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Protection of Women under the BNS, 2023: A Critical Study of Criminal Liability and Victim Justice

Neelam Vishwakarma

Assistant Professor, Madhuban Law college, Indore

ABSTRACT.

The Bharatiya Nyaya Sanhita, 2023 (BNS), in force since 1 July 2024, replaced the Indian Penal Code, 1860 and, for the first time, gathered the offences against women into a single chapter placed ahead of offences against property and the State. This paper examines whether that re-ordering reflects a real change in how Indian criminal law protects women, or a re-numbering of a regime shaped over decades by the Criminal Law (Amendment) Acts of 2013 and 2018 and by Supreme Court directions. It studies the principal provisions on sexual offences, harassment, stalking, voyeurism, dowry death, matrimonial cruelty, acid attack and trafficking, together with the procedural safeguards in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) that determine whether a complainant can actually reach a remedy. It argues that the BNS adds a few meaningful provisions, notably on deceitful sexual relations and on disclosure of a victim's identity, but retains the structural limits that have most affected victims: the marital rape exception, the gendered framing of several offences, the debate over misuse of cruelty provisions, and the gap between prescribed punishment and actual access to justice. The paper concludes with reforms aimed at making criminal liability and victim justice work together.

Keywords: Bharatiya Nyaya Sanhita; women; sexual offences; domestic cruelty; victim justice; gender justice; BNSS.

1. Introduction

Criminal law is rarely neutral about gender. What a legal system chooses to name as an offence, how it grades the punishment, and whose account it is prepared to believe all say something about the status it gives to women. For most of its life the Indian Penal Code, 1860 (IPC) spoke about women in a language of modesty and chastity, and the reforms that improved it came late and mostly in response to public outrage: the Mathura rape case in 1972, the dowry deaths of the 1980s, and the Delhi gang rape of December 2012 that led to the Criminal Law (Amendment) Act, 2013.

The Bharatiya Nyaya Sanhita, 2023 (BNS) replaced the IPC on 1 July 2024. Its most visible gesture to women is structural. The offences against women and children, which the IPC scattered across several chapters, are collected in Chapter V (sections 63 onwards), and that chapter now comes early in the Sanhita, ahead of offences against the State. Supporters read this as a statement of priorities. Critics point out that re-ordering a code is not the same as reforming it, and that the substantive content of most women-related provisions is the IPC's, carried over with changes in numbering, punishment and wording.

This paper takes the critics' challenge seriously. It asks two questions. The first concerns *criminal liability*: how far does the BNS define and punish the harms that women actually suffer, and where does it leave gaps or impose limits? The second concerns *victim justice*: even where the Sanhita creates an offence, can a woman report it, be heard, be protected and be compensated? The second question cannot be answered from the penal code alone. It depends on the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which governs reporting, investigation, trial and compensation, and on the courts that apply both.

The argument has three parts. The BNS gives women a more consolidated and, on paper, harsher body of law. It leaves untouched the structural features that have most limited protection: the marital rape exception, the gendered design of several offences, and the unresolved tension between protecting women from matrimonial cruelty and guarding against its misuse. And its promise depends on procedural and institutional capacity that the statute can describe but not supply.

2. Research design

The study is doctrinal and critical. It reads the text of the BNS and BNSS, compares provisions with their IPC and Code of Criminal Procedure counterparts, and tests them against constitutional principles and Supreme Court decisions. It does not generate new empirical data about reporting, conviction or pendency; where it refers to practice, it relies on judicial observations and published commentary.

Three questions guide the inquiry.

1. What has the BNS changed in the definition and punishment of offences against women, and what has it left alone?

2. Do the procedural provisions of the BNSS make those offences easier or harder for a woman to prosecute?
3. Where do the Sanhita and the courts leave women unprotected, and what would close those gaps?

The scope covers sexual offences, harassment, stalking and voyeurism, dowry death and matrimonial cruelty, acid attack and trafficking, and the victim-related procedure of the BNSS. Offences against children are touched on only where they overlap. The paper uses "woman" as the BNS does in the provisions discussed, and notes where a provision is gender-specific as to victim or offender. Section numbers follow the enacted texts; they should be checked against the official gazette before formal citation. Because the marital rape challenge was before the Supreme Court at the time of writing (October 2026), the paper identifies the point at which its analysis may be overtaken.

