



## REFORMS IN OFFENCES AGAINST WOMEN AND CHILDREN

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### Abstract

The status of women and children in India has changed over time, with the Constitution of India providing special protection for them. Article 15(3) of the constitution of India, allows the state to make specific provisions for women and children. Numerous laws have been enacted to safeguard their rights and welfare, with one of the most significant being the Bharatiya Nyaya Sanhita. This landmark criminal law, which took effect in 2024, replaced the colonial-era penal code and introduced crucial reforms to India's criminal justice system, responding to the need for comprehensive changes in criminal laws.

The Bharatiya Nyaya Sanhita has led significant reforms in addressing offences against women and children by dedicating a separate chapter to these offences. This chapter covers a wide range of crimes, including sexual offences, criminal force and assault, crimes related to marriage, miscarriage, and offences against children. By categorizing these offences under a single heading, the BNS demonstrates a special concern for two of society's most vulnerable groups. The Sanhita has emerged as a beacon of hope for protecting the rights of women and children by consolidating such offences. It introduces new provisions, such as criminalizing deceitful promises of marriage, and includes strict penalties for gang rape on minors. Additionally, the definition of rape has been broadened to include a wider range of consensual acts, with enhanced penalties and stricter punishments. Another key reform is the punishment for hiring or employing a child to commit an offence, aligning with the recommendations of the Justice Verma Committee. Furthermore, the BNS has adopted gender-neutral language for both perpetrators and victims, ensuring greater inclusivity and fairness in the criminal justice system.

Despite several significant reforms, the BNS has certain shortcomings that need to be addressed. This paper explores the Sanhita as a safeguard for protecting the rights of women and children. It examines the offences against women and children under the BNS and provides an analytical perspective on these offences. Additionally, it discusses various provisions omitted by the Sanhita in comparison to the IPC, concluding with suggestions for further reforms to enhance the effectiveness of the Sanhita.

**Keywords** - Bharatiya Nyaya Sanhita, Women and Children Protection, Criminal Justice Reforms, **Offences** against Women and Children, Gender-Neutral Criminal Law.

### Introduction

The foundation of India's ancient legal system was rooted in texts like the *Manusmriti* and *Arthashastra*, which outlined the principles of governance, administration, and justice. The Indian Penal Code (IPC), enacted 164 years ago during the colonial era, served as the primary criminal code, reflecting the socio-political realities of that time. However, the IPC has struggled to meet the demands of modern India. Despite numerous amendments over the years, there was a growing need to revamp and restructure the law to make it more relevant and effective in contemporary times.

In recent years, India has witnessed a surge in crimes against women and children, highlighting the urgent need to reform penal statutes with stricter punishments for such offences. The increasing prevalence of incidents like sexual assault, domestic violence, dowry deaths, and child trafficking has drawn widespread condemnation, prompting legislative reforms to address these grave issues. Additionally, the rapid advancement of technology has necessitated comprehensive reforms to tackle contemporary crimes such as cybercrime, white-collar crime, and offences against vulnerable and marginalized groups.

These reforms have been crucial in addressing long-standing issues related to safety, empowerment,



equality, and justice for vulnerable sections of society. The recent reforms introduced by the *Bharatiya Nyaya Sanhita* (BNS) have prioritized crimes against women and children by consolidating all related offences previously scattered across different sections of the IPC into a single chapter, Chapter 5 of the BNS. This consolidation has brought a structural change, simplifying the legal framework and making it more accessible. It also ensures that crimes against women and children receive focused attention in legal proceedings.

As a reformative measure, the BNS has enhanced punishments for offences against women and children. It represents a significant step forward in strengthening legal protections for these vulnerable groups, reflecting a renewed commitment to justice, safety, and equality.

#### Offences against women under BNS and reforms in such offences

Women, once revered as goddesses in Indian society, have long endured chronic discrimination and violence, often overlooked due to the deeply entrenched patriarchal mindset prevalent in the country. Chapter 5 of the *Bharatiya Nyaya Sanhita* (BNS) addresses offences against women under Sections 63 to 90, covering a range of crimes such as sexual offences, criminal assault, and offences related

to marriage and miscarriage. These provisions establish a comprehensive legal framework aimed at safeguarding women's rights, ensuring their safety, and upholding their dignity.

The BNS introduces a new offence for engaging in sexual intercourse under false pretences, including deceit related to marriage promises, employment, promotions, or concealing one's identity. Additionally, the Sanhita prescribes stringent punishments for repeat offenders of rape. It also mandates death penalties for cases of gang rape, particularly when the victim is under 18 years of age or when the victim dies because of the rape. These reforms reflect a strong commitment to protecting women from violence and ensuring justice for survivors.

