

v. *Section 376 DB*

The law applies to cases when a woman under the age of 12 is raped by a gang, imposing life imprisonment or the death penalty, as well as a fine.

vi. *Amendments to the Code of Criminal Procedure (CrPC)*

Amendments streamlined processes to guarantee speedy trials, particularly when minors are involved. With an emphasis on accelerating the legal process, the special courts were created to deal with such circumstances.

vii. *Amendments to the Indian Evidence Act (IEA)*

The Act included provisions to improve the admissibility of electronic evidence and simplify processes for recording adolescent victims' testimony, assuring their safety during the trial process.

viii. *Amendments to the Protection of Children from Sexual Offences Act (POCSO), 2012*

By strengthening the punishment structure for offenses against children, integrating POCSO with the new IPC provisions, and guaranteeing that POCSO cases were heard in special tribunals for expedited justice, the amendments strengthened POCSO.

E. Challenges with Implementation and the Need for Further Reform

The Criminal Law (Amendment) Act of 2013 and the Criminal Law (Amendment) Act of 2018 brought about historic reforms, but India's legal system still faces several obstacles that make it difficult for these laws to effectively prevent sexual violence, especially against women and children. Although the modifications were essential for strengthening legal protections, there have been issues with how they have been implemented.

a) Over-Reliance on the Death Penalty⁹

The over-reliance on the death penalty as a deterrent to sexual violence is one of the main criticisms levelled at both amendments. For the most serious crimes,

⁹ [Report 262](#), Law Commission of India, 2015.

particularly those involving minors, the 2018 amendment instituted the death penalty. However, human rights organizations and legal experts assert that there is no empirical support for the death penalty's ability to deter crime. Furthermore, since the death penalty is gradually being eliminated or curtailed in many countries worldwide, it raises serious concerns regarding human rights violations.

b) Implementation gaps

The implementation gaps remained even after the laws were amended. Delays in Establishing Special Courts: Many courts are still overburdened and lack proper support, and the creation of special courts for expediting cases has been slow.

Insufficient Law Enforcement Training: During investigations and trials, survivors are often re-victimized because police and judges are often ill-equipped to deal with sensitive cases of sexual abuse.

Because they are frequently unaware of their legal rights, victims are reluctant to report crimes.

c) Focus on Punishment Over Prevention

The changes, according to critics, put more emphasis on punitive measures than on addressing the root causes of sexual violence, which include social attitudes toward women, patriarchal practices, and gender inequality. Preventive actions are essential, such as programs to raise awareness of gender issues in the judiciary and law enforcement. thorough sex education to promote civil relationships. The goal of community-based interventions is to challenge the norms that support violence.

d) Ambiguities in Legal Definitions

Several legal elements are still ambiguous despite advancements, leading to differing judicial interpretations. For instance, the definition of "consent" in sexual offense statutes is regularly disputed, leading to uncertainty in court rulings. In certain situations, provisions pertaining to digital crimes—like cyberstalking and online harassment—are unclear, which makes it challenging to effectively prosecute offenders.

e) Delayed Justice and Prolonged Trials

The sluggish legal system is among the most urgent issues. Victims were often traumatized by the protracted proceedings, which discouraged them from seeking justice. Public confidence in the legal system is weakened by the delays in the

administration of justice brought on by procedural obstacles and an overburdened judiciary.

f) Limited child protection

Despite being designed to protect children from sexual offenses, the POCSO Act of 2012 has flaws. **Fragmented Legal Framework:** The inconsistent application of child protection laws is caused by their improper connection to broader criminal justice regulations.

Absence of Child-Friendly Facilities: In order to lessen trauma during testimony, many courts lack child-friendly spaces and protocols.

g) Custodial Abuse and Institutional Failures

Systemic shortcomings in accountability are revealed by the ongoing emergence of cases of custodial rape and abuse of power by public authorities. Effective oversight mechanisms to stop abuse in law enforcement are still lacking, despite legal reforms.

