



## Review Article

## Changes in laws against sexual offences in BNS - its legal implications

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## Abstract

The Bharatiya Nyaya Sanhita (BNS) 2023 has made a remarkable shift in India's legal system, changing the colonial-era Indian Penal Code (IPC) 1860. This review article critically analyses the BNS's broad-minded and victim-centric approach to sexual offenses. It explores into key legislative modifications, including the expanded definition of rape under Section 63, the particular circumstances for invalid consent in Section 28, and a classified, graded punishment framework outlined in Sections 64-71. The article highlights noteworthy reforms concerning age, particularly raising the age of consent for a married female within the marital rape exception from 15 to 18 years, and the overview of new offenses like "sexual intercourse by deceitful means." The review recognizes the legal implications of these modifications on prosecution and judicial understanding while finding hardships for enactment, such as the essentiality for wide education and a social mindset deviation. The BNS is considered as a foundational, futuristic law, pointing for a more judicious response to sexual offences in India.

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## 1. Introduction

The Bharatiya Nyaya Sanhita – the Evolution of Sexual Offences Law with a historical perspective

Laws against sexual crimes have undergone significant evolution, particularly following landmark cases and legislative amendments. BNS-2023 consolidated the earlier reforms, representing important codifications of existing legal principles. This article examines the legislative development from the Indian Penal Code (IPC) through the Criminal Law Amendment Acts of 2013 and 2018 against sexual offences, concluding in the provisions of the BNS.<sup>1-3</sup>

The 2012 Delhi gang rape case, served as a “Catalyst for Reform” in India's legal history which led to widespread public protests and demands for stringent legal reforms. In response, the government established the Justice Verma Committee to recommend comprehensive modifications to criminal law relating to sexual offences through the Criminal Law Amendment Acts of 2013.<sup>2,4</sup> The Act increased minimum punishment for rape from seven to ten years, with

provisions for life imprisonment in aggravated circumstances introduced four new categories of sexual offences: Sexual harassment (Section 354A), Assault with intent to disrobe (Section 354B), Voyeurism (Section 354C), Stalking (Section 354D).<sup>2</sup>

Following the Kathua rape case, the Criminal Law Amendment Act, 2018 further strengthened penalties for sexual offences against minors. The Act introduced: Death penalty for rape of girls below 12 years, Enhanced punishment of 20 years minimum imprisonment for rape of girls below 16 years, Stricter provisions for gang rape of minors.<sup>3</sup>

The decision to modify a criminal code that has existed for centuries with BNS, and the explicit and detailed attention to sexual offences in the new statute, communicate a deep legislative commitment to adapting laws to meet shifting social expectations and demands for justice. More than just midyear tweaks to the system of technical rules and legal procedures, this is an unequivocal pronouncement on the state's commitment to doing more to combat gender-

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based violence.<sup>2</sup> The nitty-gritty details, particularly in terms of consent, victim protection, and particular categories of offenses, signal a purposeful shift towards more accountability on the part of perpetrators and an end to past grey areas, or perceived softness in the justice system. This hints at a larger transformation in society when it comes to addressing sexual violence as a whole — one that shifts the paradigm from one that may have at least incidentally centred on “honour” or “morality” to a different one that is clearly all about bodily autonomy and consent.

This article offers a detailed review of the rules that relate to sexual offenses under the BNS 2023. It examines the broader definitions of these offenses, the finer points of consent, the framework for graded punishments, and the carefully designed procedures to protect victims and ensure fair trials.<sup>5</sup> The analysis will focus on the direct and indirect legal consequences of these changes for victims, accused individuals, law enforcement agencies, and the court system. It will provide important insights into how these changes might affect criminal justice in India.

## 2. Defining Sexual Offences under BNS: An Expanded Scope

Significant changes to the definitions of sexual offenses are introduced in the BNS 2023 with the goal of achieving greater inclusivity and clarity. In order to address the complex nature of sexual violence and guarantee that a greater variety of harmful acts are suitably classified and prosecuted, these changes are essential.

## 3. Rape: Comprehensive Definition and Acts (Section 63 BNS)

Section 63 of the BNS 2023 significantly broadens the definition of rape, moving beyond traditional and often restrictive understandings to encompass a wider range of non-consensual sexual acts.<sup>6</sup> This expansion is crucial for addressing various forms of sexual violence that may not have been adequately covered by previous statutes, ensuring a more inclusive legal framework. The definition explicitly includes:

1. Penetration of the penis into the vagina, urethra, anus, and mouth.
2. Insertion of objects or any body part into the vagina, urethra, and anus.
3. Manipulation of any body part of a woman to cause penetration into the vagina, urethra, anus, or any part of her body.
4. Application of the perpetrator's mouth to the vagina, anus, or urethra of a woman, or making her to do so.