The offences against women as dealt under BNS are discussed as under

1. Sexual offences.
2. Criminal force and assault.
3. Offences relating to marriage
4. Offences relating to miscarriage

#### 1. Sexual offences.

Section 63<sup>1</sup> of the BNS redefines and broadens the understanding of rape to include various forms of non-

#### <sup>1</sup> Section 63 – Rape

A man is said to commit "rape" if he---

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other

person, under the circumstances falling under any of the following seven descriptions:

- (i) against her will.
- (ii) without her consent.
- (iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
- (iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
- (v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome



consensual sexual acts. It marks a significant legal advancement by explicitly addressing marital rape, a concept that was not recognized as a criminal offence under the IPC, which previously excluded non-consensual sexual intercourse between spouses. However, the BNS does not classify sexual assault within marriage as rape, specifying that sexual intercourse or sexual acts performed by a man with his wife, who is not under 18 years of age, do not constitute rape. This shift represents a crucial step toward acknowledging women's autonomy and bodily

integrity, regardless of their connubial status. Additionally, Section 63 clarifies that medical procedures or interventions do not constitute rape.

The BNS prescribes rigorous imprisonment for a term of no less than 10 years, extendable to life imprisonment, along with a fine for the offence of rape. If the victim is under 16 years of age, the punishment is imprisonment for at least 20 years, extendable to life imprisonment, with a reasonable fine to be paid to the victim for rehabilitation.<sup>2</sup>

substance, she is unable to understand the nature and consequences of that to which she gives consent.

(vi) with or without her consent, when she is under eighteen years of age.

(vii) when she is unable to communicate consent.

Explanation 1.-For the purposes of this section, "vagina" shall also include *labia majora*.

Explanation 2.-Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.-A medical procedure or intervention shall not constitute rape.

Exception 2.-Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

<sup>2</sup> **Section 64 -Punishment for rape** - (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,-

(a) being a police officer, commits rape,-

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer;

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central Government, or a State Government, commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or (g) commits rape during communal or sectarian violence; or

(h) commits rape on a woman knowing her to be pregnant; or

(i) commits rape, on a woman incapable of giving consent; or

(j) being in a position of control or dominance over a woman, commits rape on such woman; or

(k) commits rape on a woman suffering from mental or physical disability;

(l) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(m) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

*Explanation.*-For the purposes of this sub-section (a) "armed forces" means the naval, army and air forces and includes any member of the Armed Forces



Furthermore, it advocates for the death penalty in cases where rape is committed against a woman under 12 years of age<sup>3</sup>, or where the offence results in the victim's death or causes her to be in a persistent vegetative state.<sup>4</sup> Moreover, non-consensual sexual intercourse by a husband with his wife during separation is also punishable under the BNS, with no changes or deviations from the provisions of the IPC.<sup>5</sup>

constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) "hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

(c) "police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

(d) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

<sup>3</sup>**Section 65- Punishment for rape in certain cases.**

(1) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

(2) Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that persons natural life, and with fine or with death:

In parity with IPC, section 68 of BNS also punishes a sexual intercourse by a person in Authority . **Section 69<sup>6</sup> of BNS introduces a new legal provision** aimed at addressing sexual intercourse obtained through deceitful means. This includes situations where an individual engages in sexual relations based on false promises of marriage, employment, or promotion, or by hiding their identity with no intention of fulfilling such promises. Even if the sexual act is consensual, if

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.

<sup>4</sup> **Section 66 -Punishment for causing death or resulting in persistent vegetative state of victim.**

Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 64 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.

<sup>5</sup> **Section 67 -Sexual intercourse by husband upon his wife during separation.**

Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.

Explanation.—In this section, "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 63.

<sup>6</sup> **Section 69 -Sexual intercourse by employing deceitful means, etc.**

Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation. - "deceitful means" shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.



the consent was secured through deceit, it is considered a criminal offence under this section. However, it does not qualify as rape under traditional definitions, as the offence is based on deceit rather than physical force or absence of consent. The punishment for this offence can extend up to 10 years of imprisonment along with a fine. The core elements of Section 69 focus on the use of deceitful means, such as making false promises or misrepresenting oneself. Consent obtained through such deceptive means is considered invalid because it is not truly free and voluntary. This section seeks to safeguard individuals from exploitation where manipulation undermines the authenticity of consent. It underscores the principle that consent should be based on honesty and truthful representations, and any sexual act procured through deceit is subject to legal punishment.

