



Research Article

A Critical Analysis of the Provisions Relating to Women Under the Repealed IPC and the Bharatiya Nyaya Sanhita, 2023

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Abstract

The replacement of the Indian Penal Code, 1860 (IPC) by the Bharatiya Nyaya Sanhita, 2023 (BNS) represents a major restructuring of India's substantive criminal law. The BNS was enacted on 25 December 2023 and came into force on 1 July 2024, replacing the IPC as the principal penal statute, subject to statutory savings and transitional issues.

Women-centred criminal law constitutes an important part of this transition because the IPC contained a number of specific provisions dealing with sexual offences, cruelty within marriage, dowry death, offences against modesty, stalking, voyeurism, forced marriage, miscarriage and related forms of violence. The BNS retains several of these protections but reorganises and renumbers them and, in some areas, modifies their formulation, scope and punishment. For example, the IPC provisions dealing with assault intended to outrage a woman's modesty, sexual harassment, disrobing, voyeurism, stalking and insult to the modesty of a woman have broadly corresponding provisions in sections 74 to 79 of the BNS. Similarly, IPC section 498A relating to cruelty by a husband or his relatives has been substantially carried into sections 85 and 86 of the BNS, while dowry death appears in section 80.

This paper critically analyses the continuities and changes between the repealed IPC and the BNS with particular reference to women's rights and protection from gender-based violence. It examines rape law, sexual harassment, voyeurism, stalking, disrobing, dowry death, cruelty, offences against women in marriage, forced marriage, acid violence and emerging forms of sexual exploitation. It also identifies areas in which the BNS consolidates earlier protections and areas where substantive debates remain, especially concerning the marital rape exception, the formulation of certain sexual offences, evidentiary and procedural coordination, and the need for gender-sensitive implementation.

The study is doctrinal and analytical in nature and relies on statutory materials, official legislative sources and relevant legal literature. It concludes that the BNS retains much of the protective architecture developed under the IPC but simultaneously creates an opportunity to reassess whether criminal law adequately responds to contemporary forms of violence against women. The effectiveness of the new framework will therefore depend not only on statutory text but also on interpretation, investigation, prosecution, victim support and implementation.

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1. INTRODUCTION

Criminal law performs a fundamental function in protecting individuals from violence and securing public order. Within this framework, the protection of women from physical, sexual, psychological and economic violence has remained an important concern of Indian criminal jurisprudence.

For more than 160 years, the Indian Penal Code, 1860 constituted the central substantive criminal law of India. Although enacted during the colonial period, the IPC was repeatedly amended after independence to respond to changing social conditions and constitutional developments. Important reforms concerning women were introduced over time, particularly through the provisions relating to dowry death, cruelty by the husband or his relatives and sexual offences.

The legislative development of women's criminal law under the IPC was influenced by social movements, constitutional litigation, judicial decisions and legislative responses to changing patterns of violence. Provisions such as section 498A on matrimonial cruelty, section 304B on dowry death and the post-2013 sexual-offence provisions represented significant stages in this development. India Code records section 498A as criminalising cruelty by a husband or relative of the husband, including conduct likely to drive a woman to suicide or cause grave injury and harassment associated with unlawful demands for property or valuable security.

The Bharatiya Nyaya Sanhita, 2023 seeks to consolidate and amend criminal law and replaced the IPC from 1 July 2024. The new statute reorganises the provisions of criminal law and places many offences against women under a new numbering structure.

The transition from IPC to BNS raises an important legal question: **does the BNS merely renumber and reorganise existing protections, or does it represent a substantive transformation in the legal protection of women?**

This paper addresses that question through a comparative analysis of the relevant statutory provisions.

2. RESEARCH OBJECTIVES

The study has the following objectives:

1. To examine the principal provisions relating to women under the repealed Indian Penal Code, 1860.
2. To examine the corresponding provisions under the Bharatiya Nyaya Sanhita, 2023.
3. To compare the substantive changes in offences against women under the two statutes.
4. To critically analyse the strengths and limitations of the BNS framework from a gender-justice perspective.
5. To identify areas requiring judicial clarification and legislative or institutional attention.
6. To examine the continuing relevance of constitutional values, victim protection and gender-sensitive criminal justice under the BNS.

3. Research Questions

The research is guided by the following questions:

1. What major provisions concerning women existed under the IPC?

2. Which of these provisions have been retained under the BNS?
3. What substantive and structural changes have been introduced?
4. Does the BNS expand or narrow the legal protection available to women in particular areas?
5. What major legal issues remain unresolved after the transition from IPC to BNS?

