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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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A RESEARCH PAPER ON ACCESS TO JUSTICE AND OFFENCES AGAINST WOMEN AND CHILDREN – A STUDY OF THE CLAUSES AND REFORMS UNDER BHARATIYA NYAYA SANHITA (BNS)

AUTHOR – K.S.MADHUMATHI, STUDENT AT SCHOOL OF LAW CHRIST (DEEMED TO BE) UNIVERSITY, BANGLORE

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ABSTRACT

Women have all the rights and privileges in every areas as possessed by the men. The Constitution of India has given equal rights, privileges and freedom that are enjoyed by the men for many years. In ancient period women held a respectful position in society, but later on they lost their high place due to drastic changes in socio, political and economic environment. In present scenario, Women and children's safety and security are a significant issue, with many real incidents and assault reported each year. National Crime Records Bureau (NCRB) reported that the number of cases of offences against women being registered have been on rise from 228650 in 2011 to 445256 in 2022.

But gender biases and gender-based discrimination are still exist. The child sex ratio of India is 1020, the female literacy rate is about 70.3 percent, which is 14.4 percent less as compared to the male, the rate of child marriage is 27.3 percent and India's global gender gap index is 64.1 per cent, which leads the country to rank 129th out of 146 countries in 2024. Every 16 minutes, a woman is raped in India, and the crime rate per lakh women population rose to 66.4 in 2022 from 64.5 in 2021. In 2022, the majority of crimes against women were categorized as cruelty by the husband or his relatives (31.4 .. followed by kidnapping and abduction (19.2%), assault with intent to outrage modesty (18.7%), and rape (7.1).

Violence – An abuse and include any sort of physical aggression

A physical or mental cruelty to women both directly or indirectly has been defined under the term crime or violence against women. Domestic and social violence includes various sort of physical aggression which affect women at all stages of their life. Violence Against Women and Girls (VAWG) is one of the most widespread, persistent and devastating human rights violations in the world and remains largely unreported due to the impunity, silence, stigma and shame surrounding it. It affects women extremely in

physical, sexual and psychological forms, encompassing: Intimate partner violence (battering, psychological abuse, marital rape, femicide); Sexual violence and harassment (rape, forced sexual acts, unwanted sexual advances, child sexual abuse, forced marriage, street harassment, stalking, cyber harassment); Human trafficking (slavery, sexual exploitation); Female genital mutilation; and Child marriage.

The United Nations defined "Violence against Women" in 1993 in Declaration on the Elimination of Violence against Women. It defines it as any act of gender-based violence that results in, or is likely to result in, physical,

sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

Review of Literature

India Sharma (2013) analysed the violence against women in the context of social, economic, developmental, legal, educational, human rights, and health (physical and mental) issues, preventable cause of morbidity and mortality in women, inadequacy of the relationship between violence against women and mental illness and application of laws related to it. She conducted a depth study on insensitive, inefficient, corrupt and unaccountable judicial system and law enforcement machinery fails to deter against various forms of crimes. Once rape has been committed, it confirms that all measures to stall violence have failed. Reaction in the form of declaration of enhanced punishment is largely an expression of helplessness and frustration. The emphasis should be on prevention and rehabilitation.

She concluded that women with severe mental illness need special attention. Public awareness needs to be created with respect to Women need protection but those with mental illness need more care and protection, good family support greatly improves the prognosis, many women with mental illness prove to be better marriage partners and daughter-in-laws than those without mental illness.

Amay Bajaj (2015) analysed the crimes against women through the IPC sections in the aspects of domestic violence, acid attacks, eve teasing, kidnapping and sexual harassment. He highlighted the Government efforts through legal acts like Sexual Harassment of Women at workplace Act 2013 and Protection of children against sexual offences Act 2013 with the punishments and imprisonment. He concluded that women should be ready to fight for themselves along with the huge legal support and system.

Shri Wadkar Lakshman Narsu (2017) outlined the proposed plan for a legal study on protecting women's rights in India. The study examined the effectiveness of laws related to women's employment, political participation, and protection from dowry and rape. His core objectives are to analyze how aware women are of their legal rights, examine problems affecting women's rights protections, identify hurdles in implementing relevant laws and policies, and suggest amendments to better protect women's rights in India. He evaluated the legislative, administrative, and judicial efforts to protect women's rights and identify shortcomings.

Tamilmani and Ramya (2019) conducted a study on Legal perspective of Crime against Women in India the relief and protection for women in law granted by Indian government. The major loop hole in our country is laws are not executed even properly enacted. They concluded that serious government efforts, reservation of seats in parliament, compulsory education to girls, women enrollment in armed forces, our state legislations and policies have brought socio, political and economic empowerment among women. Apart from that all the responsible citizens especially concern stakeholders pay sincere attention towards precautionary action through create the awareness among the women to prevent the crime against them.