In *Mahesh Danu Khare versus state of Maharashtra*<sup>7</sup> the Hon'ble Supreme Court clarified the law on consent, misconception of facts and criminal liability attached to false promise. The apex court has asserted that for an act to be an offence of sexual intercourse on false promise to marry, the alleged relationship or intercourse must be proved to be only based on and carried on the faith of such a false promise to marry. Adding to this the duration has to be factored, as the court opined that the longer duration of physical relationship without protest and insistence by the female partner for marriage indicated consensual relationship rather than a relationship

based on false promise of marriage by the male partner and thus based on misconception of facts.

Gang rape is one of the most heinous crimes, involving the sexual assault of a victim by one or more individuals. This offence is characterized by the participation of multiple perpetrators, where each individual can be held accountable, whether they were actively involved in the assault or played a passive role in facilitating the crime. The severity of gang rape is reflected in the stringent legal consequences imposed on the offenders.

Section 70<sup>8</sup> of BNS deals with the offence of gang rape, under the law, anyone found guilty of gang rape faces a minimum imprisonment for twenty years. However, this sentence is not absolute and can be extended to life imprisonment, depending on the circumstances of the case. In the most extreme situations, the offenders may even be sentenced to the death penalty, especially when the crime results in the victim's death or involves particularly brutal acts. In addition to imprisonment, the court may also impose a fine on the offenders. This fine is specifically intended to support the victim through rehabilitation programs, cover medical expenses, and provide for other forms of compensation to aid in the victim's recovery.

**BNS has made significant legal reform has been made regarding the age of minor victims in cases**

<sup>7</sup> SLP (CRL.) NO. 4326/2018, 2024 INSC 897.

<sup>8</sup> Section 70 -Gang rape .

(1) Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and with fine  
Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this subsection shall be paid to the victim.

(2) Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:  
Provided further that any fine imposed under this subsection shall be paid to the victim.



**of gang rape.** Previously, under Section 376DB of the Indian Penal Code (IPC), the law distinguished between minors under the age of 12 and those between 12 and 18 years, with different legal provisions for each. However, the BNS has abolished this distinction, raising the age of a minor victim to 18 years. This means that any gang rape involving a female under the age of 18 is now considered an aggravated offence, punishable with life imprisonment or the death penalty, regardless of the victim's exact age. This legal change underscores the seriousness with which the justice system treats crimes against women, reflecting a strong commitment to ensuring the safety, dignity, and protection of all individuals, especially vulnerable young women. It also serves as a deterrent to potential offenders, emphasizing that such crimes will not be tolerated and will be met with the harshest possible penalties.

Section 71 of BNS deals with people who are repeatedly convicted of serious sexual crimes, like rape. If someone has a history of such crimes, they can face severe punishments, including life imprisonment or even the death penalty. The prosecution must prove past convictions with official documents like court orders or verdict copies. The court also considers the nature of previous crimes, if they were especially brutal, the punishment may be strictest. In some cases, the court may order the offender to attend rehabilitation programs or therapy to address underlying issues. BNS also prohibits the disclosure

of identity of the victim in certain cases by virtue of Section 72 by making it illegal to reveal the identity of victims in sensitive cases, such as sexual offences. Infringing the provision prescribed under said section can result in a fine and imprisonment up to two years. There are exceptions, like if the victim gives written consent, if their next of kin agrees, or if the police investigating the case approve the disclosure, this helps protect the privacy and dignity of the victims.

## 2. Criminal force and assault

The provisions concerning the use of criminal force and assault against women under the BNS are largely in line with those in the IPC, with a few significant and noteworthy changes. Section 74<sup>9</sup> of the Bharatiya Nyaya Sankha stipulates that any individual who uses criminal force or assaults a woman with the intention of outraging her modesty, or knowing that such an act is likely to do so, shall be punished with imprisonment of either description for a term not less than one year, which may extend up to five years, along with a fine. In contrast, Section 75<sup>10</sup> addresses the offence of sexual harassment, providing protection to women against unwanted sexual advances and reinforcing their fundamental right to work and live with dignity.

The BNS has *introduced gender-neutral provisions* concerning offences related to assault, the use of criminal force, and voyeurism. This shift is evident in

### <sup>9</sup>Section 74- Assault or use of criminal force to woman with intent to outrage her modesty

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

<sup>10</sup> **Section 75 -Sexual harassment** - (1) A man committing any of the following acts:-

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.