Independent bodies will review complaints against police officers and public staff.

h) Societal and Cultural Barriers

Social attitudes like victim-blaming and stigma can make legal reforms ineffective because they deter victims from reporting crimes. Investigations may be compromised by social pressure and cultural norms, especially in rural areas.

III. The Emergence of the Bharatiya Nyaya Sanhita (BNS), 2023

An important turning point in India's criminal justice system was the implementation of the Bharatiya Nyaya Sanhita (BNS) in 2023. It was developed as a progressive, inclusive legal reform that aims to create a system that is responsive to modern concerns, particularly those pertaining to the safety and rights of women and children, in addition to replacing the Indian Penal Code (IPC) of 1860.

The need for comprehensive reform became evident even after India's legal framework for combating sexual violence was greatly strengthened by the landmark Criminal Law (Amendment) Acts of 2013 and 2018.

Although these changes were revolutionary in and of themselves, they were reactive rather than proactive, addressing crimes after they had already happened without sufficiently

addressing the underlying causes or adapting to the evolving nature of crimes. The necessity for a comprehensive law change was brought to light by the persistent problems of implementation gaps, institutional inefficiencies, and public attitudes.

F. Key reasons for the Need for BNS:

- i. Addressing the Limitations of the IPC (1860):** Although the IPC was fundamental, its provisions were out of date in light of contemporary crimes like cyberstalking, online harassment, and digital abuse. A more unified and consistent legal framework was produced by the BNS's integration of the laws pertaining to crimes against women and children.
- ii. Encouraging Gender-Neutral Justice:** By limiting justice to particular gender roles, the IPC's terminology frequently reflected patriarchal presumptions. In order to promote true gender equality, the BNS adopted gender-neutral language, ensuring that laws cover all genders and gender identities.
- iii. Broadening Legal Definitions:** New issues like child trafficking, cybercrime, and psychological abuse called for more expansive legal definitions. The BNS expanded the list of offenses while ensuring complete legal protection and accounting for contemporary concerns.
- iv. Strengthening Child Protection:** Although child sexual abuse was addressed by the POCSO Act of 2012, more extensive safeguards throughout the criminal justice system are required. Child-centric laws passed by the BNS bolstered anti-trafficking, anti-exploitation, and anti-abuse initiatives.
- v. Tougher Penalties and Faster Justice:** The BNS enforced harsher punishments for major offenses, such as mandatory minimum sentences and provisions for fast-track courts to expedite the court system. This change attempted to strengthen deterrence and shorten the time it took to deliver justice.

G. Key Features and Objectives of the Bharatiya Nyaya Sanhita (BNS)

An important part of India's criminal justice system, the Bharatiya Nyaya Sanhita (BNS) works to address contemporary issues while modernizing and streamlining the legal framework left over from the Indian Penal Code (IPC). In order to address changing criminal activity, it introduces new categories of crimes, such as organized crime, terrorism, and mob lynching, while maintaining the majority of IPC offenses, offering legal continuity and stability. Additionally, as examined by the Standing

Committee on Home Affairs, the BNS transforms the punishment framework by establishing harsher penalties for crimes like terrorism and organized crime, including life in prison and the death penalty where appropriate, encouraging rehabilitation and restorative justice, and introducing community service as a form of punishment¹⁰.

Instead of using the word "sedition," laws that penalize actions that endanger India's sovereignty, unity, and integrity have replaced the repeal of the sedition offense.

While organized crime encompasses crimes like kidnapping, extortion, cybercrime, and contract killings carried out by crime syndicates, terrorism is generally defined as actions that jeopardize public safety, public order, or public intimidation and carries harsh penalties.

The BNS also modifies mental health regulations, changing the definition of "unsound mind" to "mental illness," leaving out mental retardation but adding substance abuse, which affects the results of prosecutions.

The BNS maintains a minimum age of seven years for criminal responsibility, which can be raised to twelve depending on maturity, even though this approach might conflict with international standards that support higher limitations.