This thorough listing demonstrates a legislative commitment to minimizing ambiguity regarding the definition of sexual assault by placing more emphasis on the act and the bodily integrity violation than just penile-vaginal penetration.<sup>6</sup> A clear and intentional shift towards a more

inclusive and victim-centric understanding of sexual violence is indicated by the explicit inclusion of "insertion of objects/body part" and "manipulation of any body part," as well as the extension of the definition of rape in Section 63 BNS to encompass various forms of penetration beyond traditional penile-vaginal intercourse. Narrower definitions in the past have frequently resulted in serious non-penile forms of sexual assault being prosecuted under less serious offenses, which has lessened the severity of the harm and the victim's experience. The BNS recognizes the variety of ways sexual violence can appear and guarantees that all types of non-consensual sexual penetration are given the serious consideration they merit under the rape definition by specifically including these acts in the definition. For victims, this has significant ramifications because it validates their experiences and may make prosecution easier by eliminating the need to classify serious non-penile assaults under less suitable or harsh legal headings.

## 4. Invalid Consent Provisions (Section 28 BNS)

Section IPC 90 vs. BNS Section 28: Both provisions mentions the general principles of consent across all criminal offences, not specifically of sexual offences. Section 90 of the IPC established that consent given under fear, misconception, by persons of unsound mind, under intoxication, or by children under 12 years of age is invalid. BNS Section 28 carries forward these principles with minor modifications.<sup>7</sup> This provision is a cornerstone of modern sexual jurisprudence, aiming to prevent perpetrators from exploiting vulnerabilities. Consent is explicitly deemed invalid if obtained:

1. Against the victim's will.
2. Without the victim's consent.
3. Due to fear of death or hurt.
4. Due to misrepresentation of facts, fraud, or impersonation.
5. Due to unsoundness of mind, intoxication, or stupefying substance.
6. When the victim is under 18 years of age.
7. When the victim is unable to communicate consent.

In order to close potential gaps in defence arguments, these provisions are essential in preventing offenders from asserting consent in cases where the victim was coerced, deceived, incapacitated, or legally incapable of giving consent. A legislative commitment to raising the standard of consent from passive acquiescence to active, informed, and uncoerced agreement is demonstrated by the thorough listing of invalid consent conditions in Section 28 BNS. This is especially important in situations where power disparities are present by nature, like when there is a fear of harm, the offender is an authority figure, or dishonesty is used.<sup>5</sup> The law places a clear ethical and legal burden on the accused to demonstrate valid consent rather than on the victim to demonstrate lack of resistance or active refusal by clearly declaring that consent obtained through fear, fraud, or

incapacitation is invalid. This greatly improves the victim's standing in court and limits the use of defences based on coerced or implied consent. Additionally, the inclusion of "unable to communicate consent" closes a significant gap and guarantees complete protection by acknowledging victims who might be unconscious, physically disabled, or otherwise incapable of expressing refusal.

## 5. Statutory Rape and Age of Consent under BNS

The age of consent is a crucial protection for children from sexual exploitation, and the BNS upholds a clear and protective position on the subject. The legal age of consent for females is eighteen. Having sex with a woman under the age of eighteen, whether or not she "consented," is considered statutory rape and is illegal.<sup>2,6</sup>

Interestingly, males' consent age is "not given under section 63 BNS." However, the law makes it clear that an adult female will face charges under the Protection of Children from Sexual Offenses (POCSO) Act if she engages in sexual activity with a minor boy (under the age of 18). This demonstrates how BNS intentionally interacts with and enhances other specialized child protection laws. Although BNS Section 63 clearly states that a girl must give her consent for statutory rape at the age of 18, its clear reference to the POCSO Act in situations involving minor boys suggests that lawmakers intentionally sought to establish a multi-layered, all-encompassing framework for protecting minors rather than trying to cover all forms of child sexual abuse under a single BNS provision. Regardless of the victim's gender, this method guarantees that child sexual abuse is covered by a strong, specialized law (POCSO) created especially to address the particular vulnerabilities, psychological effects, and evidentiary difficulties faced by child victims. This highlights the complexity but also suggests that in order to guarantee proper charges, maximum protections, and sensitive handling of cases involving children, attorneys must navigate and apply both BNS and POCSO.