Sections 76<sup>11</sup> and 77<sup>12</sup>, where the phrase “any man who” has been replaced with “whoever” when referring to offenders or perpetrators. This change broadens the legal framework to include individuals of all genders as potential accused in cases of these specific offences, thereby promoting inclusivity and fairness in the application of the law. These sections prescribe stringent punishments for acts that seek to undermine a woman’s dignity, such as physical assault or the non-consensual capture and dissemination of images of a woman engaged in private acts. Importantly, the Sanhita criminalizes the act of voyeurism, ensuring that individuals cannot exploit others’ privacy for personal gratification or gain. Additionally, Section 77 specifically addresses digital crimes against women, making it an offence to misuse technology to infringe upon a woman’s privacy, such as through unauthorized surveillance, data breaches, or the distribution of intimate content without consent. This provision reflects the growing

recognition of the need to protect women from evolving forms of abuse in the digital age.

Section 78 of BNS addresses the offence of stalking, stating that any man who follows a woman and repeatedly tries to engage with her despite her clear disinterest, or who monitors her internet usage, emails, or other electronic communications, is guilty of stalking. However, this behaviour does not constitute stalking if the man can demonstrate that it was carried out to prevent or detect crime, and he was officially assigned this duty by the State, or if it was conducted in accordance with the law or to fulfil a legal obligation, or if the actions were reasonable and justified under the specific circumstances.

### 3. Offences relating to marriage

Dowry death remains a serious social issue in society, persisting despite various advancements in innovation, economic growth, and women’s empowerment. Section 80<sup>13</sup> of BNS addresses this

<sup>11</sup> **Section 76 -Assault or use of criminal force to woman with intent to disrobe.** - Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

<sup>12</sup> **Section 77 - Voyeurism** - Whoever watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

*Explanation 1.*—For the purposes of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim’s

genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

*Explanation 2.*—Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

<sup>13</sup> **Section 80 - Dowry death.**—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. *Explanation.*—For the purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished



grave concern, defining a dowry death as the death of a woman resulting from burns, bodily harm, or under suspicious circumstances within seven years of marriage, where the death is connected to dowry-related demands. This section also penalises the act of dowry death.

The legislative framework addressing domestic violence is primarily rooted in specific statutes, yet the BNS enhances the criminal provisions related to domestic violence by refining and expanding existing laws. It does so by reworking certain established provisions in greater detail, thereby strengthening the protective measures.

Notably, Sections 85<sup>14</sup> and 86<sup>15</sup> of the BNS specifically address the offence of cruelty, with the clear objective of safeguarding women from domestic abuse and harassment within the institution of marriage. Unlike the Indian Penal Code where cruelty is embedded within broader sections, the BNS assigns it a dedicated section. This not only provides greater clarity but also ensures a more comprehensive approach to women's protection against abuse.

While the BNS introduces more elaborate definitions, it retains the core elements of cruelty as defined under the IPC. These elements remain unchanged i.e. conduct that may drive a woman to suicide, cause her serious physical or mental harm, or involve harassment aimed at coercing dowry or pressuring her for the fulfilment of such demands. This continuity, coupled with the enhanced legislative framework,

with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

<sup>14</sup> **Section 85 -Husband or relative of husband of a woman subjecting her to cruelty.**—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

<sup>15</sup> **Section 86. - Cruelty defined.**—For the purposes

underscores a stronger commitment to women's safety and justice.

#### 4. Offences relating to miscarriage

Offences related to miscarriage under the BNS are distinctly framed to address the unique concerns surrounding the rights and well-being of pregnant women, offering a more comprehensive protective layer than what is provided under the Indian Penal Code . While the IPC deals with miscarriage-related offences within the broader context of bodily harm, the BNS is specifically designed to safeguard the autonomy and health of pregnant women, ensuring that their rights are not compromised under any circumstances. The BNS firmly protects women from forced miscarriages, unequivocally criminalizing any act that seeks to terminate a pregnancy without the woman's informed consent. This protection extends beyond just physical acts of coercion, encompassing a range of actions that could endanger the woman's health or violate her bodily autonomy. Importantly, the Sanhita (the codified legal framework) maintains a balanced approach by allowing for legal abortion under medically necessary circumstances, thus acknowledging the complexity of reproductive health decisions while simultaneously upholding the woman's right to choose.