Duplicate charges, conflicting fines, and other legal issues may result from the BNS's handling of overlaps with special legislation. The Protection of Children from Sexual Crimes Act of 2012 still has inconsistencies with the Crimes Against Women and Children Act, which was revised to increase the penalties for crimes against minors and raise the age requirement for victims of gang rape from 16 to 18.

By outlawing adultery as a crime and imposing life in prison in addition to the death penalty for murderers, it also upholds Supreme Court precedent.

Nonetheless, the BNS aims to provide a strong, modern legal framework that balances justice, security, and human rights in India's criminal justice system.

H. Objectives of the BNS

- i. Modernization of Criminal Law: revising laws to address contemporary issues and deliver efficient justice.
- ii. Improving Legal Clarity: To reduce ambiguity and encourage uniform application, simplify legal provisions.

¹⁰ [Report No. 246](#), The Bharatiya Nyaya Sanhita, Standing Committee on Home Affairs, Rajya Sabha, November 10, 2023

- iii. Encourage justice and rehabilitation by addressing mental health issues more thoroughly and implementing restorative strategies like community service.
- iv. Strengthening National Security: Implement stricter laws to combat identity-based violence, organized crime, and terrorism.
- v. Lastly, the Bharatiya Nyaya Sanhita (BNS) seeks to ensure that India's criminal justice system is robust, equitable, and sensitive to the needs of the modern world by striking a balance between tradition and modernization.

IV. Comparative Analysis of Legal Provisions

Offenses against women

Based on the framework established by the Indian Penal Code (IPC), the Bharatiya Nyaya Sanhita (BNS) suggests a number of changes to the legal framework governing offenses against women. There are notable differences between the two acts' definitions, sentencing guidelines, and procedural provisions, despite the fact that they both aim to offer complete protection against sexual violence, harassment, and exploitation. The distinctions between the two legal systems' approaches to handling rape, sexual harassment, and other types of gender-based violence are highlighted in this comparative study.

a. Definition of Rape

Sexual contact without a woman's consent is defined as rape under **IPC Section 375**. Certain provisions specify circumstances that render consent null and void, including duty, threats, deceit, intoxication, or incapacity. Notably, the IPC forbids marital rape unless the victim is younger than eighteen. This rule has generated intense legal and public debate, especially in the wake of seminal cases like Nirbhaya (2012).

BNS Clause 63, on the other hand, maintains the essence of the IPC definition while making minor linguistic adjustments for clarity. It upholds the exception for marital rape, which states that unless the wife is younger than eighteen, sexual contact during a marriage does not qualify as rape.

b. Punishment for Rape

IPC Section 376 mandates that a person serve at least 10 years in prison, with the possibility of life in prison or the death penalty in more extreme cases, as was shown in the Dhananjay Chatterjee case¹¹. The IPC also makes a distinction between

¹¹ 1994 Scc (2) 220 Jt 1994 (1) 33 1994 Scale (1)48

simple and gang rape, with the latter carrying harsher punishments.

The BNS Clause 64, which maintains harsh penalties, reflects these guidelines. It maintains the death penalty or life in prison for minors and in cases where the victim dies or is left in a vegetative state, in addition to applying harsher penalties to repeat offenders. These provisions aim to improve deterrence and preserve justice in severe sexual assault cases.

c. Sexual harassment

IPC Section 354A defines sexual harassment, which includes unwanted physical contact and offensive language. One to three years in prison are the possible punishments for this offense. The Vishakha v. State of Rajasthan case¹², which produced guidelines to stop workplace harassment, had an impact on the application of Section 354A.

BNS Clause 69 expands the definition to encompass online harassment, such as cyberstalking and revenge pornography. The BNS has raised the maximum penalty for serious offenses to five years in prison in response to the growing concern over online sexual harassment. This modernization improves the legal response to contemporary issues facing women, particularly online.

d. Assault to outrage modesty

IPC Section 354 prohibits actions intended to offend a woman's modesty and carries a maximum prison sentence of two years. The application of this clause against influential individuals was made clear in the Rupan Deol Bajaj v. KPS Gill case¹³ in 1995.