4. RESEARCH METHODOLOGY

The present study is **doctrinal and analytical**.

The primary sources consist of the text of the Indian Penal Code, 1860 and the Bharatiya Nyaya Sanhita, 2023, together with official legislative materials available through India Code. The study also draws upon constitutional principles, judicial interpretation and secondary legal scholarship.

A comparative methodology has been employed to identify:

- corresponding statutory provisions;
- changes in language;
- changes in punishment;
- changes in scope;
- newly introduced offences; and
- continuing legal exceptions.

The study does not rely upon primary field surveys and is therefore principally a legal-textual study.

5. Historical Development of Laws Protecting Women under the IPC

The IPC originally contained only a limited set of provisions specifically directed toward women's protection. Over time, Parliament introduced or amended provisions to address changing forms of violence.

Among the important developments were:

- introduction of section 498A concerning cruelty by husband or relatives;
- introduction of section 304B concerning dowry death;
- reforms relating to rape law;
- insertion of sections 354A to 354D covering sexual harassment, disrobing, voyeurism and stalking;
- strengthening of punishment for certain sexual offences following the Criminal Law (Amendment) Act, 2013; and
- amendments following subsequent legislative and judicial developments.

The IPC therefore cannot be understood simply as the original 1860 colonial code. Its provisions relating to women evolved substantially through post-independence legislative reform.

6. Bharatiya Nyaya Sanhita: Legislative Transition

The Bharatiya Nyaya Sanhita, 2023 was enacted on 25 December 2023 and entered into force on 1 July 2024, replacing the IPC as the principal substantive penal code. The India Code text specifies that the Act is intended to consolidate and amend provisions relating to offences and connected matters.

The transition has significance for women's criminal law because many offences were retained but given new section numbers and, in some cases, modified drafting.

The comparison therefore requires attention not only to numerical correspondence but also to the language and legal

consequences of the new provisions.

7. Comparative Framework: IPC and BNS

Subject	IPC Provision	BNS Provision
Assault/criminal force to woman with intent to outrage modesty	Section 354	Section 74
Sexual harassment	Section 354A	Section 75
Assault with intent to disrobe	Section 354B	Section 76
Voyeurism	Section 354C	Section 77
Stalking	Section 354D	Section 78
Word, gesture or act insulting modesty	Section 509	Section 79
Dowry death	Section 304B	Section 80
Cruelty by husband/relative	Section 498A	Sections 85–86
Kidnapping/abducting woman for forced marriage or illicit intercourse	Section 366	Section 87
Rape	Sections 375–376 and related provisions	Sections 63–64 and subsequent provisions
Gang rape	Section 376D	Section 70
Repeat sexual offenders	Section 376E	Section 71
Sexual intercourse by person in authority / related sexual offences	Various provisions	Reorganised within BNS sexual-offence chapter
Forced miscarriage and related offences	Sections 312–316	Sections 88 onwards

The mapping demonstrates a high degree of continuity in the basic protective framework, although numbering, organisation and in some cases statutory formulation have changed. The official BNS text expressly contains provisions corresponding to sexual offences, cruelty, forced marriage and miscarriage.

8. Rape and Sexual Offences

8.1 IPC Framework

Under the IPC, rape was principally addressed through sections 375 and 376, supplemented by provisions dealing with aggravated forms, gang rape and repeat offending. Following successive amendments, the IPC definition and punishment provisions incorporated a more detailed understanding of sexual violence, including consent, aggravated circumstances and enhanced punishment.

8.2 BNS Framework

The BNS places the principal definition of rape in section 63 and punishment in section 64. Section 64 provides a minimum punishment of ten years for rape, extendable to imprisonment for life, subject to the statutory framework. For specified aggravated circumstances, the punishment structure is more severe.

The BNS also retains a consent-based formulation. Its explanation provides that consent means an unequivocal voluntary agreement communicated through words, gestures or verbal or non-verbal communication, and specifically states that mere absence of physical resistance does not, by itself, constitute consent.

This formulation is important because it reinforces the distinction between absence of resistance and affirmative voluntary participation.

9. Marital Rape Exception

One of the most significant continuing issues concerns the statutory marital rape exception.

The BNS continues to provide that sexual intercourse or sexual acts by a man with his own wife, where the wife is not under eighteen years of age, do not constitute rape under the rape provision.

This represents an area of continuity rather than substantive change.

From a critical perspective, the provision raises questions concerning bodily autonomy, equality, privacy and the relationship between marriage and sexual consent. At the same time, any legal assessment must distinguish the statutory position from constitutional and judicial debates concerning the validity and scope of the exception.