Furthermore, the BNS takes a progressive stance by strictly penalizing not only the act of forced miscarriage but also any act intended to cause a miscarriage that results in the death of the woman. This provision underscores the law's zero-tolerance policy towards reckless or malicious practices that

of section 85, "cruelty" means— (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.



jeopardize both the life of the mother and the unborn child. The Sanhita serves as a critical deterrent against unsafe, unlawful, or coercive abortion practices. By imposing stringent penalties for such offences, it discourages individuals and entities from engaging in actions that could endanger a woman's life. This legal framework not only reinforces the commitment to protecting women's health but also strengthens the broader societal recognition of reproductive rights as an integral aspect of human dignity and autonomy

### Offences against children under BNS

The BNS represents a landmark step forward in the quest to safeguard the rights and well-being of children. Recognizing the unique vulnerabilities of minors, it has taken a bold stance by establishing a dedicated chapter exclusively focused on offences against children. This pivotal move underscores the nation's commitment to not just protecting but actively championing the dignity and safety of its youngest citizens.

At the heart of this transformative legislation lies Chapter V (Sections 93 to 99), a robust framework meticulously crafted to address the multifaceted threats faced by children. This chapter serves as a shield, offering enhanced legal protection against heinous crimes such as abandonment, concealment, sexual assault, exploitation, trafficking, and the engagement of children in the commission of offences. The provisions are not merely punitive but are designed to act as a deterrent, ensuring that perpetrators face harsher punishments that reflect the gravity of their crimes. Moreover, the Sanhita's

approach transcends traditional legal boundaries by weaving in comprehensive measures that address both the prevention and prosecution of child-related offences. This proactive step ensures that children are not just protected from immediate harm but are also shielded from systemic risks that could jeopardize their future. In essence, the BNS doesn't just amend laws rather it redefines justice for children. It acknowledges their fragility, fortifies their legal standing, and sends an unequivocal message: India stands united in its resolve to protect, nurture, and uphold the rights of every child.

The offences against children dealt in BNS are discussed as under:-

#### 1. *Abandonment of child*

Section 93<sup>16</sup> of the BNS holds parents or guardians accountable for abandoning a child under the age of 12, prescribing a penalty of up to seven years of imprisonment or a fine. This provision is designed to ensure that children are not left in vulnerable, life-threatening situations due to the negligence or irresponsibility of those entrusted with their care. It reinforces the fundamental duty of parents and guardians to provide a safe and nurturing environment, safeguarding children from harm and neglect.

#### 2. *Concealment of birth by secret disposal of dead body*

Section 94<sup>17</sup> of the BNS criminalizes the act of secretly burying or disposing of a child's body to

<sup>16</sup> **Section 93 – Exposure and abandonment of child under twelve years of age, by parent or person having care of it-** Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent

the trial of the offender for murder or culpable homicide, as the case may be, if the child die in the consequence of the exposure.

<sup>17</sup> **Section 94 – Concealment of birth by secret disposal of dead body** -Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which



conceal the fact of the birth. This provision serves as a powerful deterrent against the unlawful concealment of births, ensuring that infant deaths are handled with the dignity, transparency, and legal oversight they deserve.

### 3. *Hiring, employing child to commit offence*

BNS has introduced the *new provision* criminalising the hiring or employing of children to commit the offence with severe punishment. Section 95<sup>18</sup> imposes strict penalties on individuals who hire, employ, or exploit children to commit any offence, including those related to sexual exploitation and pornography. This provision serves as a critical safeguard, reinforcing the legal imperative to protect children from being manipulated or coerced into criminal activities. By imposing severe consequences on offenders, Section 95 not only deters the exploitation of vulnerable children but also upholds the fundamental principles of justice, child welfare, and human dignity. It recognizes the inherent vulnerability of children and the need for robust legal measures to prevent their abuse in any form.

### 4. *Procuration of child*

**Section 96<sup>19</sup> of BNS** plays a crucial role in the legal framework designed to protect children from sexual exploitation, trafficking, and other forms of abuse. This section criminalizes any act that involves inducing a child to move from one location to another, or to perform specific acts, with the intention that such actions will result in the child being subjected to forced or seduced illicit intercourse. The provision is

a significant legal safeguard aimed at preventing the exploitation of children in various forms, including sexual trafficking, coercion, and abuse. The introduction of Section 96 represents an evolution in the legal recognition of children's vulnerabilities. Previously, the IPC contained **Section 366A**, which specifically addressed the procurement of a minor girl for illicit intercourse. While this section provided a measure of protection, its scope was limited to minor girls and did not encompass all children, irrespective of gender. This gap meant that boys, transgender children, and other non-binary individuals were left without adequate legal recourse under the same provisions.