3. Constitutional and international foundations

Equality and special provision. Article 14 guarantees equality before the law, and Article 15(3) permits the State to make special provision for women and children. The Supreme Court has read the second as an enabling clause: protective laws for women are not discrimination, though they must not rest on stereotypes about women's weakness or dependence. The tension between protection and paternalism runs through the whole of this subject.

Life, dignity and bodily integrity. In *Bodhisattwa Gautam v. Subhra Chakraborty* (1996) 1 SCC 490 the Court held that rape violates a woman's right to life and personal liberty under Article 21 and is not merely an offence against modesty. *Vishaka v. State of Rajasthan* (1997) 6 SCC 241 drew on Articles 14, 15, 19 and 21 and on international conventions to lay down binding guidelines against workplace sexual harassment, which Parliament later enacted as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. *K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1 added privacy, dignity and decisional autonomy, which have since been used to argue that consent within marriage is a constitutional question and not only a matter of personal law.

Fundamental duty. Article 51A(e) makes it a duty of every citizen to renounce practices derogatory to the dignity of women. Though not enforceable as a right, it has been used to interpret statutes in a woman-protective direction.

International obligations. India is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and courts have used it, along with the General Recommendations of its Committee, as an aid to reading domestic law (*Vishaka*). The Convention treats gender-based violence as discrimination and expects States to criminalise it, provide remedies and protect witnesses.

What follows for criminal law. Taken together, these sources point to three standards against which the BNS can be tested. The law should define offences by reference to violation of the person and not honour or modesty. It should be applied without stereotype. And it should give the woman a real route to the court, not merely a right on paper. The remainder of the paper uses these standards.

4. From IPC to BNS: the main provisions on women

Chapter V of the BNS gathers the offences against women and children from section 63. The table maps the principal provisions on women to their IPC counterparts. Punishments are summarised, not quoted, and should be checked against the text.

BNS section	Offence	IPC counterpart	Position under the BNS
63	Rape (definition)	375	Carried over; marital exception retained, wife's age threshold 18
64	Punishment for rape	376(1), (2)	Rigorous imprisonment of ten years to life, with fine
65	Rape of girl under 16 or 12	376(3), 376AB	Enhanced terms, up to death for under 12
66	Rape causing death or persistent vegetative state	376A	Twenty years to life or death
67	Sexual intercourse by husband on wife during separation	376B	Two to seven years
68	Sexual intercourse by person in authority	376C	Five to ten years
69	Sexual intercourse by deceitful means or false promise of marriage	New	Up to ten years and fine
70	Gang rape	376D	Twenty years to life; life or death where victim under 18
72	Disclosure of identity of victim	228A	Up to two years and fine
74	Assault or criminal force to outrage modesty	354	One to five years
75	Sexual harassment	354A	Up to three years in listed cases
76	Assault with intent to disrobe	354B	Three to seven years
77	Voyeurism	354C	Gender-neutral as to accused; one to three years, higher on repetition
78	Stalking	354D	Up to three years first conviction, five on repetition
79	Word, gesture or act insulting modesty	509	Up to three years and fine
80	Dowry death	304B	Seven years to life
85, 86	Cruelty by husband or relatives; definition	498A	Reproduced; up to three years and fine
124	Acid attack	326A, 326B	Ten years to life; five to seven years for attempt
143, 144	Trafficking; exploitation of trafficked person	370, 370A	Retained, with broader language

The table shows that the genuine novelty lies in one section (69), in modest changes to wording and punishment, and in the structure of the chapter itself. The remainder is continuity. That is not a criticism in itself: the 2013 and 2018 amendments had already raised punishments considerably. But it calibrates the claim that the BNS marks a new era for women's protection. It consolidates rather than reconstructs.

