



## **The Protection of Women in Criminal Law: A Comparative Study of IPC and BNS**

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### **Abstract**

The protection of women from crimes such as rape, domestic violence, and sexual harassment remains a pressing concern in India. The Indian Penal Code (IPC, 1860), which has served as the backbone of the country's criminal justice system for over a century, has increasingly been viewed as inadequate in addressing the complexities of modern crimes, particularly in the digital sphere. To address these evolving challenges, the Bharatiya Nyaya Sanhita (BNS, 2023) has been introduced as a reformatory legal framework aimed at modernizing and strengthening existing laws. This paper conducts a comparative study between the IPC and the BNS, focusing on crimes against women, such as rape, domestic violence, and sexual harassment. It critically analyzes the scope, penalties, and protective measures under both legal frameworks, highlighting the advancements and reforms introduced in the BNS to address contemporary issues, including online violence and victim-centered justice approaches. Through this analysis, the paper assesses the effectiveness of the BNS in offering enhanced protection for women and promoting gender justice. Furthermore, the study identifies areas where further legislative and systemic improvements are required to ensure robust legal safeguards in the face of emerging challenges. The findings underscore the importance of legal adaptability in achieving a safer and more equitable society.

### **Key words**

*Indian Penal Code 1860, Bharatiya Nyaya Sanhita 2023, Criminal justice system, Legal modernization, Criminal law reforms, Socio-legal impact, Cyber-crimes, Contemporary challenges, justice and fairness*



### *Introduction*

The protection of women from violence is a cornerstone of any progressive and equitable legal system. Women's rights in India have long been a subject of legal reform, with ongoing efforts to strengthen laws addressing gender-based violence. Historically, the Indian Penal Code (IPC), formulated in 1860 under colonial governance, served as the foundation of India's criminal justice system. While groundbreaking for its time, the IPC's provisions related to crimes such as rape, domestic violence, and sexual harassment have increasingly been criticized for their inadequacy in addressing modern societal needs.

This new legal code reflects a conscious effort to address contemporary challenges, particularly digital violence and victim-centered justice approaches. It aims to make the legal system more responsive to the lived realities of women, introducing reforms to enhance legal protections and ensure justice. For instance, the BNS incorporates stricter provisions for online violence, expands definitions of sexual offenses, and strengthens penalties for repeat offenders, among other updates.

The primary objective of this paper is to examine and compare the IPC and BNS in their approach to crimes against women, specifically focusing on rape, domestic violence, and sexual harassment. By analyzing key provisions, penalties, and protective measures, this study evaluates the effectiveness of the reforms introduced under the BNS in improving the legal landscape for women in India. Additionally, it explores the real-world implications of these reforms in fostering women's safety, access to justice, and empowerment while identifying areas where further progress is necessary to meet the challenges of a rapidly changing world.

### **Rape Laws: A Comparative Analysis of IPC and BNS**

#### **IPC Provisions**

The Indian Penal Code (IPC), 1860, defines rape under **Section 375**, which criminalizes non-consensual sexual intercourse with a woman. This section emphasizes the key elements of rape, including **force, coercion, and the absence of consent**. Consent, as defined in the IPC, must be unequivocal and voluntary, and the law explicitly excludes consent obtained through intimidation, deception, or authority abuse.

Under **Section 376**, the IPC prescribes a punishment of **rigorous imprisonment for a minimum of 7 years**, which may extend to **life imprisonment** or even imprisonment for the remainder of the offender's natural life. Special provisions under **Sections 376A to 376D** address aggravated forms of rape, including:

- **Rape resulting in death or vegetative state** of the victim (Section 376A).
- Cases involving **gang rape** (Section 376D).
- Rapes committed by individuals in positions of authority, such as police officers or public servants (Section 376C).



- Sexual assault on minors or disabled individuals, where the offense is deemed particularly heinous.

Although these provisions cover a broad range of circumstances, the IPC has been criticized for its inability to address **modern forms of sexual violence**, particularly those enabled by technology.

