

WOMEN, CHILDREN AND THE NEW CRIMINAL LAWS

An overview of changes introduced in Bharatiya Nyaya Sanhita
and Bharatiya Nagarik Suraksha Sanhita, 2023

BACKGROUND

Over 600 changes introduced

Language modernized, offences re-organized, provisions amended, added and deleted

Made victim and witness central to the criminal legislation

Ease of public engagement in the criminal justice system enhanced

Technology and timelines introduced to streamline processes

INTENDED GOALS

To make the criminal
justice system of the
country

Technologically
adept

Transparent
and Swift

Credible and
Accountable

Justice Driven

**BHARATIYA NAGARIK SURAKSHA
SANHITA**

CHANGES IN DEFINITION

The requirement of the accused person being formally charged eliminated. This modification expedites the process of victims receiving compensation entitled to them in certain cases

- Definition of 'victim' **broadened**

S. 2(1) (wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission **for which the accused person has been charged** and the expression "victim" includes his or her guardian or legal heir;

- Code of Criminal Procedure, 1973

S. 2(1)(y) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission of the accused person and includes the guardian or legal heir of such victim;

- Bharatiya Nagarik Suraksha Sanhita, 2023

WOMEN CENTRIC CHANGES

● **Section 176(1) Second Proviso** – In order to provide more protection to the victim and enforce transparency in investigation related to an offence of rape, **the statement of the victim shall be recorded through audio video means by police.**

○ **183(6)(a) Proviso 1** – For certain offences against woman, statements of the victim are to be recorded, as far as practicable, by a **woman Magistrate and in her absence a male Magistrate in the presence of a woman.**

○ **183(6)(a) Proviso 2** – The Magistrate shall now record the statement of a witness in case of certain offences against women that are punishable with imprisonment for ten years or more or with imprisonment for life or with death.

WOMEN CENTRIC CHANGES

Section 184(6) - Medical practitioners are mandated to send the medical report of a victim of rape to the investigating officer within 7 days.

Section 179(I) First Proviso– Exemption from attending the police station is given to **woman**, male person below 15 years, person above 60 years (earlier 65 years), mentally or physically disabled person and a person with acute illness. Further, a second proviso to sub– section (I) is added to allow the persons mentioned in the exemption category to attend at the police station if he/she is willing so to do.

Section 195(I) Proviso – Provides that no male person under the age of fifteen years or above the age of 60 years (65 years earlier) or a **woman** or a mentally or physically disabled person or a person with acute illness shall be required to attend at any place other than the place in which such male person or woman resides. In cases where such a person is willing to attend the police station, they may be allowed to do so.

CHANGES AFFECTING WOMEN

Changes in Information to the Police and their Powers to Investigate

- **Section 173(1)** – The provision of filing of **Zero FIR** has been introduced. Now, when information is received by the police that discloses the commission of an offence **outside the limits of a police station**, it shall be entered in the book to be kept by such officer.
- The provision for lodging information through electronic communication (**e- FIR**) has been added with the enabling provision that the signature of the person giving such information shall be taken within 3 days before the e- FIR is taken on record.
- **Section 173(2)** – The right of the victim to get a **free of cost copy of FIR forthwith** introduced.

Police Report and Supply of Documents

- **Section 193(3)(ii)** – To make the law more victim centric, it is mandated that the police officer must **inform the progress of investigation to the informant or victim within 90 days** of the investigation. Technology has been included as a valid mode of communication for conveying this information to the victim/informant.

CHANGES AFFECTING WOMEN

Process to Compel Appearance

- **Section 66** – Gender neutrality has been introduced and women have been included as an adult member of the family for the purpose of service of summons on behalf of the person summoned. The earlier reference to ‘some adult male member’ has been replaced with ‘**some adult member**’

Changes in Order for Maintenance of Wives, Children and Parents

- **Section 145** – Introduces the inclusion of both **father and mother** in the proceedings for an order of maintenance from the place where the dependent parent resides. This removed the difficulty which existed in the CrPC wherein in case of parents, the place for initiation of proceeding was the place of residence of their son.