Aadarsh Kumar Shrivastava (2020) conducted a study on protection from crimes against women under Indian laws against women. They highlighted the various forms of crimes against the women and the list keeps growing like attempt to commit rape, Kidnapping and abduction for different purposes, procurement of minor girls, Importation of girls from foreign countries, habitual dealing in slaves, selling minor for purposes of prostitution, stalking, importation of girls, word, gesture or act intended to insult the modesty of a woman and honor killing and various statutes passed under IPC and Criminal Procedure Code.

They concluded that in contrast to treated as glorified others and worshipped as goddess, in recent past years, women have undergone endure violence in difference aspects. It is the high time for the society and the legal system to break the silence and to implement effective and elaborate provisions in laws and give them utmost protection.

On the eve of March 8 International Women's Day, Ministry of Women and Child Development highlighted the significance of grants equality to women and empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic, educational and political disadvantages faced by them. Government of India has taken number of efforts to check crimes against women and children like setting up of helplines (Swadhar scheme), grant in aid schemes for providing assistance for rescue and rehabilitation of trafficked victims, institutional mechanisms such as National and State Commissions for women to conduct sensitization and orientation programmes for judicial and police officers on gender issues, organizing legal literacy and legal awareness camps and review of laws with a view to remove provisions which may be discriminatory to women and to enhance punishments for crimes against women.

National Commission for Women (NCW) and National Policy for the Empowerment of Women insists well structured legal system, universalisation of education, holistic approach to women's health, mainstreaming of gender perspective in development process, economic and social empowerment of women.

Lakshmi Priya and Venkatesh Bhargava (2022) conducted a study on analysis of protection of children from sexual offences. They identified that adoption of the exceptional guideline Protection of Children from Sexual Offences (POCSO) 2012, which condemns a wide span of crimes such as youngster attack, incitement, and deceiving for

sensual diversion, is a great development. Special Courts are required by statute to cooperate with quick starts in CSA matters. They discussed both the expected benefits and the potentially unfavorable side effects that may emerge from the use of the law in India. This study highlighted the key concerns arising from POCSO: time of consent, age confirmation, and obligatory disclosing. They concluded that there are a number of flaws that need to be addressed or addressed in direction to assure its current execution besides lower the crime percentage against children.

Significance of the Study

The status of the women is determined through the access of their legal rights. In our country, series of legal provisions ensures the women's right have proved ineffective in enhancing their positions. The prime reasons are flaws of laws, inability and lack of awareness to access legal rights, lack of transparency, expensive and time consuming judicial process and other economic and social reasons. In this context, BNS has thrown the light on offences against women and children with the intended goal of reform the criminal justice system of the country through technologically adapt, transparent and fast, credible and accountable and justice driven. The prime aim of this study is to know and analyse about the reformed legal system and inclusion of new clauses to promote protection of women's right.

Statement of the Problem

The prime aim of the study is to highlight the protection of women and children rights in our country. Though many rights are portrayed in our legal system, but women and children are not protected completely it importance in our society to provide legal rights and create awareness and access the law to ensure the rights are addressed through the legal systems. There are so many Acts also exist to protect women and children after independence but their position is not changes in present society. Present provisions and legal system are not

enough for protection of women's right. In this present context, it is highly timely to analyse the provisions and reforms brought and implemented by BNS regarding offences against women and children.

The following concepts are important to a strong and inclusive statement of the present study:

- A clear view of the purpose of the legislations under BNS in women's right to be free from gender based violence
- Description of the provisions related to sexual harassment on women and children's safety, health, economic security and equal status in society
- Reforms brought in BNS through inclusion of new clauses relating to dealing of offences against women and children.

Objectives of the Study

- To give an overview about the present status of women and children and their protection
- To study the judicial efforts and legal procedures under BNS to reduce fear among women and children about their rights.
- To create awareness about rights of women and children according to the reforms in BNS under Chapter V

- To see the overview of the effectiveness of various provisions of the protection of women and children's right under BNS
- To analyse the rights of women, children and the new criminal laws with reference to new clauses introduced in BNS

Data Collection

For the present study, secondary data were applied according to the objectives of the study. This data was collected from the Annual Crime Report published by NCRB, National Family Health Survey Report – 5, Government of India, Ministry of Statistics and programme Implementation, Women and Men in India, Government of India, Ministry of Statistics and programme Implementation Women and Men in India 2022, Reports of Ministry of Women and Child Development and from the articles from legal and other related journals, magazines, review papers, newspapers and official websites.