The issue remains one of the most important unresolved questions in the study of criminal-law protection of married women.

10. Sexual Harassment

Section 354A of the IPC criminalised specified forms of sexual harassment, including unwelcome physical contact and advances, demands or requests for sexual favours, showing pornography against the will of a woman, and sexually coloured remarks.

The BNS reproduces the offence in section 75.

The major significance lies in continuity: the criminal law continues to treat sexual harassment as a distinct offence rather than subsuming it under the general offence of outraging modesty.

This reflects the recognition that sexual harassment may take multiple forms and need not involve physical assault.

11. Assault with Intent to Disrobe

IPC section 354B dealt specifically with assault or criminal force intended to disrobe a woman.

The BNS corresponds to this offence under section 76.

The provision demonstrates continued criminal recognition of forced exposure and sexualised violence as distinct from ordinary assault.

12. Voyeurism

IPC section 354C created a specific offence of voyeurism. The provision addressed watching, capturing or disseminating images of a woman engaged in a private act where she reasonably expected privacy.

The BNS carries this protection forward through section 77.

The importance of retaining voyeurism as a separate offence lies in its recognition that invasion of sexual privacy can occur without physical contact.

This is particularly relevant in an era of smartphones, hidden cameras, digital sharing and online dissemination.

13. Stalking

IPC section 354D criminalised stalking, including repeated attempts to contact or follow a woman despite a clear indication of disinterest, as well as certain forms of monitoring electronic communication.

The BNS carries the offence into section 78.

The continuation of a separate stalking offence is legally significant because persistent surveillance and unwanted pursuit are often precursors to more serious forms of violence. The BNS framework therefore retains an important preventive dimension.

14. Insult to the Modesty of a Woman

IPC section 509 criminalised words, gestures or acts intended to insult the modesty of a woman. The provision formed part of the IPC's specific protection concerning dignity and sexualised humiliation.

The corresponding BNS provision is section 79.

The retention of this provision indicates that the BNS continues to recognise verbal and behavioural attacks on women's dignity as a distinct criminal concern.

15. Dowry Death

Dowry death was addressed under IPC section 304B.

Under the BNS, dowry death is dealt with in section 80. The new criminal framework therefore retains the offence as a distinct category.

The continuity is reinforced by the Bharatiya Sakshya Adhiniyam, 2023. Section 118 of the new evidence law provides for a presumption regarding dowry death where the statutory conditions relating to cruelty or harassment for or in connection with dowry are established.

This illustrates an important point: women's protection under criminal law cannot be studied through the BNS in isolation. The substantive offence, evidentiary presumptions and criminal procedure operate as an interconnected legal framework.

16. Cruelty by Husband or Relative

One of the major protections introduced into the IPC was section 498A.

It criminalised cruelty by a husband or relative of the husband. The IPC definition covered both:

1. wilful conduct likely to drive a woman to suicide or cause grave injury or danger to life, limb or health; and

2. harassment connected with unlawful demands for property or valuable security.

The BNS retains this protection through sections 85 and 86. Section 85 provides punishment for cruelty, while section 86 defines cruelty in substantially corresponding terms. The punishment may extend to three years and also includes liability to fine.

Thus, although the section number has changed, the central substantive protection remains.

This continuity is legally significant because matrimonial cruelty cannot be reduced to physical violence alone. The statutory definition expressly includes conduct threatening mental or physical health and harassment linked to unlawful property demands.

17. Forced Marriage and Abduction of Women

IPC section 366 dealt with kidnapping or abducting a woman with the intent that she be compelled to marry against her will or forced or seduced into illicit intercourse.

The BNS retains this category under section 87.

The continued criminalisation reflects the importance of protecting women's autonomy in relation to marriage and sexual choice.

The provision is particularly important in cases involving coercive marriage arrangements, forced movement and exploitation.

18. Miscarriage and Reproductive Autonomy

The IPC contained provisions concerning causing miscarriage and related offences under sections 312 to 316.

The BNS carries these offences into sections beginning with section 88. Section 88 addresses voluntarily causing miscarriage except where done in good faith for saving the woman's life, while subsequent provisions deal with aggravated circumstances.

These provisions demonstrate that reproductive violence has historically formed part of criminal law protecting women.

However, the subject intersects with reproductive-health legislation and constitutional questions concerning women's autonomy. Therefore, criminal law must be read together with the Medical Termination of Pregnancy framework and constitutional jurisprudence rather than in isolation.