CHANGES AFFECTING WOMEN

General Provisions as to Inquiries and Trials

- **Section 360** – The Court shall afford an **opportunity to the victim to be heard before withdrawal of prosecution.**
- **Section 392** – A time period of **45 days from the date of termination of trial** is provided for the judgment to be pronounced in any criminal Court. The Court to **upload the copy of the judgment on its portal within 7 days** from the date of judgment. An accused in custody can be brought to hear the judgment pronounced through audio – video electronic means as well.

Introduction of Witness Protection Scheme

- **Section 398 – New Section.** Mandates the preparation and notification of a witness protection scheme by every State Government. A witness protection scheme serves as a safeguarding mechanism, fostering an environment where witnesses can contribute to the legal process devoid of fear or duress. The necessity for a comprehensive witness protection scheme has been underscored by the Malimath Committee and various Law Commission Reports. In *Mahendra Chawla v UOI*, the **Witness Protection Scheme 2018** (draft) was approved by the Supreme Court.

GENERAL REFORMS INTRODUCED

Introduction of timeline

- **Supply of police report, documents etc.- 14 Days**
- **Committal of case- 90 days extendable up to 180 days**
- **Filing discharge application- 60 days**
- **Framing of charge- 60 days.**

Use of technology

- **Deposition of evidence of witnesses by audio-video electronic means at the designated place to be notified by the State Government.**
- **Deposition by successor-in-office *via* audio-video electronic means.**

Introduction of discharge in summons cases

Making summary trial mandatory for limited set of offences and widening the power of Magistrate to try cases punishable with 3 years punishment to try summarily.

GENERAL REFORMS INTRODUCED

Prosecution related Reforms:

- Section 20 establishes a comprehensive **Directorate of Prosecution**. For the first time, the provision for **District Directorate of Prosecution** has been made.
- The **Director of Prosecution** will be responsible for giving opinions on filing appeals and monitoring cases punishable with 10 years or more/life imprisonment/death.
- The **Deputy Director of Prosecution** has been made responsible to examine police report and monitor the cases punishable for 7 years or more but less than 10 years and for ensuring their expeditious disposal.
- The **Assistant Director of Prosecution** has been empowered to monitor cases punishable for less than 7 years.
- The BNSS makes the provision for the Central Government to appoint the Public Prosecutor or Additional Public Prosecutor for the purpose of prosecution before the Delhi High Court. (Section 18(1) Proviso)

GENERAL REFORMS INTRODUCED

Investigation related reforms

- **Introduction of Zero FIR, e-FIR, Preliminary Enquiry, Investigation by senior police officer, use of forensic experts, timeline for completing further investigation (90 days), deemed sanction in 120 days.**
- **Public servant is protected against false and frivolous cases at both the stages- Complaint before the Magistrate and Application made under section 175(3) (Police officer's power to investigate cognizable cases) Now considering the assertions made by the public servant and receiving a report containing facts and circumstances of the incident from his superior officer is mandatory.**

GENERAL REFORMS INTRODUCED

Investigation related reforms

- **In Complaint cases- hearing the accused is made mandatory before taking cognizance**
- **Arrest and custody:**
 - **Partial restriction in making arrest in less than three years punishable offence**
 - **No arrest while forwarding the police report to the Magistrate**
 - **No arrest for taking sample of handwriting/signature/voice sample/finger impressions**
 - **Additional medical examination of the arrested person in police custody**
 - **One designated police officer in every district and at every police station to maintain records of arrest**

GENERAL REFORMS INTRODUCED

Investigation related reforms

- **Arrest and custody:**
 - **Notice of appearance-** Form I has been added in Schedule I of the BNS.
 - **Use of handcuffs while effecting the arrest and production before court of an arrested person.**
 - **Power of police to detain or remove any person resisting, refusing, disregarding etc. to conform to any direction of a police officer is introduced in section 172 BNS.**
 - **Police custody period is 15 days spread over the initial period of 40/60 days based on the total period of 60/90 days.**
 - **The accused being required for police custody beyond the first 15 days, will not be the sole ground for refusing grant of bail to the accused.**
 - **No scope for house arrest-** detention shall only be in a police station under police custody or in prison under judicial custody or any other place declared as a prison by the Central Government or the State Government.