The BNS Clause 68 maintains the core principles of IPC Section 354 even though the wording has been improved to include psychological intimidation and non-physical harassment, such as verbal threats and online abuse. Although the penalty is still consistent with the IPC, victims of psychological and emotional abuse are now guaranteed legal protection due to this expanded reach.

e. Voyeurism and Stalking

IPC Sections 354C and 354D stipulate that stalking and voyeurism are punishable by up to three years in prison for first-time offenders. The speed at which the courts handle stalking claims was illustrated in the State of Maharashtra v. Bandu @

¹² [1997] Supp. (3) S.C.R. 404

¹³ 1996 AIR 309, 1995 SCC (6)

Daulat case¹⁴.

BNS Clauses 71 and 72 still contain these regulations, albeit with some minor wording changes. Notably, the BNS applies harsher penalties, including up to seven years in prison for repeat offenders, and broadens the definition to include cyberstalking and digital voyeurism. These changes address the rise in cybercrimes and reflect the legal system's response to new forms of gender-based violence.

f. Protection of the Victim's Identity

IPC Section 228A, which carries a maximum two-year jail sentence, forbids publishing the identities of rape victims. This provision was essential in the Disha Case¹⁵ for preserving the victim's identity while upholding their dignity and privacy.

BNS Clause 72(2), which further strengthens protections against media trials and public exposure, echoes this clause. Penalties for intentional disclosure are more severe and can last up to five years. This development is crucial at a time when victim-blaming, sensationalism, and social media regulations frequently jeopardize justice.

g. Marital rape

Both the IPC and the BNS uphold the rule that sexual contact within a marriage does not constitute rape unless the woman is under the age of eighteen. This clause has been the subject of numerous petitions challenging its validity as societal views on individual liberty and gender equality have evolved.

Despite ongoing calls for its repeal by legal scholars and women's rights advocates, the BNS Clause 63 (Exception 2) upholds this stance, highlighting the necessity of revisions that consider contemporary concepts of consent and bodily autonomy.

I. Offenses against children

For example, in order to strengthen the legal framework for children's protection, the BNS (Bharatiya Nyaya Sanhita) prescribes harsher punishments for offenses against children. However, there are inconsistencies in the law, particularly with regard to the definition of a child and the penalties for various offenses.

a) Definition of a Child and Its Inconsistencies

There are variations in the BNS regarding the definition of a child, despite the

¹⁴ Air 2017 Supreme Court 5414

¹⁵ W.P.(Crl.) No. 355/2019 (PIL-W)

Protection of Children from Sexual Offences Act, 2012 (POCSO Act) consistently defining a child as any individual under the age of 18. According to the POCSO Act, the BNS typically considers anyone under the age of 18 to be a child. However, some offenses deviate from this standard, which may result in unfair justice and unclear legal provisions.

For instance, the penalty for rape and gang rape depends on the victim's age. Gang rape carries different penalties depending on whether the victim is older or younger than eighteen. However, the law separates the penalties for rape into three age groups: under 12, between 12 and 16, and over 16.

This stratification contrasts with the unique approach of the POCSO Act, which does not distinguish between subcategories that fall under the under-18 age category.

b) Age Limits for Particular Crimes

Furthermore, the BNS sets age restrictions for particular offenses that contradict the broad principle of child protection. For example, the crime of kidnapping or kidnapping a child with the intent to steal from a parent only applies to children under the age of ten. Since an 11-year-old child would be treated the same as an adult for a comparable offense, this creates a legal disparity. The inconsistent age threshold has the potential to maintain gaps in legal accountability in addition to undermining the protective purpose of the legislation.

Furthermore, the BNS upholds the age restriction of 21 years old for the offense of importing a foreign woman from another country, which was initially established by the Indian Penal Code (IPC). However, boys must be at least 18 years old. This disparity reflects outdated beliefs that conflict with contemporary notions of children's rights and safety.