19. Acid Violence

Acid attacks represent a severe form of gender-based violence, frequently associated with disfigurement, permanent injury and social consequences.

The IPC, following legislative reform, separately criminalised causing grievous hurt by acid and related attempts under sections 326A and 326B.

The corresponding BNS framework retains specific criminal protection against acid-related violence.

The significance of retaining dedicated provisions is that ordinary hurt provisions may not sufficiently capture the distinctive physical, psychological and social consequences of acid attacks.

20. Newly Expressed Forms of Sexual Exploitation

The BNS introduces a significant new provision in section 69 dealing with sexual intercourse by employing deceitful means or through certain forms of false promise, where the conduct does not amount to rape under the rape provision.

The introduction of a separate statutory offence illustrates an attempt to address forms of alleged sexual exploitation falling outside the technical definition of rape.

However, its practical and constitutional interpretation will require careful judicial scrutiny, particularly regarding:

- distinction between fraudulent promise and genuine relationship;
- proof of initial intention;
- interaction with consensual adult relationships;
- evidentiary standards; and
- avoidance of criminalisation merely because a consensual relationship subsequently fails.

The provision therefore represents an area where judicial interpretation will be particularly important.

21. Critical Comparison of the IPC and BNS

21.1 Continuity

A significant feature of the BNS is continuity.

Many core offences protecting women under the IPC have not been abolished. Instead, they have been reorganised and renumbered.

Examples include:

- sexual harassment;
- disrobing;
- voyeurism;
- stalking;
- insult to modesty;
- dowry death;
- cruelty by husband or relatives;
- forced marriage; and
- rape.

This indicates that the BNS does not represent a complete conceptual break from the earlier statutory framework.

21.2 Structural Reorganisation

The BNS places related offences in a revised structure and changes section numbering.

For researchers, lawyers, police officers and courts, this creates a transitional requirement: previous case law under the IPC must be carefully mapped onto corresponding BNS provisions rather than transferred automatically.

21.3 Language of Consent

The BNS expressly states that consent involves unequivocal voluntary agreement and that mere absence of physical resistance does not constitute consent.

This is an important formulation in sexual-offence jurisprudence because it addresses a recurring evidentiary misconception concerning resistance.

21.4 Continuing Marital Exception

At the same time, the continuation of the marital rape exception represents an important area of legal continuity and continuing debate.

Thus, the BNS should not be characterised simply as either a complete expansion or complete restriction of women's rights. Different provisions produce different legal effects.

22. Critical Issues Concerning Women under the BNS

22.1 Gender-Specific Drafting

Several BNS provisions are drafted around the relationship between a male offender and a female victim.

While gender-specific provisions may provide targeted protection, they also raise questions about gender neutrality and protection of victims outside traditional statutory categories.

22.2 Need for Victim-Centred Interpretation

The effectiveness of statutory protection depends significantly upon investigation, forensic collection, witness protection, medical examination and prosecutorial practice.

A strong statutory provision can produce limited practical protection when institutional implementation is inadequate.

22.3 Digital and Technology-Facilitated Abuse

The continued relevance of voyeurism, stalking and sexual harassment provisions is increasingly connected with digital spaces.

Online monitoring, non-consensual dissemination of intimate images, cyberstalking and digital sexual harassment require interpretation that is responsive to contemporary technology while remaining faithful to statutory language.

22.4 Matrimonial Violence

Sections 85 and 86 preserve criminal protection against cruelty within marriage.

Nevertheless, questions remain concerning the relationship between criminal prosecution, matrimonial remedies, domestic violence law and the prevention of misuse of criminal provisions.

The appropriate legal approach requires protection of genuine victims while preserving due process and fair adjudication for accused persons.

22.5 Coordination with Other Laws

Women's legal protection cannot be assessed through the BNS alone. Relevant legislation includes:

- Protection of Women from Domestic Violence Act, 2005;
- Dowry Prohibition Act, 1961;
- Sexual Harassment of Women at Workplace Act, 2013;
- Prohibition of Child Marriage Act, 2006;
- Medical Termination of Pregnancy Act, 1971;
- Protection of Children from Sexual Offences Act, 2012; and
- Bharatiya Nagarik Suraksha Sanhita, 2023;
- Bharatiya Sakshya Adhiniyam, 2023.

This interconnected legislative framework is necessary for a complete understanding of women's protection.

23. Role of the Bharatiya Sakshya Adhiniyam, 2023

The transition from IPC to BNS occurred alongside the replacement of the Indian Evidence Act by the Bharatiya Sakshya Adhiniyam, 2023.