The broader language of Section 96 remedies this limitation by extending protection to all children, regardless of gender. It acknowledges the diverse ways in which children can be subjected to exploitation and trafficking, recognizing that the risk is not confined to a specific demographic. By criminalizing not just the act of illicit intercourse but the inducement and transportation that facilitate such acts, Section 96 strengthens the legal framework against child trafficking and sexual exploitation. Furthermore, Section 96 emphasizes the intent behind the act, focusing on the inducement of children, which includes coercion, manipulation, or deceit used to facilitate the movement or actions leading to exploitation. This provision also implicitly recognizes the role of traffickers, recruiters, and abusers who exploit legal loopholes to target vulnerable children.

may extend to two years, or with fine, or with both.

<sup>18</sup> **Section 95- Hiring, employing or engaging a child to commit an offence-** Whoever hires, employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.

Explanation. —Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section.

<sup>19</sup> **Section 96 – Procuration of child** - Whoever, by any means whatsoever, induces any child to go from any place or to do any act with intent that such child may be, or knowing that it is likely that such child will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.



### 5. *Kidnapping or abduction of child*

Section 97<sup>20</sup> prohibits the kidnapping or abduction of a child under ten years old with the intent to steal from them. This provision aims to protect children from financially motivated crimes and imposes severe penalties on those who violate it.

### 6. *Selling child for prostitution purpose*

Section 98<sup>21</sup> establishes severe penalties for individuals who engage in the sale, hire, or disposal of a child for prostitution or other immoral purposes. This provision acts as a formidable deterrent against child trafficking and exploitation, sending a clear message that such heinous acts will not be tolerated. In a significant legislative update, the BNS has replaced the term "minor," as previously used in Section 372 of the IPC, with the more precise and protective term "child" in both the heading and the provision itself. Additionally, the phrase "any person

<sup>20</sup> **Section 97 - Kidnapping or abducting child under ten years with intent to steal from its person** - Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

<sup>21</sup> **Section 98 – Selling child for purpose of prostitution, etc.** - Whoever sells, lets to hire, or otherwise disposes of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation 1.—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution. Explanation 2.—For the purposes of this section “illicit intercourse” means sexual intercourse

under the age of eighteen years" has been substituted with the word "child," reinforcing the legal commitment to safeguarding individuals under 18 from all forms of exploitation and abuse. This change underscores a stronger, child-centric approach in the legal framework, highlighting the importance of protecting the rights and dignity of every child.

### 7. *Buying child for prostitution purpose*

Section 99<sup>22</sup> makes it a criminal offense to buy, hire, or acquire possession of a child for the purpose of prostitution. This provision strengthens the legal framework against child trafficking, acting as a robust barrier to prevent the exploitation of vulnerable children. By stipulating stringent punishments for offenders, Section 99 not only serves as a strong deterrent but also underscores the unwavering commitment of the law to protect the rights, dignity, and well-being of every child. It reinforces the principle that children must be shielded from all forms

between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation

<sup>22</sup> **Section 99 – Buying child for the purpose of prostitution, etc.** - Whoever buys, hires or otherwise obtains possession of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to fourteen years, and shall also be liable to fine. Explanation 1.—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution. Explanation 2.—“Illicit intercourse” has the same meaning as in section 98



of abuse and exploitation, ensuring that those who seek to profit from their vulnerability face serious legal consequences. BNS has introduced minimum mandatory punishment as seven years, and the upper limit of imprisonment is extended up to fourteen years for the said offence and the words "any person under the age of eighteen years" are replaced by the word "child"

### Reforms in offences against women and children under BNS

The Bharatiya Nyaya Sanhita 2023 marks a monumental shift in India's criminal justice landscape, bringing with it a wave of transformative changes that reflect the evolving needs of society. It doesn't just tweak existing laws rather redefines the very structure of the legal framework, introducing new provisions while amending outdated sections of the penal code. This isn't mere legal reform but a bold step towards creating a more just, responsive, and effective system that prioritizes the rights and dignity of every citizen. At its core, the BNS seeks to streamline the criminal justice process, eliminating unnecessary complexities and ensuring that justice is not just done but is seen to be done with greater efficiency. It aims to reduce delays, enhance clarity in legal procedures, and strengthen the foundation of fairness and accountability within the justice system.

One of the most noteworthy aspects of the BNS is its focused reform on offences against women and children, these two groups represent both the vulnerability and the future of society. Recognizing the urgent need to address the rising incidents of crimes targeting these vulnerable populations, the BNS introduces a committed chapter specifically designed to tackle such offences with greater sensitivity and severity. This distinct chapter is more than just a legal provision and is a powerful statement that the law stands firmly against gender-based violence and child exploitation. It not only enhances punitive measures but also ensures that the legal system is trauma-informed, offering better protection, support, and justice for survivors. The

provisions are crafted with the understanding that crimes against women and children require not just punitive action but a holistic approach that encompasses prevention, support, and rehabilitation.