## 6. Continuation of the Marital Rape Exception

Before the BNS, the Supreme Court's landmark judgment in *Independent Thought v. Union of India* (2017) partially addressed the marital rape exception. The Court struck down Exception 2 to Section 375 IPC insofar as it related to girls between 15 and 18 years of age and ruled prospectively that Sexual intercourse with a wife between 15-18 years constitutes rape regardless of consent.<sup>8</sup>

The BNS, in its definition of rape under Section 63, explicitly mentions that sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape. This means that if the wife is below 18 years, the act would be categorized as rape, even within a marital relationship. This is a noteworthy modification from the IPC, where the age threshold for this specific exception was 15 years. The BNS has effectively elevated the age of

consent for a wife within the marital rape exception from 15 to 18, aligning it with the general age of consent for other females.

## 7. Punishments and Sentencing Framework in BNS

For different types of rape, the BNS implements a complex, ordered punishment system that carefully considers the seriousness of the crime and aggravating circumstances. By making sure that punishments are appropriate for the offense, this seeks to discourage different types of sexual assault.

## 8. Classified Punishments for Rape (Sections 64-71 BNS)

The BNS provides a thorough framework for rape punishment, with different levels of severity determined by the victim's vulnerability and the type of offense committed. This detailed approach guarantees that punishments correspond to the seriousness of the offense.

1. Section 64(1): Outlines the standard penalty for rape, which is between 10 and life in prison.<sup>9</sup> This broad range allows for judicial discretion to tailor sentences based on the specific facts and circumstances of each case.
2. Section 64(2): Addresses rape committed under "special circumstances," explicitly including custodial rape<sup>9</sup> The punishment for this category also ranges from 10 years to life imprisonment. This provision underscores the aggravated nature of offenses committed by persons in positions of trust or authority, recognizing the severe breach of power.
3. Section 65(1): Pertains to the rape of a girl below 16 years. While the specific punishment is not detailed in the provided information, its separate mention indicates a higher degree of culpability due to the victim's extreme vulnerability based on age.<sup>10</sup>
4. Section 65(2): Deals with the rape of a girl below 12 years. Given the serious harm done to very young victims, this category is probably going to have even harsher penalties.<sup>10</sup>
5. Section 66: Deals with rapes that cause the victim to go into a persistent vegetative state. This clause suggests the harshest punishment possible because it recognizes the most serious physical and neurological effects of sexual assault.<sup>11</sup>
6. Section 67: Criminalizes sexual intercourse with a wife during separation without her consent. By highlighting the critical importance of consent even in a marital context and eroding historical immunities, this is an important recognition of marital rape in certain situations, especially when the couple is separated.<sup>12</sup>

- 7. Section 68: Addresses sexual activity carried out by an individual in a position of authority. Like the idea of custodial rape, this clause aims to hold people accountable when they misuse their authority or position of trust.<sup>13</sup>
- 8. Section 69: This is one of the major additions to the law against sexual offence. This newly added section specifically criminalizes sexual intercourse by a man who, by "deceitful means" or having sexual relations acquired through dishonest means, such as making false claims of marriage, a job, or a promotion by hiding information.<sup>14</sup> This provision addresses a common form of exploitation where consent is vitiated by fraud. Thus, this section is vital in creating a separate, cognizable, and non-bailable offense for such specified offence.
- 9. Section 70: Deals with gang rape.<sup>15</sup> The BNS introduces a more rigorous, graded punishment structure for gang rape through Section 70(1) and 70(2), distinguishing between different victim age groups to ensure penalties are proportionate to the severity of the crime and the victim's vulnerability.
- 10. Section 71: Addresses rape by repeat offenders.<sup>16</sup> This clause, which reflects a strong commitment to deter recidivism and safeguard society from ongoing threats, attempts to impose harsher, frequently mandatory minimum penalties on repeat offenders.

Sections 64–71 BNS, which go beyond merely a general rape provision, provide a comprehensive and nuanced approach to criminal justice by breaking down rape offenses into specific categories (custodial rape, gang rape, rape by repeat offenders, rape of minor victims, rape by deceitful means, etc.). This level of detail makes it possible to impose penalties that accurately capture the seriousness of the offense and the victim's heightened susceptibility in particular situations. Treating gang rape and custodial rape, for instance, as separate crimes with potentially harsher punishments sends a clear and powerful message about accountability for crimes committed collectively or by those in positions of authority.<sup>15</sup> In addition to striving for proportional justice, which guarantees that the penalty is commensurate with the seriousness of the offense, this strategy also acts as a more potent deterrent for certain high-risk behaviours and repeat offenses<sup>16</sup> improving public safety and increasing victim trust in the legal system's capacity to administer justice. Summarising all major sections of BNS 2023 related to sexual offence, the comparative analysis with IPC sections is mentioned in

Table 1. below.