This is particularly relevant to women because evidentiary rules can materially influence the effectiveness of substantive criminal provisions.

For example, the new evidence law retains a statutory presumption concerning dowry death when the specified conditions relating to cruelty or harassment for dowry are established.

Thus, substantive criminal-law reform must be evaluated together with evidentiary reform.

24. Role of the Bharatiya Nagarik Suraksha Sanhita, 2023

Criminal protection does not depend solely upon defining offences. Procedures relating to registration of cases, investigation, arrest, medical examination, cognizance, trial and victim participation substantially affect outcomes.

The Bharatiya Nagarik Suraksha Sanhita, 2023 therefore forms an important component of the broader transition.

For example, the new procedural law specifically provides rules concerning prosecution of an offence under BNS section 85 concerning matrimonial cruelty.

Consequently, any comprehensive research into women's protection after 1 July 2024 should treat the BNS, BNSS and Bharatiya Sakshya Adhiniyam as an interconnected legislative package.

25. Major Findings

The study produces the following major findings.

25.1 Substantial Continuity

A considerable number of important IPC offences relating to women have been retained in substantially similar form under the BNS.

25.2 Renumbering Is Not the Same as Legal Reform

The change from IPC section numbers to BNS section numbers does not automatically mean that every corresponding offence has undergone substantive transformation.

25.3 Certain Areas Have Received New Drafting

The BNS introduces new or differently framed provisions, including the offence relating to sexual intercourse through deceitful means under section 69.

25.4 Rape Law Retains Significant Existing Features

The BNS continues a detailed statutory framework concerning rape and aggravated rape and expressly addresses the meaning of consent.

25.5 Matrimonial Cruelty Remains Criminalised

The protection formerly found in section 498A IPC has been substantially retained in BNS sections 85 and 86.

25.6 Dowry Death Continues as a Distinct Offence

BNS section 80 retains a separate offence of dowry death, reinforced by the corresponding evidentiary presumption under the Bharatiya Sakshya Adhiniyam.

25.7 Marital Rape Remains a Major Unresolved Area

The BNS continues the statutory exception for sexual intercourse by a husband with his wife where the wife is not under eighteen.

26. Suggestions

The following measures may strengthen the implementation of the BNS from a women's-rights perspective:

First, police officers, prosecutors, judicial officers and legal-aid institutions should receive specialised training on the new section numbering and substantive changes.

Second, official cross-reference materials should be made easily available so that practitioners can accurately map IPC precedents to BNS provisions.

Third, investigation of sexual offences should remain victim-sensitive, scientifically informed and consistent with constitutional safeguards.

Fourth, digital forms of stalking, voyeurism and sexual exploitation require technologically competent investigation.

Fifth, implementation of matrimonial cruelty provisions should balance protection of genuine victims with due process and fair trial safeguards.

Sixth, courts should develop clear jurisprudence concerning section 69 so that the provision distinguishes fraudulent sexual exploitation from ordinary failure of consensual adult relationships.

Seventh, women's criminal protection should be evaluated together with the BNSS and Bharatiya Sakshya Adhiniyam rather than through substantive criminal provisions alone.

27. CONCLUSION

The replacement of the Indian Penal Code, 1860 by the Bharatiya Nyaya Sanhita, 2023 is a significant event in the development of Indian criminal law. In relation to women, however, the transformation is more nuanced than a simple replacement narrative suggests.

The BNS preserves many important protections developed under the IPC. Sexual harassment, assault intended to outrage modesty, disrobing, voyeurism, stalking and insult to the modesty of a woman remain separately criminalised through sections 74 to 79. Dowry death remains a distinct offence under section 80. The protection against matrimonial cruelty under former section 498A IPC is substantially preserved through sections 85 and 86.

The BNS also modifies the organisation and wording of sexual offences and introduces provisions addressing conduct through deceitful means. Its rape provisions contain an express consent formulation and provide that mere absence of physical resistance does not constitute consent.

At the same time, continuity remains evident in controversial areas, most notably the statutory marital rape exception.

Accordingly, the BNS should neither be understood as merely a change of names and section numbers nor as a complete

reconstruction of women's criminal rights. It represents a combination of continuity, consolidation, reorganisation and selective substantive change.

Ultimately, the effectiveness of legal protection for women will depend upon the interaction between statutory text, constitutional interpretation, police investigation, prosecution, evidence, judicial reasoning, victim support and access to justice. The transition to the BNS provides an important opportunity for Indian criminal jurisprudence to develop a more coherent, contemporary and victim-sensitive approach to gender-based offences while preserving the principles of legality, fairness and due process.

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