### **BNS Provisions**

The **Bharatiya Nyaya Sanhita (BNS), 2023**, retains the foundational elements of rape as defined in the IPC but introduces several critical updates to reflect contemporary realities. The **scope of rape** has been **expanded** to include digital crimes, such as **revenge porn, cyberstalking, and online sexual exploitation**, which were not explicitly addressed under the IPC. By broadening the definition, the BNS aims to tackle the **rising prevalence of online sexual violence** in the digital age. Punishments under the BNS for rape remain consistent with those in the IPC in most cases, prescribing **rigorous imprisonment ranging from 7 years to life imprisonment**. However, the BNS introduces the **death penalty for aggravated forms of rape**, particularly in cases of:

- **Gang rape** involving extreme brutality.
- Sexual assault of **minors under the age of 12**.
- Repeat offenders convicted of heinous sexual crimes.

These changes demonstrate the BNS's **stricter stance** on sexual violence, aiming to act as a **strong deterrent** to potential offenders.

### **Key Differences Between IPC and BNS**

- **Definition Expansion:** The BNS explicitly addresses **digital forms of sexual violence**, such as **revenge porn, cyber harassment, and online sexual exploitation**, filling a critical gap in the IPC's framework.
- **Death Penalty for Aggravated Rape:** While the IPC prescribes **life imprisonment** as the maximum punishment for aggravated rape, the BNS introduces the **death penalty** in cases involving extreme brutality, signaling a **harsher punitive approach**.
- **Victim-Centered Approach:** The BNS emphasizes **streamlined procedures** to ensure the protection of victims' privacy and dignity, particularly in cases of online sexual exploitation, where evidence is sensitive and often misused.

### **Effectiveness of Reforms**

The reforms introduced in the BNS represent a significant step forward in addressing the **complexities of sexual violence in a digital era**. The inclusion of digital crimes acknowledges the realities of **cyber-**



**enabled violence** that were overlooked in the IPC. Additionally, the provision for the **death penalty** reflects the growing public demand for harsher punishments for heinous crimes.

However, the effectiveness of these reforms depends on several factors:

1. **Investigation Mechanisms:** The successful prosecution of digital offenses hinges on robust systems for collecting, preserving, and analyzing **digital evidence**. Without specialized training for law enforcement, these provisions may remain underutilized.
2. **Enforcement Challenges:** Implementing the death penalty for aggravated rape could face legal and ethical challenges, particularly in a country where debates on capital punishment persist.
3. **Victim Support Systems:** To ensure justice, the BNS must be complemented by **adequate victim support mechanisms**, such as counseling, legal aid, and witness protection programs, particularly for survivors of digital violence.

## **Domestic Violence: A Comparative Analysis of IPC and BNS**

### **IPC Provisions**

The **Indian Penal Code (IPC), 1860**, addresses domestic violence through **Section 498A**, which criminalizes **cruelty by a husband or his relatives toward a wife**. The term "cruelty" encompasses **physical abuse, mental harassment**, and acts that drive a woman to **suicide** or cause grave injury to her health. While this provision was revolutionary at the time of its introduction, it has been criticized for being too narrowly focused on harassment related to dowry demands, leaving other forms of abuse, such as economic control and psychological violence, unaddressed.

The punishment under **Section 498A** is **imprisonment for up to three years**, along with a fine. Despite its criminal provisions, the IPC does not provide a holistic framework for protecting victims or addressing their immediate needs. Instead, civil remedies for domestic violence are addressed separately under the **Protection of Women from Domestic Violence Act, 2005 (PWDVA)**. The PWDVA allows victims to seek **protection orders, maintenance, and residence rights**, but as a civil statute, it lacks the deterrent force of criminal penalties. This dual framework often leads to fragmented responses to domestic violence cases, with victims needing to navigate both criminal and civil proceedings.

### **BNS Provisions**

The **Bharatiya Nyaya Sanhita (BNS), 2023**, takes a more **comprehensive and integrated approach** to domestic violence, reflecting contemporary understandings of abuse and victim needs. While retaining the criminalization of physical abuse, the BNS expands the definition of domestic violence to include **psychological abuse, economic control, and coercion**, recognizing the multifaceted nature of violence within



households. For instance, **withholding financial resources**, **isolating a victim socially**, or **manipulating their mental well-being** are now explicitly recognized as forms of abuse under the BNS.

