

# **An Analytical Review on Redressal Legislations for Women and Children: In relevance to New Criminal Laws**

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## **ABSTRACT**

The study provides an analytical review of the 2023 revisions in the Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita with a focus on their implications for women and children. The recent legislative amendments aim to enhance the legal framework to protect the rights and safety of these vulnerable groups. Key changes include stricter penalties for crimes against women and children, streamlined judicial processes for faster resolution of cases, and the introduction of new provisions to address emerging societal issues. This paper evaluates the efficacy of these changes in addressing existing gaps in the legal protections afforded to women and children, and discusses the potential challenges in their implementation. The analysis draws on legal texts, case studies, and comparative examination to provide a comprehensive overview of the impact of these legislative reforms

## **Introduction**

The criminal justice system in India has undergone a historic transformation in 2024 with the replacement of the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC) by the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS). This monumental shift, which incorporates over 600 changes, marks a significant step towards modernizing India's legal framework to better align with contemporary needs and societal expectations. Historically, the IPC and CrPC, enacted during the British colonial era, have been criticized for their out-dated provisions and procedural complexities that often hindered the swift delivery of justice. The 2024 reforms, encapsulated in the BNS and BNSS, aim to address these issues by introducing a more streamlined and efficient legal process. One of the most pivotal changes is the reorganization and reclassification of offences, which is designed to provide greater

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clarity and coherence for legal practitioners and the general public.<sup>1</sup> A notable aspect of these reforms is the enhanced focus on victims and witnesses, recognizing their critical role in the judicial process. The new laws include several provisions to ensure their safety, reduce intimidation, and provide necessary support during judicial proceedings. This victim-centric approach is intended to foster a more humane and empathetic legal system.<sup>2</sup>

Additionally, the reforms emphasize greater public engagement and accessibility within the criminal justice system. By introducing technology-driven solutions and establishing clear timelines for judicial processes, the BNS and BNSS aim to reduce delays and inefficiencies, thus making the system more user-friendly and trustworthy. This approach not only enhances transparency but also builds a stronger relationship between law enforcement agencies and the public.

The overarching objective of the 2024 legislative reforms is to establish a criminal justice system that is technologically advanced, transparent, swift, credible, accountable, and justice-driven. These goals can be delineated as follows:

- i.** Technologically Advanced: The integration of advanced technological tools is a cornerstone of the reforms. This includes the use of digital evidence management systems, video conferencing for court proceedings, and automated case management systems. Such technological advancements are expected to enhance the efficiency and accuracy of criminal investigations and judicial processes, thereby reducing the burden on the legal infrastructure and expediting the delivery of justice.<sup>3</sup>
- ii.** Transparent and Swift: Transparency and promptness are critical to restoring public faith in the criminal justice system. The new laws mandate clear timelines for various stages of the judicial process to prevent undue delays. Moreover, measures have been introduced to ensure that information related to cases is readily accessible to the public, promoting transparency and accountability. This approach aims to reduce the backlog of cases and ensure timely resolution, which is essential for maintaining public trust.<sup>4</sup>
- iii.** Credible and Accountable: Enhancing the credibility and accountability of law enforcement agencies and the judiciary is another key goal. The reforms include provisions for regular audits, performance reviews, and the establishment of oversight bodies to monitor and evaluate the functioning of the criminal justice system. By holding these institutions accountable, the reforms seek to foster a culture of integrity and professionalism.<sup>5</sup>

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<sup>1</sup> Government of India, Ministry of Home Affairs, "Press Release on the Introduction of Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita," December 25, 2023.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> National Crime Records Bureau, "Annual Report on the Implementation of Criminal Justice Reforms," December 25, 2023.

<sup>5</sup> Ibid.

- iv. **Justice Driven:** At the heart of the legislative changes is a commitment to justice. The reforms prioritize the interests of victims, ensuring they receive the support and protection they need. This victim-centric approach is complemented by stringent measures to hold perpetrators accountable for their actions. By focusing on delivering justice, the reforms aim to reinforce the rule of law and ensure that the legal system serves its fundamental purpose.<sup>6</sup>

These comprehensive reforms represent a concerted effort to address the longstanding issues within India's criminal justice system. By focusing on technological integration, transparency, accountability, and justice, the revised Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita aim to create a more robust, responsive, and equitable legal framework for India. The Legal Standardisation of BNSS for Women and Children.

The Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 offers substantial improvements over the Code of Criminal Procedure (CrPC) 1973 in addressing offenses against women and children. Firstly, the BNSS 2023 has significantly broadened the definition of a 'victim'. Under the CrPC 1973, a 'victim' was defined as a person who suffered any loss or injury due to the act or omission for which the accused was charged, including the victim's guardian or legal heir. The BNSS 2023 eliminates the requirement for the accused to be formally charged before the victim can receive compensation, thereby expediting the compensation process for victims in certain cases.<sup>7</sup>

The BNSS 2023 introduces several changes aimed at enhancing protections for women and ensuring transparency in the investigation process. Notably, the statement of a rape victim must be recorded through audio-video means by the police. Statements of victims in certain offenses against women should be recorded by a woman Magistrate when practicable, or by a male Magistrate in the presence of a woman if a woman Magistrate is not available.<sup>8</sup> Additionally, a Magistrate must record the statement of a witness in cases involving offenses against women that are punishable with imprisonment for ten years or more, life imprisonment, or the death penalty.<sup>9</sup> Medical practitioners are now mandated to send the medical report of a rape victim to the investigating officer within 7 days. Exemptions are provided for certain groups from attending the police station, although they may attend if they choose to do so. Finally, no male under 15 years or above 60 years, no woman, and no mentally or physically disabled person or person with acute illness shall be required to attend any place other than their residence unless they are willing to do so.<sup>10</sup>

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<sup>6</sup> Government of India, Ministry of Home Affairs, "Press Release on the Introduction of Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita," December 25, 2023.

<sup>7</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, Section 2(1)(y).

<sup>8</sup> Sections 183(6)(a) of Bharatiya Nagarik Suraksha Sanhita, 2023.

<sup>9</sup> Section 184(6) of Bharatiya Nagarik Suraksha Sanhita, 2023.

<sup>10</sup> General reforms and technology use under Bharatiya Nagarik Suraksha Sanhita, 2023.

The BNSS 2023 introduces several changes affecting women, particularly in the processes of informing the police and their investigatory powers. The provision of filing a Zero FIR allows information to be entered into the police station's book even if the offense was committed outside its jurisdiction. The provision for lodging information through electronic communication (e-FIR) is also introduced, with the requirement that the informant's signature be obtained within 3 days before the e-FIR is recorded. Victims have the right to receive a free copy of the FIR immediately.<sup>11</sup> The police must inform the progress of the investigation to the informant or victim within 90 days, using technology as a valid mode of communication. Gender neutrality is introduced by including women as adult members of the family for the purpose of service of summons. Both fathers and mothers are included in proceedings for an order of maintenance from the place where the dependent parent resides, removing previous limitations. The court must afford the victim an opportunity to be heard before withdrawing prosecution, and there is a 45-day period from the trial's termination for the judgment to be pronounced, with the judgment to be uploaded on the court's portal within 7 days.<sup>12</sup> Additionally, a new section mandates the preparation and notification of a witness protection scheme by every State Government.

The BNSS 2023 introduces several general reforms, including the introduction of timelines and the use of technology. The timeline for the supply of police reports and documents is set at 14 days, committal of cases at 90 days (extendable up to 180 days), filing discharge applications at 60 days, and framing charges at 60 days. Complaint cases require a 30-day notice to the complainant for appearance.<sup>13</sup> Technology is utilized for the deposition of evidence by audio-video means at designated places notified by the State Government, and for deposition by successors-in-office via audio-video means. The BNSS also introduces discharge in summons cases, making summary trials mandatory for a limited set of offenses and expanding the Magistrate's power to try cases punishable with up to 3 years of imprisonment summarily. A comprehensive Directorate of Prosecution is established, including District Directorate of Prosecution, defining the roles of the Director, Deputy Director, and Assistant Director of Prosecution to monitor and expedite cases based on their severity.

Investigation-related reforms include the introduction of Zero FIR, e-FIR, preliminary enquiry, investigation by senior police officers, the use of forensic experts, a timeline for completing further investigations (90 days), and deemed sanction in 120 days. Public servants are protected against false and frivolous cases at both the complaint stage before a Magistrate and during applications made under Section 175. Arrest and custody reforms introduce partial restrictions on arrests for offenses punishable by less than three years, additional medical examinations, and designated officers to maintain arrest records. The notice of appearance now includes Form 1 in Schedule 1 of the BNSS.<sup>14</sup>

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<sup>11</sup> Section 66 of Bharatiya Nagarik Suraksha Sanhita, 2023.

<sup>12</sup> Section 20 of Bharatiya Nagarik Suraksha Sanhita, 2023.

<sup>13</sup> Proclaimed offender provisions under the Bharatiya Nagarik Suraksha Sanhita, 2023.