GENERAL REFORMS INTRODUCED

Summoning, Search and Seizure related reforms

- In Summon to produce a document or a thing **production of electronic communication, including communication devices** which is likely to contain digital evidence is introduced.
- **Videography of the process of search and seizure including the preparation of a list of seized items and the signing of it by the witness is made mandatory.**
- **Proceeds of crime-** Enable the police, with the permission of the Court, **to attach and forfeit any property obtained as proceeds of crime.**

GENERAL REFORMS INTRODUCED

Summoning, Search and Seizure related reforms

- **Search without warrant-** Section 185 introduces several checks on the powers of the police while conducting search. Firstly, the police officer is required to **record the grounds of his belief for conducting search at a place in the 'case-diary'** under section 185(1). Further, **any search conducted by a police officer shall be recorded through audio-video electronic means** as per section 185(2). Further, Section 185(5) makes the police officer accountable to **send, within 48 hours, the copies of any record made in this regard to the nearest Magistrate** empowered to take cognizance of the offence.
- **Disposal of case property-** Section 497 introduces the **quick disposal of case properties even during the investigation, on preparation of a statement of the property by the Court within 14 days after such property has been photographed/ video graphed.**

GENERAL REFORMS INTRODUCED

Introduction of Technology

- **Submission of police report**
- Magistrate taking cognizance of any offence **upon receiving a police report electronically.**
- **Supply of copies to the accused**
- **Summoning process-** maintaining the register in the police station and in the Court to keep the address, email address, phone number etc. of the person to be summoned

Proclaimed Offender

- **Widening the scope of 'proclaimed offender'**
- **Forfeiture and attachment of property**
- **In absentia trial**

BHARATIYA NYAYA SANHITA

RE-ORGANIZATION OF OFFENCE

Offences against woman and child which were scattered throughout in Indian Penal Code, 1860.

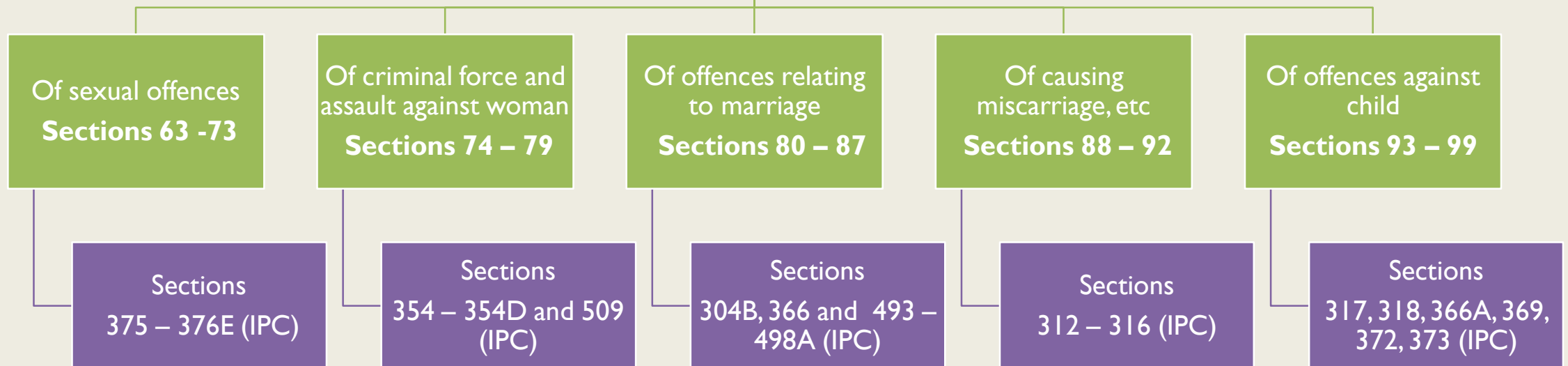
They have been **consolidated under Chapter-V** of the Bharatiya Nyaya Sanhita, 2023.

Offences against woman and child have been given precedence over other offences.

I.BNS, 2023 consists of only **358 sections** as opposed to 511 sections in IPC, 1860.