Table 1: Comparative Analysis: IPC vs. BNS Framework<sup>4,16,17</sup>

Aspect	IPC Provisions	BNS Provisions	Key Changes
Rape Definition	Section 375	Section 63	Minimal changes; age threshold modified
Consent Framework	Section 90 (general)	Section 28 (general) + Section 63 (specific)	Enhanced rape-specific provisions
Punishment	Section 376	Section 64-66	Consolidation of existing amendments
Marital Exception	Exception 2 (modified by courts)	Exception 2 (retained with judicial modifications)	No legislative change

Adultery: Decriminalization and Abetment of Suicide (Section 108 BNS)

Section 108 of the BNS deals with abetment of suicide in general terms and is not specifically confined to cases involving adultery. The provision states that if any person commits suicide, whoever abets such suicide shall be punished with imprisonment up to ten years and fine.<sup>18</sup> While courts may invoke Section 108 in cases where suicide results from adultery-related harassment, the provision does not automatically apply to all adultery-suicide cases. Even before BNS, in the judgment of K.V. Prakash Babu v. State of Karnataka (2016). The Supreme Court ruled that adultery, even if proven, does not, in itself, constitute abetment of suicide.<sup>19</sup>

9. Unnatural Sexual Offences

Section 63 of the BNS defines rape broadly to include several forms of non-consensual sexual offences, including sodomy and oral sex, but does not categorize them as "unnatural".<sup>4</sup> The BNS seems to primarily criminalize "unnatural" acts only when they involve non-consent (which places them under the expanded definition of rape in Section 63 BNS) or exploitation (such as involving minors under POCSO), even though historically these acts were frequently criminalized on the basis of moralistic grounds or perceived deviance.<sup>20-22</sup> This tendency is further supported by the clear reference to "No specific section in BNS for punishment" for bestiality.<sup>23</sup> This suggests a shift away from making consenting adult sexual acts illegal to a more rights-based and progressive view of sexual autonomy. This omission, however, has also been a subject of judicial scrutiny, with courts asking the government to clarify the legal vacuum for non-consensual acts and bestiality.

## 10. Legal Implications of the BNS Framework

Thus, the BNS 2023 has significant legal ramifications for victim protection, sexual offense prosecution, and the administration of the legal system as a whole.

A wider range of non-consensual sexual acts will probably be prosecuted as rape as a result of the greatly expanded definition of rape (Section 63 BNS).<sup>6</sup> This could increase the conviction rate for sexual assaults that were previously underclassified and assure that charges accurately reflect the seriousness of the crime. By guaranteeing proportionality and methodically addressing aggravating circumstances, the granular, graded punishment system (Sections 64–71 BNS) gives judges more precise and explicit guidelines for sentencing, potentially resulting in more consistent and equitable sentencing decisions.<sup>9-16</sup> Courts can instead concentrate more effectively and directly on the behaviour and intent of the offender. Public trust in the legal system's capacity to adequately address sexual violence could be greatly increased as a result of more effective trials, speedier justice delivery, and possibly higher conviction rates.

## 11. Challenges and Future Outlook for Implementation

Even though the BNS provisions are clearly progressive and well-meaning, a number of crucial elements that go beyond simple legislative enactment will be necessary for their successful implementation:

1. **Education and Awareness:** The judiciary, medical professionals, and law enforcement officers will need to receive in-depth, ongoing education on the new definitions, the subtleties of consent, the updated procedural procedures, and a victim-sensitive approach.
2. **Social Mindset Shift:** Even with legal reforms, strong cultural perceptions of sexual assault, widespread victim-blaming behaviours, and inflexible gender norms may still make it difficult to implement the new framework effectively and gain widespread public support.
3. The BNS is unquestionably a progressive legal document, but the ultimate success of its "changes" and its intended "legal implications" depends entirely on its practical and effective implementation.

## 12. Conclusion

With its extensive definitions, careful clarification of the subtleties of consent, graded and proportionate punishment structure, and strong victim-centric procedural safeguards, the Bharatiya Nyaya Sanhita 2023 represents a significant shift in India's legal landscape regarding sexual offenses and lays a solid and forward-thinking foundation for a more just, equitable, and successful response to sexual violence.

## 13. Source of Funding

None.

## 14. Conflict of Interest

None.

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