<sup>14</sup> Section 20 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Summoning, search, and seizure reforms include checks on police search powers, requiring grounds to be recorded and searches to be documented via audio-video means. Quick disposal of case properties during the investigation is provided for. The BNSS also utilizes technology for the submission of police reports and the supply of copies to the accused, ensuring efficient communication and record-keeping. Finally, the BNSS expands the scope of 'proclaimed offender', strengthens measures for forfeiture and attachment of property, and introduces detailed processes for conducting trials in absentia.

By comprehensively addressing these key areas, the BNSS 2023 aims to create a more inclusive, transparent, and efficient legal system, with particular emphasis on the protection and empowerment of women and vulnerable groups.

### **The advancements in BNS in subject to Women and Children.**

The Bharatiya Nyaya Sanhita (BNS) of 2023 marks a significant advancement in the legal framework for addressing offences against women and children in India, surpassing the provisions of the Indian Penal Code (IPC) of 1860 in several critical ways. This new legal code not only streamlines and reorganizes the scattered provisions but also introduces new offences, enhances penalties, and raises the age of protection, thereby providing more robust safeguards for women and children.

One of the most notable improvements in the BNS is the reorganization of offences against women and children. Under the IPC, these offences were dispersed across various sections, making it cumbersome and challenging for law enforcement and judicial authorities to address them effectively. The BNS consolidates these offences under Chapter V, covering Sections 63 to 99, thus providing a more streamlined and focused approach.<sup>15</sup> This reorganization not only simplifies the legal process but also underscores the importance of protecting women and children by giving these offences precedence over others.

For instance, sexual offences, which were previously covered under Sections 375-376E of the IPC, are now consolidated under Sections 63-73 of the BNS.<sup>16</sup> Similarly, offences involving criminal force and assault against women, previously scattered under Sections 354-354D and 509 of the IPC, are now addressed in Sections 74-79 of the Bharatiya Nyaya Sanhita. This consolidation extends to offences relating to marriage, causing miscarriage, and various crimes against children, which are now cohesively organized within the same chapter. This structural change not only makes the legal code more coherent but also ensures that these offences are addressed with the urgency and seriousness they deserve.

The BNS also introduces new offences that address contemporary issues, which were not adequately covered under the IPC. One such offence is outlined in Section 69, which criminalizes

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<sup>15</sup> Chapter V of Bharatiya Nyaya Sanhita, 2023

<sup>16</sup> Ibid., Sections 63-73.

sexual intercourse by employing deceitful means. This includes situations where a person has sexual intercourse with a woman by making false promises of marriage or by other deceptive means.<sup>17</sup> Such conduct, while not amounting to rape under traditional definitions, still constitutes a grave violation of personal autonomy and trust and is now punishable with imprisonment for up to ten years and a fine. This provision fills a significant gap in the IPC, offering better protection to women against exploitation and deceit.

Similarly, Section 95 of the BNS addresses the hiring or employing of a child to commit an offence, including sexual exploitation or pornography. This section mandates a minimum punishment of three years, which may extend to ten years, along with a fine.<sup>18</sup> If the offence is committed, the punishment for the perpetrator is equivalent to the punishment for the offence itself. This provision provides a more robust legal framework to protect children from being exploited or coerced into criminal activities, reflecting a much-needed update in the legal protections for minors.

Another critical enhancement in the BNS is the increase in the age of protection for certain offences. Under Section 63 of the BNS, the age below which a wife's non-consensual intercourse is considered rape is raised from fifteen to eighteen years.<sup>19</sup> This change addresses a significant loophole in the IPC, which allowed for marital rape of minors aged fifteen and above. By raising the age of protection, the BNS aligns with contemporary understandings of child protection and human rights, ensuring that young wives are safeguarded from sexual exploitation within marriage.

Furthermore, the BNS enhances penalties for several offences, reflecting a more stringent approach to crimes against women and children. For instance, Section 65 of the BNS addresses punishment for rape in certain cases, mandating rigorous imprisonment for a term not less than twenty years, which may extend to life imprisonment.<sup>20</sup> This provision is more stringent than the corresponding Section 376 of the IPC, ensuring that perpetrators of such heinous crimes face more severe consequences.

Similarly, Section 70 of the BNS deals with gang rape, imposing a minimum sentence of twenty years, which may extend to life imprisonment or even the death penalty in cases involving minors.<sup>21</sup> This is a significant enhancement compared to the IPC, which had separate provisions for gang rape on women under sixteen years (Section 376DA) and under twelve years (Section 376DB). By consolidating and enhancing these provisions, the BNS ensures that all perpetrators of gang rape face severe and uniform penalties, thereby acting as a stronger deterrent.