5. Sexual offences

The definition of rape (section 63). The BNS keeps the IPC's expanded 2013 definition, which covers penetration of the vagina, mouth, urethra or anus by any object or body part, and the specified acts of manipulation and application of the mouth. Consent is described as an unequivocal voluntary agreement communicated by words, gestures or any form of verbal or non-verbal communication, and the explanation that mere absence of resistance does not imply consent is kept. Sexual intercourse with a girl under eighteen is rape irrespective of consent. These are sound features, and they reflect the principle established in *Mukesh v. State (NCT of Delhi)* (2017) 6 SCC 1 and earlier cases that the offence is violation of bodily autonomy.

Punishment (sections 64 to 66, 70). The minimum term for rape is ten years, extendable to life. Rape of a girl under sixteen attracts twenty years to life, and of a girl under twelve, twenty years, life or death. Gang rape draws twenty years to life, with life or death where the victim is under eighteen. Rape causing death or a persistent vegetative state attracts twenty years to life or death. Section 71 provides enhanced punishment for repeat offenders. The effect is a steeply graded scale. Whether severity deters is debatable. It is sometimes argued that high mandatory minimums make courts slower to convict, but that is a hypothesis for empirical study and this paper does not assert it.

Position of authority and custodial settings (section 68). Section 68 carries forward the offence of sexual intercourse by a public servant, a person in charge of a jail, remand home, hospital or similar institution, or a person in a position of authority, where the woman's consent is obtained within that relationship. It treats consent in such settings as compromised, and the penalty is five to ten years.

Deceit and false promises (section 69). This is the principal new provision. It punishes sexual intercourse, not amounting to rape, by deceitful means, including false promise of employment or promotion, inducement, or marriage after suppressing one's identity, with imprisonment up to ten years and fine. Its significance is twofold. It gives statutory form to a line of cases, such as *Uday v. State of Karnataka* (2003) 4 SCC 46 and *Pramod Suryabhan Pawar v. State of Maharashtra* (2019) 9 SCC 608, in which the Court tried to distinguish a promise to marry that was false from the start from a relationship that failed, and held that consent given under a misconception of fact is not consent only where the misconception is directly connected with the act. And it creates an intermediate category that sits below rape, which can avoid prosecuting what are essentially failed relationships as rape.

The provision cuts both ways. It recognises that deception can vitiate agreement and gives women a remedy that previously had to be forced into the rape definition. But the phrase "deceitful means" requires courts to judge a person's state of mind at an earlier time, usually on the strength of the woman's word against the man's. There is also a risk that moral judgments about consensual relationships creep into a criminal trial. The Court's insistence in *Pramod Suryabhan Pawar* that a failed promise is not necessarily a false one remains the principal guard against that.

Marital exception (section 63, Exception 2). The BNS retains the rule that sexual intercourse by a man with his own wife, the wife not being under eighteen, is not rape. The age threshold, which the IPC had set at fifteen, was raised to eighteen after *Independent Thought v. Union of India* (2017) 10 SCC 800 held that the lower threshold was inconsistent with the law protecting children. Beyond that, the exception stands. Section 67 punishes intercourse by a husband with a wife living separately under a decree or custom, at a much lower scale of two to seven years, which underlines how differently the law treats the same act when it occurs inside a marriage.

The constitutional challenge is pending. In 2022 a division bench of the Delhi High Court gave a split verdict on the exception, with one judge holding it unconstitutional and the other upholding it as based on an intelligible classification. The Supreme Court has since taken the matter up together with an appeal from a Karnataka High Court order, and in September 2026 directed that the batch be listed for final hearing, observing that it would examine both whether the exception is valid and whether a prosecution of a husband can be sustained even if it survives. The Union Government's position, stated in an affidavit in October 2024, is that the matter belongs to Parliament and that other remedies such as the cruelty provision and the Protection of Women from Domestic Violence Act, 2005 are available. The outcome was not known when this paper was prepared and the discussion should be updated once judgment is delivered.

6. Harassment, stalking, voyeurism and outraging modesty

The provisions in this group came into the IPC through the 2013 Amendment, after the report of the Justice Verma Committee, and the BNS carries them over under sections 74 to 79.