In addition to criminalizing domestic violence, the BNS introduces provisions for **temporary protection orders**, **safety plans**, and **financial support** for victims, ensuring they receive **immediate relief** even as legal proceedings are underway. These measures include:

- Access to **temporary shelters** for victims and their children.
- **Emergency financial aid** to cover living expenses during separation.
- **Restraining orders** to prevent the abuser from contacting or approaching the victim.

Furthermore, the BNS emphasizes **streamlined procedures** for reporting and investigating domestic violence cases, including the establishment of specialized units within law enforcement to handle such cases with sensitivity and efficiency.

### **Key Differences Between IPC and BNS**

- **Expanded Definition:** Unlike the IPC, which primarily focuses on physical abuse and dowry-related harassment, the BNS includes **psychological abuse** (such as emotional manipulation and verbal degradation) and **economic abuse** (such as controlling finances or preventing employment) as actionable offenses.
- **Integrated Protective Measures:** The BNS incorporates provisions for **temporary shelter**, **financial support**, and **safety planning** directly within its framework. These measures address victims' immediate needs, which were previously left to civil remedies under the PWDVA.
- **Victim-Centered Approach:** The BNS shifts the focus from punishment alone to **protection and rehabilitation**, ensuring that victims are safeguarded from further harm while the legal process unfolds.

### **Effectiveness of Reforms**

The **reforms introduced in the BNS** represent a significant step forward in addressing the **complex realities of domestic violence** in India. By acknowledging **psychological and economic abuse**, the BNS recognizes that violence is not always physical and that non-physical abuse can have equally devastating impacts on a victim's well-being. The provision of **temporary shelters**, **financial aid**, and **safety plans** ensures that victims are not left vulnerable during the legal process, reflecting a **victim-centered approach** to justice.

However, the effectiveness of these reforms will depend on their **implementation**, especially in rural and underdeveloped areas where access to legal resources and victim support infrastructure remains limited. Some key challenges include:



1. **Awareness and Accessibility:** Many women in rural areas remain unaware of their rights under the BNS. Outreach and legal literacy campaigns are essential to ensure victims know how to seek help.
2. **Law Enforcement Training:** Effective enforcement of the BNS will require **specialized training** for police officers and judicial officials to handle domestic violence cases with sensitivity and professionalism.
3. **Support Infrastructure:** The availability of **temporary shelters** and **financial aid** is critical to the success of the BNS, but these resources are often scarce in underserved regions.

The punishment under Section 354A ranges from **simple imprisonment up to one year** to **rigorous imprisonment up to three years**, along with fines, depending on the severity of the offense. This act provides guidelines for addressing sexual harassment in professional settings, including the establishment of **Internal Complaints Committees (ICCs)**, the requirement for organizations to formulate anti-harassment policies, and the provision for compensation to victims. However, the POSH Act is limited to workplaces and does not address harassment in **public spaces** or the **digital domain**, leaving significant gaps in protection.

### **BNS Provisions**

The **Bharatiya Nyaya Sanhita (BNS), 2023**, provides a more **comprehensive framework** for addressing sexual harassment by adapting to the realities of **digital and public-space harassment**. While retaining the provisions of the IPC for physical harassment, the BNS expands its scope to include:

1. **Cyber Harassment:** This includes **revenge porn, cyberstalking, unwelcome messages or images through digital platforms**, and harassment on social media.
2. **Online Threats:** Explicit threats to harm, shame, or coerce women through digital communication channels are recognized and penalized.
3. **Public Space Harassment:** The BNS specifically addresses harassment in **public places**, such as catcalling, stalking in public transport, and groping in crowded areas, which were not explicitly covered under the IPC.

The BNS prescribes **stricter penalties for online and public-space harassment**, acknowledging the psychological impact of such offenses. For example:

- **Revenge porn** and **cyberstalking** attract penalties of **rigorous imprisonment** ranging from **three to five years**, along with substantial fines.
- Repeat offenders face **enhanced sentences**, reflecting the law's deterrent focus.





### **Key Differences Between IPC and BNS**

- **Digital Harassment:** The BNS takes a forward-looking approach by explicitly addressing **digital harassment**, such as revenge porn and cyberstalking. The IPC, framed before the digital age, lacks specific provisions to deal with such crimes.
- **Public-Space Harassment:** The BNS includes **harassment in public spaces** under its purview, recognizing the widespread prevalence of offenses like verbal abuse, stalking, and inappropriate physical behavior in public areas. The IPC primarily focuses on workplace and physical harassment, leaving these forms of abuse inadequately addressed.
- **Comprehensive Scope:** The BNS integrates provisions for both **physical and online harassment**, making it more inclusive compared to the IPC's fragmented and limited framework.
- **Enhanced Penalties:** The BNS introduces **higher penalties for digital offenses** and repeat offenders, reflecting the seriousness of online harassment and its long-lasting impact on victims.