Results:

Crime against Women in India

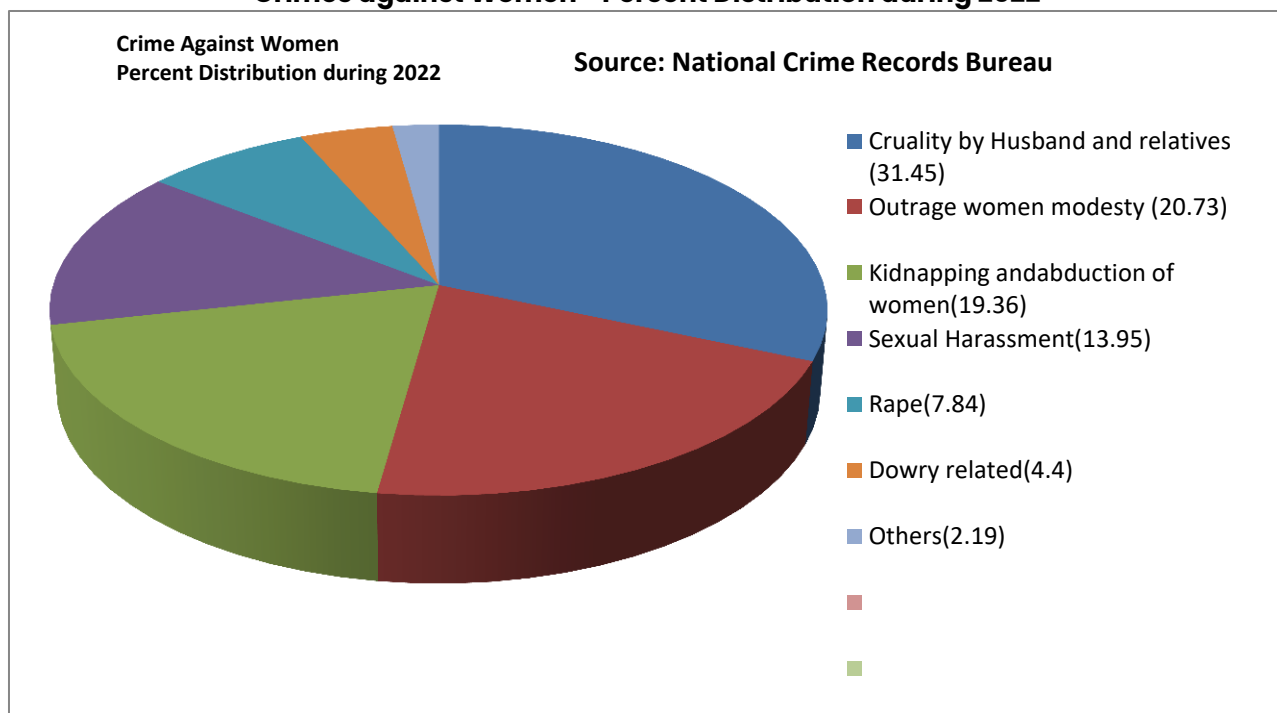
Crimes against women have been on the rise in India especially in later of 2010. The trend of crime against women in India from 2018 to 2022 is as follows.

Table 1. Growth Rate of IPC Crime against Women in Total IPC Crime

Year	Crime Against Women (IPC Crime)	Growth Rate	Total IPC Crime	Growth Rate	% of Crime Against Women on Total IPC Crime
2018	310824	–	31,32,000	–	9.92%
2019	330787	0.064	32,25,071	0.030	10.26%
2020	371503	0.123	42,54,354	0.319	8.73%
2021	428130	1.152	36,63,360	–0.140	11.69%
2022	445256	0.040	38,35,979	0.047	11.61%

Based on the Report of NCRB

Crimes against Women –Percent Distribution during 2022



Constitutional and Legal Provision for Women

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. Achieve gender equality and empower all women and girls” is one of the sustainable development goals of Govt of India, Ministry of statistics and programme implementation in 2022. It ensures ending all forms of discrimination against women and girls everywhere. It is vital to give women equal rights on land and property, sexual and reproductive health, and to technology and the internet. Providing equal access to education, health care, employment opportunities, political representation and economic decision-making processes by women will contribute a lot to society and humanity at large. Due to the relentless efforts of women’s rights advocates from across the globe, the 2030 Agenda’s commitment to gender equality is prominent, comprehensive and cross-cutting, building on the commitments and norms contained in the Beijing Declaration and Platform for Action and the Convention on the Elimination of All Forms of