Assault or criminal force to outrage modesty (section 74). The offence turns on the notion of modesty, a word with Victorian overtones that the courts have been uncomfortable with. The Supreme Court in *Raju Pandurang Mahale v. State of Maharashtra* (2004) 4 SCC 371 and *Rupan Deol Bajaj v. K.P.S. Gill* (1995) 6 SCC 194 treated modesty as an attribute of a woman as a woman, and asked whether the act would be perceived by a reasonable person as an affront to her sense of decency. The better view is that the harm being protected is bodily integrity and dignity, and several courts have said so. The BNS retains the old language, so the gap between what the offence protects in theory and how it is named remains.

Sexual harassment (section 75), assault with intent to disrobe (section 76). Section 75 punishes unwelcome physical contact, demands for sexual favours, showing pornography against a woman's will and sexually coloured remarks. The punishment varies from one to three years depending on the conduct. Section 76 is aimed at attempts to strip a woman and is punished more heavily, at three to seven years.

Voyeurism (section 77). This is notable because the accused is described neutrally in the BNS text as regards gender, whereas the corresponding IPC provision (354C) referred to a man. The change is a small step towards a gender-neutral framing for some offences, although the victim remains a woman.

Stalking (section 78). Following a woman and contacting her despite clear indication of disinterest, or monitoring her use of the internet or electronic communication, is punishable by up to three years on first conviction and up to five on a subsequent one. There is a list of defences, including prevention of crime and lawful authority. Cyber-stalking is covered but only through the general language of monitoring electronic communication, which may not capture newer forms such as location tracking by spyware or deepfake harassment.

Insulting modesty by word or gesture (section 79). This replaces IPC section 509 and covers words, sounds, gestures or intrusion on privacy intended to insult a woman's modesty.

An assessment. These provisions are broadly adequate in design, and they offer lesser punishments that allow courts to respond proportionately to conduct that falls short of rape. Their weaknesses are practical. Many are punishable by up to three years only, which means that under the BNSS notice-of-appearance scheme police will often issue a notice instead of arresting, and a complainant who fears retaliation may feel exposed in the meantime. Reporting is also low because the conduct is socially normalised. Finally, the law covers harassment in public and personal settings, while workplace harassment is addressed by a separate statute (the 2013 Act) with an administrative, not criminal, mechanism. The BNS does not link the two, and a woman may have to choose between routes.

7. Dowry death, cruelty and matrimonial offences

Dowry death (section 80). Where a woman dies of burns or bodily injury, or otherwise than under normal circumstances, within seven years of marriage, and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or his relatives for or in connection with a demand for dowry, the husband or relative is deemed to have caused the death. The punishment is not less than seven years and may extend to life. The section is paired with a presumption in the law of evidence (section 118 of the Bharatiya Sakshya Adhiniyam, 2023, corresponding to section 113B of the Evidence Act), which shifts the burden to the accused once the conditions are met. The Supreme Court has required that the cruelty be proximate in time, so that the words "soon before" are not stretched beyond a live and continuing link (*Kans Raj v. State of Punjab* (2000) 5 SCC 207), and has also reminded trial courts to apply the presumption where its conditions are made out (*Satbir Singh v. State of Haryana* (2021) 6 SCC 1).

Dowry death was added to the IPC in 1986 because ordinary murder trials failed in cases where the only witnesses were members of the husband's household. The provision remains necessary for that reason. It is also dependent on proof of a dowry demand, which excludes deaths in an abusive marriage where the harassment is not framed in dowry terms.

Cruelty by husband or relatives (sections 85 and 86). Section 85 provides that a husband or a relative of the husband who subjects a woman to cruelty is punishable with up to three years and fine. Section 86 defines cruelty as wilful conduct likely to drive the woman to suicide or cause grave injury to life, limb or health, or harassment with a view to coercing her or her relatives to meet an unlawful demand for property or valuable security. The provisions reproduce section 498A of the IPC and its Explanation, the only change being that the Explanation became a separate section.