J. Recommendations for Legal Reform

To address these disparities, the Standing Committee on Home Affairs (2023)¹⁶ has proposed that all laws define a kid as someone under the age of eighteen. Such an amendment will reduce uncertainty, harmonize legal terminology, and ensure that the protective measures outlined in the BNS and related acts are implemented.

¹⁶ [Report No. 246](#), The Bharatiya Nyaya Sanhita, Standing Committee on Home Affairs, Rajya Sabha, November 10, 2023

K. Child Abandonment and Concealment of Birth

i. Abandonment and Exposure of Children

BNS Section 93, which focuses on the act of leaving a child exposed or with the intent to abandon them, broadens the scope of IPC Section 317, which makes it illegal for a parent or guardian to leave a child under the age of twelve. The punishment for this section is a fine, a maximum sentence of seven years in prison, or both.

Key Difference: The BNS emphasizes the psychological and social aspects of the offence by specifically including the motive behind abandonment.

ii. Concealment of Birth

IPC Section 318: Deals with hiding a birth by secretly disposing of a deceased person's body; it carries a maximum two-year jail sentence.

Key Difference: By providing more precise definitions, the BNS eliminates ambiguity in legal interpretation. BNS Section 94 maintains the same penalty and makes it clear that purposeful concealment of the birth is a crime, regardless of whether the infant died before, during, or after birth.

L. Exploitation of Children

a. Recruiting, Using, or Involving a Child in Criminal Activity

IPC: No specific provisions apply to this offense. A new crime, BNS Section 95, makes it illegal to hire, employ, or engage children in sexual exploitation or pornography, among other offences.

Penalties include the same penalties as if the offense had been committed by a minor, including a fine and three to ten years in prison.

Key Difference The primary difference is the new clause in the BNS that recognizes children's unique vulnerabilities as coerced victims and potential offenders.

b. Procuration of Children

All minors under the age of eighteen, regardless of gender, are included in the offense under BNS Section 96; IPC Section 366A makes it illegal to procure minor girls (under the age of eighteen) for illegal purposes.

A fine and a maximum jail term of ten years are among the penalties.

Key Difference: By providing gender-neutral protection, the BNS addresses the vulnerabilities of male children in procuration cases that were previously ignored.

M. Kidnapping and Abduction of Children

a. Abducting or Kidnapping a Child Under 10 for Theft

BNS Section 97: Maintains the same penalty but clarifies what exactly qualifies as dishonestly taking away a child's movable property. • IPC Section 369: Makes kidnapping or abducting any child under ten for theft a crime, punishable by up to seven years in prison.

Key Difference: The main difference is that the BNS makes the intent requirement more clear, emphasizing the need to show dishonesty in the act.

N. Child Prostitution and Related Offenses

a) Selling a Child for Illicit Activities or Prostitution

BNS Section 98 states that selling a child for prostitution is a crime punishable by up to 10 years in prison and a fine. • IPC Section 372 makes it illegal to sell someone for prostitution, carrying a maximum ten-year jail sentence.

Key Difference: The BNS emphasizes children's heightened susceptibility by using the term "child" rather than "any person."

b) Buying a Child for Prostitution or Immoral Purposes

IPC Section 373: Prostitution purchases carry a maximum seven-year jail sentence. BNS Section 99: Expands the offense to include buying children for such purposes, carrying a fine and a prison term of seven to fourteen years.

The main distinction The main difference is that the BNS imposes more severe penalties, which are appropriate given the seriousness of child abuse and the need for effective deterrence.

O. Child sexual abuse

IPC Sections 376AB, 376DA, and 376DB: Focus on sexual offenses against children, prescribing life imprisonment or the death penalty for heinous crimes, as seen in the Kathua Rape Case (2018).

These rigorous rules are maintained in BNS Clause 66, which also places an emphasis on quicker trials and more stringent deterrent measures.

Important Distinction: The BNS's focus on accelerated trials demonstrates a commitment to reducing court system delays, which is essential when dealing with minors.

P. Abetment of Child Suicide

IPC Section 305: Uses phrases like "insane person" or "any idiot" to criminalize aiding and abetting suicide by a minor or someone who is mentally ill.