Discrimination against Women (CEDAW). There are following targets under SDG 5 to monitor gender equality and ensure empowerment of women and girls:

Target 5.1: End all forms of discrimination against all women and girls everywhere

Target 5.2: Eliminate all forms of violence against all women and girls in the public and private spheres

Target 5.3: Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation Target 5.4: Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies

Target 5.6: Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development

Target 5.a: Undertake nationwide reforms to give women equal rights to economic

resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources

Target 5.b: Enhance Information and communication technology to empower women

Violence against women continues to be an obstacle to achieving equality, development, peace as well as to the fulfillment of women and girls' human rights. All in all, the promise of the Sustainable Development Goals (SDGs) – to leave no one behind – cannot be fulfilled without putting an end to violence against women and girls.

Role of Government in Reducing offences against women

Government of India has been advising State Governments to adopt gender sensitization of the police personnel, adopting appropriate measures for swift and salutary punishment to public servants found guilty of custodial violence against women, minimizing delays in investigations of murder, rape and torture of women and improving its quality, setting up a 'crime against women cell' in districts where they do not exist, providing adequate counselling centres and shelter homes for women who have been victimized, setting up of special women courts, and improving the effectiveness of schemes developed for the welfare and rehabilitation of women who are victimized with greater emphasis on income generation to make the women more independent and self-reliant.

Ministry of Home Affairs

Crimes against women are categorized under two sections (i) Offences against women are punishable under Indian Penal Code (ii) under Special and Local Laws (SLL)

Crimes against women (Glimpses of India Penal Code, 1860)

This includes Kidnapping (Sec 359, 360, 366), Eve Teasing (Sec 509), Chain snatching (Sec 378), Rape (Sec 376, 376A, 376B, 376C, 376D), Sexual Harassment (Sec 354A), Domestic Violence (Sec 498A), Honor Killing, Cyber Crimes (Bullying, Abuse, Violence, Pornography), Dowry deaths, Acid Attacks (Sec 326A, 326B), Stalking (Sec 354D), Assault to outrage modesty (Sec 354, 354B) and Women trafficking (Sec 370, 370A, 372, 373).

Crimes against Women under the Special and Local Law

- ✓ The Immoral Traffic (prevention) Act, 1956
- ✓ The Dowry (prohibition) Act, 1961
- ✓ The Child Marriage restraint Act, 1929
- ✓ The indecent representation of women (prohibition) Act, 1986
- ✓ The commission of Sati (prevention) Act, 1987
- ✓ The Protection of women from Domestic Violence Act, 2005
- ✓ The Prohibition of Child Marriage Act, 2006
- ✓ The sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- ✓ The Criminal Law (Amendment) Act 2018:
- ✓ Disha Act (2019)
- ✓ The Women Helpline Scheme is a government initiative that provides 24x7 emergency responses to women affected by violence in public or private spaces through a single toll-free number (181).

BHARATIYA NYAYA SANHITA (BNS)

Government of India has implemented new criminal laws effective from July 1 2024 onwards with the aim of updating and reforming justice system. The Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha

Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA) have replaced the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC), and Indian Evidence Act, respectively. Prime Minister Narendra Modi stated these reforms aim to “eradicate the mentality and symbols of slavery” and create a “new confident India.” The prime goals of BNS as follows:

- The new laws prioritise justice and fairness over punishment alone.
- The new laws include provisions that alter existing legal procedures.
- The new laws have effectively reintroduced provisions similar to the previously stayed sedition law
- To make the criminal justice system of the country technologically adaptive, justice driven, credible and accountable and transparent and swift

The role of BNS is greater in the context of reorganizing offences. 511 sections of IPC have been reduced to 358 in BNS 2023. Offences against women and children have been priority and the scattered offences against women throughout in IPC, 1860 have been consolidated under Chapter –V of BNS 2023.

Offences against Women and Child

Offences against woman and child	Sections under BNS	Sections under IPC
Of sexual offences	63 to 73	375, 376 – 376E (Rape, gang rape, attempt to commit rape and Punishment)
Of criminal force and assault against women	74 –79	354-354D and 509 Outraging & insulting the modesty of women (Eve teasing, Sexual harassment, Disrobing a

		Woman, Voyeurism and Stalking)
Of offences against marriage	80-87	304B, 366 & 493 –498A (Dowry death, Cruelty by Husband or his Relatives, Importation of girls upto 21 years of age)
Of offences against miscarriage	88-92	312-316 (miscarriage and death of an unborn child)
Of offences against child	93-99	317,318,366A,369,372 & 373 (Kidnapping and abduction)

New Offences Introduced

Section 69: Sexual intercourse by employing deceitful includes inducement for , false promise of employment or marry a woman without the intention of fulfilling it, not amounting to offence of rape, shall be punished with ten years imprisonment and shall also be liable to fine.