This is the most controversial item in the chapter. The case for it is that most violence against married women occurs inside the home, is unseen by outsiders, and was formerly invisible to criminal law. The case against it, repeated by the Supreme Court in *Preeti Gupta v. State of Jharkhand* (2010) 7 SCC 667, *Rajesh Sharma v. State of U.P.* (2017) 8 SCC 746 and more recently *Kahkashan Kausar v. State of Bihar* (2022) 6 SCC 599, is that the offence is cognizable and non-bailable and is sometimes used with exaggerated, omnibus allegations that implicate distant relatives. The Court has responded by requiring courts to look closely at general and unspecific allegations, and in *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273 by limiting routine arrest. In *Rajesh Sharma* it went further and introduced family welfare committees, but in *Social Action Forum for Manav Adhikar v. Union of India* (2018) 10 SCC 443 it withdrew those directions as going beyond the judicial role.

In *Achin Gupta v. State of Haryana* (2024 INSC 369), decided on 3 May 2024 before the BNS took effect, the Court observed that sections 85 and 86 were a verbatim reproduction of section 498A and asked the legislature to consider making changes in light of practical realities. Parliament did not amend them before commencement. The sections have therefore been brought into force unchanged, and the debate has simply been carried over into the new code.

Other matrimonial offences. The BNS also continues provisions on bigamy and on cohabitation induced by a deceitful belief of lawful marriage (sections 81 and 82), enticing a married woman (section 84) and kidnapping or abducting a woman to compel marriage (section 87). These are largely unchanged. The enticement provision, derived from the IPC's adultery-era law on married women, sits uneasily with the constitutional position that a woman is an autonomous adult, and is a candidate for review.

Assessment. The BNS preserves the offence without resolving its central difficulty. If the misuse concern is real, it needs evidence, a narrower definition or procedural filters, and not only judicial warnings. If the offence is a genuine protection, then limiting the proof of cruelty to its present vague words will continue to produce inconsistent outcomes. Either way, the provision is an example of a law that is asked to do protection and deterrence together, and whose effectiveness depends heavily on the police and the court that handle the first complaint.

8. Acid attack, trafficking and other bodily offences

Acid attack (section 124). Voluntarily causing grievous hurt by acid is punishable with not less than ten years and up to life imprisonment, with a fine that must be just and reasonable to meet the victim's medical expenses and be paid to the victim. Throwing or attempting to throw acid with intent to cause such harm is punishable with five to seven years. The provision carries forward sections 326A and 326B of the IPC. Its legislative background is the Supreme Court's decision in *Laxmi v. Union of India* (2014) 4 SCC 427, which directed regulation of the sale of acid, compensation of at least three lakh rupees to victims, and free treatment in private as well as public hospitals. The fact that victims have continued to struggle to obtain compensation and treatment shows how little statutory text alone can accomplish.

Trafficking (sections 143 and 144). The BNS retains the IPC's provisions on trafficking of persons for exploitation, with a broad definition of

exploitation that includes sexual exploitation and forced labour, and punishes those who knowingly obtain the services of a trafficked person. These provisions matter for women because trafficking and sexual exploitation overlap. The principal concern is the relationship with the Immoral Traffic (Prevention) Act, 1956, under which women in prostitution are sometimes treated as offenders. A woman who is a victim of trafficking should be protected and rehabilitated, not prosecuted, and the BNS does not explicitly say so.

Miscarriage and related offences (sections 88 to 92). The BNS retains the offences relating to causing miscarriage, with and without the woman's consent, and the offence of causing death by an act intended to cause miscarriage. These sit alongside the Medical Termination of Pregnancy Act, 1971, which permits termination in defined circumstances. The result is a dual system in which a woman's reproductive decisions can be shaped by a criminal prohibition with an exception, rather than by a right with regulation. The Supreme Court's reading of the 2021 amendments in *X v. Principal Secretary, Health and Family Welfare Department* (2022) has widened access, but the penal provisions remain on the books.

Other provisions of relevance. The general chapter on offences against the body also affects women: hurt and grievous hurt (sections 115 and 116), wrongful restraint and confinement, criminal intimidation, and the offences of abetment of suicide. A woman who suffers non-sexual violence from a partner, such as beating, confinement or threats, must often rely on these general offences or on civil protection under the 2005 Domestic Violence Act. The BNS does not create a specific offence of domestic violence, nor does it address coercive control or economic abuse, both of which are increasingly recognised in other jurisdictions.