CHAPTER V - OF OFFENCES AGAINST WOMAN AND CHILD

CHAPTER - V Section 63 – 99 (BNS)



NEW OFFENCES INTRODUCED

Section 69. Sexual intercourse by employing deceitful means, etc. - Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation.—“deceitful means” shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity

NEW OFFENCES INTRODUCED

Section 95. Hiring, employing or engaging a child to commit an offence. - Whoever hires, employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.

Explanation.—Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section

AGE ENHANCED

IPC Offence	BNS Offence
<p>S. 375 Rape</p> <p>Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.</p>	<p>S. 63 Rape</p> <p>Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape</p>

SECTIONS MERGED

IPC Offence	BNS Offence
<p>S. 376 Punishment for Rape 376(3)</p>	<p>S. 65 Punishment for rape in certain cases. 65(1) — Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim</p>
<p>S. 376AB. Punishment for rape on woman under twelve years of age</p>	<p>65(2) — Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and with fine or with death: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim</p>

SECTIONS MERGED AND PUNISHMENT ENHANCED

IPC Offence	BNS Offence
<p>S. 376D Gang Rape</p>	<p>S. 70 Gang Rape S. 70(1) Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and with fine: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim.</p>
<p>S. 376DA Punishment for gang rape on woman under <u>sixteen years</u> of age.</p> <p>punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine</p> <p>S. 376DB Punishment for gang rape on woman under <u>twelve years</u> of age.</p> <p>punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death</p>	<p>S. 70(2) - Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this sub-section shall be paid to the victim.</p>

SECTIONS MERGED

IPC Offence	BNS Offence
S. 494. Marrying again during lifetime of husband or wife.	S. 82 Marrying again during lifetime of husband or wife. 82(1) Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Exception.—This sub-section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.
S. 495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.	S. 82(2) Whoever commits the offence under sub-section (1) having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

GENDER NEUTRALITY FOR PERPETRATOR

Old Definitions (IPC)	New Definitions (BNS)
<p>S. 354B Assault or use of criminal force to woman with intent to disrobe.—Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.</p>	<p>S. 76 Assault or use of criminal force to woman with intent to disrobe. —Whoever assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.</p>
<p>S. 354C Voyeurism.—Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.</p>	<p>S. 77 Voyeurism. —Whoever watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.</p>

GENDER NEUTRALITY INTRODUCED FOR VICTIM

Old Definitions (IPC)	New Definitions (BNS)
<p data-bbox="142 654 1103 701">S. 366B. Importation of girl from foreign country.</p> <p data-bbox="142 841 1309 1096">Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine</p>	<p data-bbox="1340 654 2402 758">S. 141 Importation of girl or boy from foreign country.</p> <p data-bbox="1340 822 2402 1122">Whoever imports into India from any country outside India any girl under the age of twenty-one years or any boy under the age of eighteen years with intent that girl or boy may be, or knowing it to be likely that girl or boy will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.</p>

MINOR GIRL REPLACED WITH CHILD

Old Definitions (IPC)

S. 366A. Procurement of minor girl. —Whoever, by any means whatsoever, induces any **minor girl** under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

New Definitions (BNS)

S. 96. Procurement of child. —Whoever, by any means whatsoever, induces any **child** to go from any place or to do any act with intent that such child may be, or knowing that it is likely that such child will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine

PUNISHMENT ENHANCED

Old Punishment (IPC)

S. 373. Buying minor for purposes of prostitution, etc.—Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term **which may extend to ten years, and shall also be liable to fine.**

New Punishment (BNS)

S. 99. Buying child for purposes of prostitution, etc. — Whoever buys, hires or otherwise obtains possession of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term **which shall not be less than seven years but which may extend to fourteen years, and shall also be liable to fine.**

AGE DIFFERENTIAL REMOVED

Old Definitions (IPC)	New Definitions (BNS)
<p>S. 361. Kidnapping from lawful guardianship.—</p> <p>Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.</p>	<p>S. 137. Kidnapping.—</p> <p>(1)(b) whoever takes or entices any child or any person of unsound mind, out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such guardian, is said to kidnap such child or person from lawful guardianship.</p>

THANK YOU