By substituting "person of unsound mind" for outdated terminology, BNS Section 107 aligns it with modern legal and psychological standards.

Key Difference: The BNS acknowledges mental health concerns without stigmatising them, reflecting a more considerate and inclusive attitude.

Q. Legal Reforms and Socio-Legal Impact

A revolutionary shift in India's legal system is highlighted by the comparison of the Indian Penal Code (IPC) and the Bharatiya Nyaya Sanhita (BNS), which shows a progressive approach to addressing crimes against women and children. The BNS introduces important reforms, including the extension of gender-neutral regulations, the consolidation of child-related offenses, and the incorporation of modern legal concepts to address emerging issues like cybercrimes and digital exploitation. The emphasis on harsher penalties, expedited trials, and updated mental health terminology demonstrates a commitment to timely justice, deterrence, and psychological sensitivity. The BNS also strengthens protections for women through provisions addressing digital abuse, enhanced victim privacy protections, and enlarged definitions of sexual harassment. However, contentious issues such as the marital rape exception persist in both legal codes, highlighting ongoing social debates regarding consent and gender justice. Finally, the BNS is a significant legal development that aims to create a more inclusive, robust, and responsive justice system that aligns with contemporary social values and India's growing human rights consciousness.

V. Conclusion

Significant legal changes intended to improve the safety of women and children can be seen when comparing the Bharatiya Nyaya Sanhita (BNS) with the Indian Penal Code (IPC). Progressive changes are introduced by the BNS, such as expanded categories of gender-based violence, gender-neutral measures for child crimes, and contemporary protections against digital exploitation. It reflects a more cohesive legal framework that fills in the gaps in the IPC by combining child-related offenses into a single chapter. Additionally, the BNS improves victim protection by implementing policies such as accelerated trials, harsher punishments for aggravated cases, and updated mental health terminology that replaces antiquated terms like

"insane person" with "person of unsound mind."

The BNS's flexibility in tackling modern issues is further evidenced by the implementation of policies to prevent cybercrimes like online harassment and stalking. But controversial topics like the marital rape exception are still up for debate, reflecting continuous discussions about gender justice, autonomy, and consent.

R. Policy Implications and Proposals for Future Reforms

Even though the BNS is a significant step forward, some areas still require more attention:

Removal of the Marital Rape Exception: It is critically necessary to review and modify the law's position on marital rape. BNS has failed to address the evolving public view of consent and individual liberty, as well as several of the Justice Verma Committee's (2013) recommendations¹⁷.

Strengthening Digital Safeguards: As cybercrimes rise, more comprehensive legislation that addresses child pornography, online harassment, and digital exploitation is needed. Specialized cyber courts are also needed to ensure that offenders receive timely punishment.

Enhancing Systems of Victim Support: Strong victim support services, including counselling, legal aid, and rehabilitation programs, must be established in order to guarantee comprehensive justice.

Training in judicial and law enforcement: Law enforcement agencies and judges must participate in continuous capacity-building initiatives to increase awareness of gender sensitivity, trauma-informed practices, and emerging forms of violence.

Review of Punitive Measures: While the BNS administers harsher penalties, a comprehensive approach that incorporates restorative justice methods may be considered, particularly for young offenders and circumstances where rehabilitation is a possibility.

S. Concluding Remarks on the BNS's Capability to Safeguard Women and Children

The BNS represents a more contemporary, rigorous, and inclusive approach to protecting women's and children's rights, marking a significant advancement in India's

¹⁷ Report of the Committee on Amendments to Criminal Law, 2013 (Verma Committee).

legal system. Its comprehensive coverage of offenses, reforms addressing digital crimes, and expedited judicial procedures all show a strong commitment to justice. However, persistent legal and social problems like the marital rape exception and the lack of adequate victim support systems underscore the need for ongoing reforms. The effectiveness of the BNS will ultimately depend on its dynamic deployment, continuous evaluation, and response to shifting societal demands.