9. Victim justice in procedure: the BNSS

A penal code defines wrongs; a procedural code decides whether they ever reach a court. For women, the BNSS matters at least as much as the BNS. The table sets out the main victim-related provisions and what each is meant to do.

Stage	BNSS provision	Intended effect	Limit
Reporting	s. 173	Zero FIR at any police station; electronic information with later signature; information on listed offences by a woman recorded by a woman officer	Depends on station-level compliance; electronic route needs access
Statement	s. 183	Statement before a Magistrate, with audio-video recording permitted	Magistrate availability; use of recordings varies
Medical examination	s. 184	Examination of rape victim by a registered practitioner, with report within seven days	Quality of examination and consent procedure
Investigation	s. 193	Time limit for completing investigation of rape; victim to be told of progress	Limited sanction for delay
Scene documentation	s. 176	Forensic visit and videography in serious offences	Capacity of forensic services
Trial	s. 366	In-camera trial of rape cases; women judges where practicable	Courtroom practice, cross-examination conduct
Withdrawal	s. 360	Victim to be heard before withdrawal of prosecution	Applies in limited scenarios
Compensation	ss. 395 to 397	Victim compensation, free treatment	State schemes vary widely

Reporting. Section 173 formalises the "zero FIR", under which a police station must register information about a cognizable offence regardless of where it occurred and then transfer it. It also allows information to be given electronically, to be signed within three days. Where a woman reports a sexual offence, the information is to be recorded by a woman police officer, and where she is temporarily or permanently mentally or physically disabled, at her residence or place of her choice, in the presence of an interpreter or special educator where needed. These provisions respond to a persistent difficulty: women who go to a police station are met with reluctance, jurisdictional excuses and pressure to compromise.

Preliminary enquiry. Section 173(3) allows an officer, with senior approval, to conduct a short preliminary enquiry before registering a case in offences punishable with three to seven years. Applied to harassment or cruelty complaints, this may delay registration, although the Supreme Court's earlier rule in *Lalita Kumari v. Government of U.P.* (2014) 2 SCC 1 that registration is mandatory where a cognizable offence is disclosed remains the governing constitutional standard, with limited categories of preliminary enquiry permitted.

Statement and medical examination. The recording of a rape victim's statement under section 183, and the audio-video option, reduce the risk of later retraction through pressure and provide a record that can limit repeated questioning. The medical examination under section 184 follows the pattern of the 2013 reforms, and the Court has made clear that the discredited "two-finger test" must not be used, because it violates the woman's dignity and has no scientific basis (*Lillu v. State of Haryana* (2013) 14 SCC 643).

Investigation timelines. The BNSS requires investigation of rape to be completed within two months of the recording of the information, and requires the police to inform the victim of the progress of investigation within ninety days. The latter is a genuine innovation, since it recognises the complainant as a participant and not merely a witness. Its weakness is that a missed deadline carries no stated consequence.

Trial. Section 366 retains in-camera trial for rape and related offences and the rule that proceedings should, as far as practicable, be conducted by a woman judge. Section 72 BNS and the related prohibition on printing court proceedings without permission protect the victim's identity, consistent with *Nipun Saxena v. Union of India* (2019) 2 SCC 703, which extended confidentiality to victims of sexual offences generally. The BNSS also permits electronic means for evidence and appearance, which can reduce the burden on women who would otherwise travel long distances or face the accused in the courtroom, although it raises its own questions of access and privacy.

Participation and compensation. The BNSS recognises the victim's right to be heard on withdrawal of prosecution (section 360), builds on the Code's earlier provisions on victim compensation and free medical treatment, and provides for a witness protection scheme to be notified by each State. The Supreme Court's earlier decisions required compensation as a matter of Article 21 (*Delhi Domestic Working Women's Forum v. Union of India* (1995) 1 SCC 14) and, in *Mahender Chawla v. Union of India* (2019) 2 SCC 375, approved a uniform witness protection scheme. Compensation, however, depends on the quality of State schemes and legal-services machinery, which vary sharply.