Section 95: Hiring, employing or engaging a child to commit an offence including sexual exploitation or pornography shall be punished with imprisonment of three to ten years (may be extended) and with fine.

Changes in Existing Provisions

Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age is not rape under IPC Sec 375, the age limit has been enhanced to eighteen years under Sec 63 of BNS. The change in the age of consent seeks to give legislative effect to the Supreme Court's judgment in Independent Thought Vs Union of India (2017), where the marital rape exception was read down to the extent that it allowed sexual intercourse

between a man and his minor wife over the age of 15 years”.

The term given under Sec 366 A of IPC the Procuration of “minor girl” has been replaced under Sec 96 of BNS as “Child” and the rest of concepts are same.

Merging of Sections

Sec 494 & 495 under IPC have been clubbed under Sec 82 (1) & (2) of BNS. Sec 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 life of such husband and wife, shall be punished with imprisonment upto seven years with fine. Sec 82(2) states that the whoever commits the offence having concealed from the person with whom the subsequent marriage is contracted, the imprisonment may extend to ten years with fine.

Sections 376, 376 AB under IPC deals with punishment for rape on woman, under twelve years of age have been merged under sec 65 (1) & (2) under BNS. Sec 65(1) deals with whoever commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment of not less than twenty years, may extend to imprisonment for life with fine. In case of the same offence happens to a woman under twelve years of age 65(2), the same given in the above section with the term “death”. This section really has reduced the complexity in legal framework by clubbing the age category of twelve and sixteen. In both the cases fine and any further fine imposed should cover the reasonable medical expenses and rehabilitation of the victim.

Merging of Sections and Enhancement of Punishment

Sec 376 D of IPC relates to Gang rape has been defined clearly in BNS Sec 70(1) Where a woman is raped by one or more persons with a common intention shall be punished with imprisonment of twenty years upto the end of his natural life with fine. Along with this they have to pay if any further fine and meet the

reasonable medical expenses and rehabilitation of the victim.

Sec 376 DA and 376 DB of IPC deals with the punishment for gang rape on women under sixteen years and twelve years of age respectively. Both these sections are merged under Sec 70(2) of BNS with the enhancement of age of eighteen years along with the clear definition of gang rape under sec 70(1) and punishment with the death.

Gender Neutrality – Perpetrator

Sec 354 B under IPC defines Any man who assaults or use of criminal force to woman with intent to disrobe or compel her to be naked shall be punished with imprisonment of three to seven years with fine. The same way sec 354 C (Voyeurism) says Any man who watches or capture image of a woman engaging in a private act shall be punishable with imprisonment of one to three years with fine. The new definition under BNS sections 76 & 77 replacing the term **Any man** with **Whoever**.

Gender Neutrality – Victim

Sec 366 B of IPC defines importation of girl from foreign country under the age of twenty one years with intent of forcing or seducing to illicit intercourse shall be punishable with imprisonment of ten years with fine. This old definition has been replaced under Sec 141 of BNS as girl or boy instead of girl with the age limit of twenty one years for boy and eighteen years for girl.

Extension of Punishment

In case of buying minor for purposes of prostitution or illicit intercourse or for any illegal and immoral purpose with the punishment of imprisonment upto ten years with fine under Section 373 of IPC, the term minor is replaced with “Child” and the punishment for the same has been extended as imprisonment of seven to fourteen years with fine under section 99 of BNS.

Removal of Age Difference

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 under sec 137 of BNS is the new version which replaces the term minor with child and removes the age difference of sixteen to eighteen.

Conclusion

Our Government has been taking serious measures to prevent the crimes against women and children, to empower, grant equality and to adopt positive discrimination in favour of them and to protect them from the challenges faced in socio, economic, education and political environment. Government efforts like development policies, plans, acts and our legal framework constantly focus at the development of women in different spheres. India has also ratified various international conventions and human rights to secure equal rights of women. Citizen centric initiatives and launching of e FIR facilities and women helpdesks and professional investigation address the issues related to rise in crime against women and children. But still there is a substantial rise in reported crimes against women and children. The legal framework under BNS, a monumental legislation initiated by our Government, incorporates crucial provisions to protect the rights and dignity of women across the nation. This study elaborates the significant changes brought by BNS, like changes in provisions, rennumbers existing provisions, harmonises the treatment, merges sections, removes age based qualifiers and enhancement of punishments declared in IPC in addressing crime against women and children. Apart from these effective measures, it is a responsibility of every individual to put an end to the violence against women and children and create a safer environment to them.

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