Some major reforms in offences against women and children are as follows: -

1. **Section 69** of the BNS introduces a groundbreaking provision that criminalizes sexual intercourse obtained through deceitful means, an offence that previously found no recognition under the Indian Penal Code. This section acknowledges the nuanced nature of sexual violence, extending legal protection beyond physical force to include instances where manipulation, fraud, or coercion is used to exploit individuals. It reflects a more comprehensive understanding of consent, emphasizing that true consent cannot be obtained through deception, thereby strengthening the legal framework against sexual exploitation.
2. **Section 95** of the BNS marks a landmark reform by criminalizing the hiring and employing of children to commit offences. This provision is a game-changer in the realm of juvenile justice, addressing the critical issue of children being exploited by criminal networks, gangs, and notorious offenders. Often, these young individuals, driven by coercion, poverty, or manipulation become unwilling participants in crimes, only to be trapped in a vicious cycle of recidivism. By recognizing this reality, Section 95 not only seeks to protect the innocent but also to break the cycle of exploitation, ensuring that children are not treated as criminals but as victims in need of protection, rehabilitation, and support. This forward-thinking approach is a testament to the BNS's commitment to safeguarding the rights and futures of vulnerable children, especially those in conflict with the law.
3. BNS has introduced a uniform definition of a "child" as any person below the age of eighteen years. It is a significant reform that harmonizes the legal understanding of childhood across



various statutes. This consistent age threshold is more than just a technical adjustment and it's a strategic move to strengthen the implementation and enforcement of child protection measures across the legal landscape. This uniformity ensures that no child falls through the cracks due to legal ambiguities, making it easier for authorities to apply child protection laws effectively. Moreover, this clarity fosters better coordination among law enforcement agencies, judicial bodies, and child welfare organizations, enabling a more cohesive approach to addressing issues related to child rights, welfare, and justice. In essence, the BNS's definition of a child is not just a legal formality but is a powerful tool to create a safer, more just society where the rights of every child are recognized, respected, and vigorously protected.

4. The offences of voyeurism and disrobing a woman have been made **gender neutral** in reference to perpetrator.
5. Death penalty has been mandated for the offence of gang rape with a minor.
6. BNS introduces a significant and progressive change by replacing the term "procurement of minor girl" with "procurement of child". This shift reflects a more inclusive and **child-centric approach**, acknowledging that the exploitation of children is not limited by gender. By broadening the scope to cover all children, regardless of gender, the BNS recognizes the reality that both boys and girls can be victims of exploitation, trafficking, and abuse. This change is crucial because it ensures that the legal framework is gender-neutral, providing equal protection to every child against the heinous crime of procurement, which involves inducing, procuring, or facilitating a child's involvement in illegal activities like forced labour, prostitution, or trafficking. This reform not only strengthens the safeguards for vulnerable children but also aligns India's legal standards with international child protection norms. It sends a clear and powerful message that no child, regardless of gender, should ever be subjected to exploitation or abuse,

and the law will stand firm in defending their rights and dignity.

7. BNS has abolished this distinction of age by raising the age of a minor victim of sexual offence to 18 years.
8. Age of consent in Section 63 in exception 2 is also replaced by 18 years which was 15 years in IPC in section 375.
9. BNS has taken a significant step forward by assigning cruelty a separate section, highlighting the serious nature of this offence and the urgent need for distinct legal provisions to address it. This move is not just about legal classification but is a powerful acknowledgment of the profound physical, emotional, and psychological harm that cruelty can inflict on victims, especially women and children. By creating a standalone section, the BNS ensures that cruelty is given the attention it deserves within the criminal justice system. It covers a broad spectrum of abusive behaviours, including physical violence, mental harassment, emotional abuse, and neglect, thereby recognizing that cruelty extends beyond overt violence to include subtler forms of harm that can be equally devastating. This reform also reflects a shift towards a more **victim-centric approach**, where the law is sensitive to the experiences of those who suffer from cruelty. It facilitates clearer legal procedures, stronger punitive measures, and more effective enforcement, ensuring that perpetrators are held accountable for their action.

In essence, the BNS is a revolution in legal thought with a bold assertion that justice must be dynamic, inclusive, and deeply rooted in the principles of equality and human dignity. It's not just about laws, it is about building a society where justice is accessible, protective, and transformative for all, especially for those who need it the most.