Assessment. On paper, the BNSS moves the system closer to a victim-centred model: women can report at any police station, in any form, to a woman officer, and are entitled to information and a degree of participation. The constraint is capacity. Almost every provision depends on the practice of the police station, the Magistrate and the hospital, and none of them is accompanied by a new institutional resource or a remedy for non-compliance.

10. The judicial approach

Indian courts have, over five decades, moved from treating the sexual-violence complainant with suspicion to treating her testimony with respect, though not in a straight line.

From Mathura to Gurmit Singh. In *Tukaram v. State of Maharashtra* (1979) 2 SCC 143, the Mathura case, the Supreme Court acquitted police officers accused of raping a young tribal woman in the police station on the ground that she had not resisted, a reasoning that provoked public protest and the 1983 amendments on custodial rape and the burden of proof. In *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384 the Court reversed the culture of doubt, holding that a victim's testimony, like an injured witness's, can be relied on without corroboration if it inspires confidence, and that courts should not approach a woman's account with the scepticism applied to an accomplice.

Dignity in procedure. The Court has since struck at degrading practices: the two-finger test in *Lillu*, questions about a victim's past sexual history, and bail conditions that required the accused to approach the complainant, such as asking her to tie a rakhi, which it condemned in *Aparna Bhat v. State of M.P.* (2021) and replaced with detailed guidance on gender-sensitive bail orders. These decisions show how far progress depends on judicial attitude and not only on statutory text.

Consent and autonomy. *Pramod Suryabhan Pawar* and later decisions on false promise of marriage, and the *Independent Thought* decision on the age threshold in the marital exception, show a Court prepared to read consent in the light of context while refusing to treat every failed relationship as an offence.

Limits. The same Court has also produced acquittals on the ground of delay, absence of injury or the woman's perceived conduct, and its observations on misuse of cruelty and rape provisions have at times been used to encourage scepticism about complainants. The Court has itself had to condemn stereotypes in judicial reasoning, and a handbook on combating gender stereotypes was released in 2023 for this purpose. It follows that victim justice is a matter of judicial training and attitude, which the statutes can support but cannot guarantee.

11. Critical appraisal

The BNS and BNSS can be assessed against the three standards drawn from the constitutional framework: whether offences are defined by violation of the person, whether they are applied without stereotype, and whether they offer a real route to a remedy.

Standard	Where the new law helps	Where it falls short
Defined by violation of the person	Section 69 on deceit; neutral accused in voyeurism; age of wife raised to 18	Marital exception; the language of modesty retained in ss. 74, 79
Applied without stereotype	Statutory emphasis on woman officers and sensitive recording	Cruelty provisions reproduced despite misuse concerns; no statutory guard against stereotyped reasoning
Real route to a remedy	Zero FIR, e-FIR, recorded statements, progress information, in-camera trial	Preliminary enquiry; no consequence for delay; uneven compensation and witness protection

First, the marital exception is the clearest gap between the law and the constitutional standard. The exception treats a wife's consent as permanently given by marriage, an idea that sits badly with *Puttaswamy* and with the Court's own reading of consent. The Union's answer that the matter is for Parliament and that other remedies exist is a serious argument about institutional roles, but it does not explain why the same act is rape outside marriage and a lesser offence (section 67) or no sexual offence at all within it. The Supreme Court's current hearing may settle the matter. Whatever the outcome, Parliament will need to decide whether to legislate directly.

Second, the gendered design of the Sanhita is under-examined. Most offences in Chapter V assume a male offender and a female victim. This reflects the pattern of reported violence, but it leaves male, transgender and non-binary victims of sexual violence reliant on weaker general offences. The BNS made one adjustment (voyeurism) and a few offences elsewhere refer to transgender persons, but the question whether rape law should be gender-neutral as to victim has not been taken up. Women's groups have generally argued for protective laws that remain focused on women while expanding protection for others, and that argument should be tested, not assumed.

Third, the misuse debate shows a failure of evidence. Both sides in the cruelty debate rely on assertions. The Court and the legislature appear to have had little systematic data on false, exaggerated and genuine complaints, outcomes at each stage, and the reasons for acquittal. Without that, the provision is defended by anecdote and criticised by anecdote. Judicial caution, such as the requirement of specific allegations, is useful but treats the symptom.