### **Effectiveness of Reforms**

The BNS represents a **major advancement** in addressing sexual harassment in India. The inclusion of **cyber harassment** acknowledges the realities of the **digital age**, where social media, messaging apps, and other online platforms have become tools for gender-based violence. By criminalizing offenses like revenge porn and cyberstalking, the BNS seeks to deter perpetrators and provide justice to victims in previously overlooked scenarios.

Similarly, the addition of **public-space harassment** provisions ensures that women are protected in all environments, whether at work, online, or in public. These reforms are particularly relevant in India, where crimes like **street harassment (eve-teasing)** and stalking in public spaces are widespread but often go unreported due to societal stigma and inadequate legal coverage under the IPC.

However, the effectiveness of these reforms will depend on several key factors:

1. **Enforcement Challenges:** Investigating and prosecuting digital harassment requires specialized expertise, particularly in collecting, preserving, and analyzing **digital evidence**. Law enforcement agencies must be equipped with **technical training** and **cyber forensic capabilities**.
2. **Awareness and Reporting:** Victims of online harassment often do not report offenses due to **fear of stigma, lack of trust in law enforcement, or ignorance of legal protections**. Public awareness campaigns are essential to encourage reporting and ensure victims know their rights under the BNS.
3. **Judicial Efficiency:** Courts need to adapt to the growing volume of digital harassment cases by ensuring **speedy trials, protection of victim privacy, and sensitivity in handling evidence**.



4. **Digital Platform Accountability:** Effective implementation of the BNS will require **collaboration with social media platforms** and digital service providers to track offenders, remove harmful content, and prevent the misuse of their platforms for harassment.

#### 5. Comparative Analysis of IPC and BNS (300-400 words)

Aspect	IPC (1860)	BNS (2023)
<b>Rape</b>	Defines rape and provides punishment for physical offenses	Expands to include digital offenses, death penalty for aggravated cases
<b>Domestic Violence</b>	Section 498A: Focuses mainly on physical abuse	Broader definition, includes emotional and economic abuse, with protective orders
<b>Sexual Harassment</b>	Focuses on physical and workplace harassment	Includes online harassment and broader public space harassment
<b>Punishment for Rape</b>	Life imprisonment for severe cases	Death penalty for aggravated cases, life imprisonment
<b>Protective Measures</b>	Limited to marital cruelty	Includes safety plans, maintenance, and shelter for victims

#### 6. Conclusion:

In conclusion, the **Bharatiya Nyaya Sanhita (BNS), 2023**, marks a significant and progressive shift from the **Indian Penal Code (IPC), 1860**, in addressing crimes against women. While the IPC served as a foundational framework for criminalizing offenses such as **rape, domestic violence, and sexual harassment**, its limitations in addressing modern forms of violence have been increasingly evident in the digital age. The BNS (2023) introduces a more **inclusive and victim-centered approach**, expanding the scope of legal definitions and offering enhanced protection for women. It recognizes previously underexplored areas such as **psychological and economic abuse** in cases of domestic violence and explicitly addresses **digital harassment**, including cyberstalking, revenge porn, and online threats. This reflects an understanding of the **changing dynamics of gender-based violence**, where technology and public spaces play a crucial role in enabling abuse. Moreover, the BNS incorporates **stricter penalties**, such as the death penalty for aggravated rape, alongside provisions for immediate relief, including **temporary protection orders, financial aid, and victim anonymity**. These measures aim to not only deter perpetrators but also provide **comprehensive support systems** for victims, ensuring their safety, dignity, and rehabilitation during legal proceedings. However, while the BNS represents a forward-thinking legal reform, its effectiveness will ultimately depend on **robust implementation mechanisms**. Law enforcement agencies need specialized training to handle





digital evidence, and judicial processes must adapt to ensure **speedy trials** and **sensitive handling of victim testimony**.

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