#### **Shortcomings in BNS while dealing with the offences against women and children**

While the BNS represents a significant stride in reforming India's criminal justice system, particularly



through its robust measures for the protection of women and children, it is not without its limitations and gaps. Despite its ambition to be a comprehensive legal code, the BNS falls short in several critical areas, leaving certain offences unaddressed and failing to reflect the evolving complexities of modern society.

One of the most glaring omissions is the **lack of provisions addressing sexual crimes against men.**

The code's narrow focus on female victims overlooks the reality that sexual violence affects individuals of all genders. This exclusion not only denies justice to male survivors but also perpetuates a culture where the experiences of men are marginalized in legal discourse, contradicting the principles of equality and non-discrimination enshrined in the Constitution.

Furthermore, the BNS **retains the colonial-era approach to marital rape, treating it as a non-offence.** This outdated perspective undermines the principle that consent is the cornerstone of any relationship, irrespective of marital status. By not criminalizing marital rape, the BNS essentially normalizes sexual violence within marriage, disregarding the autonomy and dignity of countless individuals trapped in abusive domestic environments.

The **deletion of Section 377 from the IPC**, while a progressive step towards decriminalizing consensual same-sex relationships, inadvertently creates a legal vacuum regarding the rape of an adult man. Without explicit provisions, cases of non-consensual acts involving adult men may fall through the cracks, leaving victims without legal recourse. This omission reflects a failure to acknowledge the diverse realities of sexual violence in contemporary society.

Moreover, the newly introduced laws concerning **consensual relationships raise concerns about potential misuse.** While the intent may be to protect individual freedoms, the lack of clear safeguards opens the door to false accusations or legal harassment, particularly in cases where personal relationships become entangled in legal disputes.

The BNS also struggles to address the **complexities of the digital age.** Despite the rise of cybercrimes, online harassment, and digital exploitation, the code's provisions are insufficiently equipped to tackle these modern challenges. The absence of comprehensive cyber laws within the BNS leaves a critical gap in protecting individuals from the ever-evolving threats in the digital space.

Lastly, one of the most glaring oversights is the failure to establish **specific offences for transgender individuals.** In an era where gender inclusivity and equality are globally recognized as fundamental human rights, the BNS's silence on this front is both disheartening and unacceptable. Transgender individuals face heightened risks of violence, discrimination, and exploitation, and the law must explicitly protect them, acknowledging their right to dignity, safety, and justice.

### Conclusion

While the Bharatiya Nyaya Sanhita represents a significant move towards legal reform, it falls short of being truly inclusive, comprehensive, and progressive. Its existing gaps highlight the urgent need for further changes that reflect the diversity of human experiences, adapt to shifting societal norms, and ensure that justice remains impartial, irrespective of gender, orientation, or identity.

To transform the BNS into a more inclusive and forward-thinking legal framework, several key reforms are necessary. Firstly, the definition of sexual offences should be expanded to clearly include crimes against men, recognizing that sexual violence affects individuals across all genders. The outdated marital rape exemption should be abolished, reaffirming that consent within marriage is as critical as in any other relationship. Moreover, clear, inclusive definitions of consent are essential to address issues of coercion, manipulation, and deceit, offering robust protection against all forms of sexual exploitation.



The legal code should also include specific provisions for transgender individuals, tackling the unique violence and discrimination they face while formally acknowledging diverse gender identities within the legal system. As the digital landscape rapidly evolves, comprehensive cyber laws are needed to combat online harassment, cyberbullying, revenge porn, and digital exploitation, alongside strong data protection and privacy safeguards. Protections for non-binary and gender non-conforming individuals must be explicitly articulated to ensure their rights are recognized and upheld. In juvenile justice, the focus should shift from mere protection against online threats to prioritizing rehabilitation over punishment for young offenders, aiding their successful reintegration into society.

Legal provisions regarding consensual relationships should be reinforced to prevent misuse while safeguarding personal freedoms. Mental health support should be integrated into the justice system to address the psychological impact on crime survivors. Additionally, rehabilitation programs for offenders, especially juveniles, can play a key role in reducing recidivism and promoting societal reintegration. To ensure effective implementation, investment in capacity-building initiatives for law enforcement, the judiciary, and legal professionals is vital, with a focus on gender sensitivity, digital crime awareness, and minority rights.

Finally, establishing independent oversight bodies will enhance transparency, accountability, and justice, ensuring that the BNS evolves into a dynamic legal framework that upholds the principles of justice, equality, and human dignity in an ever-changing society.

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