Fourth, severity and access are not the same thing. The BNS and its predecessors have increased punishments repeatedly. Yet the main barriers to justice for women have been under-reporting, slow investigation, hostile courtrooms and long trials. Raising the maximum penalty does nothing for a woman who cannot get her complaint registered or who withdraws under pressure. A critical reading of the BNS must therefore ask less about the number of years and more about conviction, speed and survivor experience.

Fifth, the BNSS reforms need infrastructure. Women police officers, forensic labs, Magistrates trained in sensitive recording, victim compensation funds and witness protection are all assumed by the text. If they are not provided, the new rights are unevenly distributed according to the region and means of the complainant.

This appraisal rests on doctrinal analysis and judicial statements. Claims about the impact of the new law since July 2024 would require data from police records, courts and State legal-services authorities, which the present paper does not collect.

12. Recommendations

For Parliament

1. Remove or substantially redraft Exception 2 to section 63 so that non-consensual sexual intercourse within marriage is not excluded from the offence of rape. If Parliament prefers a graded approach, it should at least bring section 67 to parity of punishment and remove the exemption for sexual acts of aggravated nature within marriage.
2. Replace the language of "modesty" in sections 74 and 79 with a description of the actual wrong, namely violation of bodily integrity, dignity or sexual autonomy.
3. Address the cruelty offence on the basis of evidence: commission a study of complaints under sections 85 and 86 and their outcomes, and consider procedural filters such as a requirement of specific allegations against each accused relative, rather than leaving the matter to judicial warnings.
4. Provide express protection against prosecution for trafficked and exploited women, and clarify the relation between the BNS provisions and the Immoral Traffic (Prevention) Act.
5. Extend stalking and harassment provisions to modern forms of technology-facilitated abuse, such as spyware, location tracking and non-consensual synthetic images, and consider a standalone offence of coercive control within intimate relationships.
6. Examine, by an expert committee, whether sexual-offence provisions should be extended to protect male and transgender victims while preserving protective focus on women.

For courts and prosecutors

7. Treat the clauses on victim-centred procedure (zero FIR, woman officer, recorded statement, progress information, in-camera trial) as mandatory standards and monitor compliance in sessions courts.
8. Apply sections 69 and 63 with attention to the distinction between a false promise and a failed relationship, and avoid stereotyped assumptions about how a victim should behave.
9. Use the Supreme Court's handbook on gender stereotypes in judicial training and in written judgments.

For the executive

10. Fund and staff the BNSS machinery: women officers at police stations, forensic labs, one-stop centres, trained Magistrates and prosecutors, and State-level victim compensation and witness protection schemes with published statistics.
11. Publish disaggregated data on registration, investigation time, charge-sheet, conviction and compensation for offences against women, so that future reform is based on evidence.

13. Conclusion

The Bharatiya Nyaya Sanhita does not rewrite the law on women's protection. It collects it, renumbers it and, in a few places, sharpens it. The new offence of sexual intercourse by deceitful means, the neutral accused in voyeurism and the higher age threshold in the marital exception are meaningful if modest changes. The re-ordering of the code, which gives offences against women and children a place near the front, matters symbolically even if it does not by itself change outcomes.

The larger story is one of continuity. The marital exception remains, the language of modesty remains, the cruelty provision is reproduced word for word despite the Supreme Court's request to reconsider it, and the dowry provisions stand as before. These are not oversights but choices, and each is open to constitutional and policy criticism.

The BNSS adds a procedural layer that moves towards victim-centred justice: zero FIR, electronic reporting, recorded statements, progress information and a witness protection scheme. Whether these provisions change anything for a woman in a district town depends on resources and attitudes that the statute can describe but not create.

The measure of this reform will therefore not be the number of years in the punishment tables. It will be whether a woman who reports a crime is believed, protected and heard, whether her case reaches a verdict in reasonable time, and whether the law treats her as a full person within and outside marriage. On that measure, the BNS and BNSS have made a start, and the Supreme Court's ruling on the marital exception, Parliament's response to it and the investment made in the system will determine how far the start is carried.

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