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<sup>17</sup> Ibid., Section 69.

<sup>18</sup> Ibid., Section 95.

<sup>19</sup> Ibid., Section 63.

<sup>20</sup> Ibid., Section 65.

<sup>21</sup> Ibid., Section 70.

The BNS also merges several sections and enhances punishments for various offences, making the legal code more concise and effective. For instance, Section 82 addresses the offence of marrying again during the lifetime of a spouse, which was previously covered under Sections 494 and 495 of the IPC. The BNS enhances the punishment for this offence, particularly in cases where the former marriage is concealed from the new spouse, reflecting a more stringent approach to bigamy.

Moreover, the BNS introduces specific provisions for offences like assault with the intent to disrobe (Section 76) and voyeurism (Section 77), which were previously covered under Sections 354B and 354C of the IPC.<sup>22</sup> These sections not only clarify the definitions of these offences but also enhance the penalties, ensuring that perpetrators face more severe consequences for such violations of personal dignity and privacy.

Another significant addition is Section 141 of BNS, which criminalizes the importation of girls or boys from foreign countries for illicit purposes. This section extends the protections of the corresponding Section 366B of the IPC, which only covered girls, by including boys as well. This change reflects a more inclusive approach to protecting minors from trafficking and exploitation. The Bharatiya Nyaya Sanhita of 2023 represents a substantial improvement over the Indian Penal Code of 1860 in dealing with offences against women and children. By consolidating related offences, introducing new provisions, enhancing penalties, and raising the age of protection, the BNS provides a more organized, comprehensive, and stringent legal framework. These changes ensure better protection and justice for women and children, reflecting a significant step forward in India's commitment to safeguarding its most vulnerable populations.

A way forward.

The 2023 revisions in the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS) mark a pivotal shift in India's legal landscape, particularly in the realm of protecting women and children. These comprehensive legislative reforms, which replace the Indian Penal Code (IPC) of 1860 and the Code of Criminal Procedure (CrPC) of 1973, represent a concerted effort to modernize the legal framework and address longstanding issues within the criminal justice system. The BNS and BNSS introduce several significant changes aimed at enhancing legal protections for women and children. These include, but not limited to, Reorganization and Consolidation of Offences, Introduction of New Offences, Enhanced Penalties, Raising the Age of Protection, Technological Integration and Transparency, Victim-Centric Approach.

The 2023 revisions in the BNS and BNSS have far-reaching implications for the protection and empowerment of women and children in India. By addressing gaps in the previous legal framework and introducing more stringent measures, these reforms aim to create a safer and more just society. The consolidation and enhancement of provisions related to offences against women

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<sup>22</sup> *Ibid.*, Sections 76-77.



and children provide more robust legal safeguards. This is expected to lead to better enforcement of laws and increased accountability for perpetrators. The introduction of e-FIRs and provisions for Zero FIRs are likely to encourage more victims to report crimes, thereby improving the overall reporting and documentation of offences. The emphasis on clear timelines and the use of technology in judicial processes are expected to reduce delays and expedite the delivery of justice. This is crucial for maintaining public trust and ensuring timely resolution of cases. The victim-centric approach, including the mandatory recording of statements and special considerations for vulnerable groups, ensures that victims receive the support and protection they need throughout the judicial process.

While the 2023 revisions in the BNS and BNSS represent a significant step forward, several challenges remain in their implementation. Addressing these challenges will be crucial for realizing the full potential of these reforms. Ensuring effective implementation and enforcement of the new provisions will require significant training and capacity-building for law enforcement and judicial authorities. This includes familiarizing them with the new legal framework and technological tools. Raising public awareness about the new provisions and encouraging victims to come forward will be essential. This may require targeted campaigns and community outreach programs to educate the public about their rights and the available legal protections. Adequate resource allocation for the technological integration and support services outlined in the BNSS will be critical. This includes funding for digital infrastructure, forensic laboratories, and victim support services. Establishing oversight bodies and mechanisms to monitor the implementation and impact of the new laws will be crucial. Regular audits and performance reviews can help identify areas for improvement and ensure accountability.

The 2023 revisions in the Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita represent a transformative step towards a more just and equitable legal framework in India. By addressing the gaps in the previous legal system and introducing comprehensive protections for women and children, these reforms aim to create a safer and more inclusive society. As India moves forward with these legislative changes, it will be essential to focus on effective implementation, public awareness, and continuous monitoring to ensure that the intended benefits are realized. Through these efforts, the BNS and BNSS have the potential to significantly enhance the protection and empowerment of women and children, reflecting a strong commitment to justice and human rights.

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