

CRITICAL ANALYSE : CONCEPT OF SEXUAL VIOLENCE AND IT'S LEGAL PROVISIONS UNDER BHARATIYA NYAYA SANHITA, 2023

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ABSTRACT

The research paper gives a theoretical understanding of sexual violence laws in India and its relevant provisions under Bharatiya Nyaya Sanhita, 2023. Sexual violence offences are heinous in nature and affect society as a whole. Many factors contribute to the rise in offences of sexual violence against an individual in India, the study finds. Sexual violence offences can happen with anyone and such abuse sexually may be from family members, trusted persons, or strangers. After considering these factors, it is not wrong to presume that women and children are not safe. As a result, it was thought that issues of rape against women and children emerge due to conflict between "traditional" standards and values, which are responsible for the violence. It violates the victim's privacy, lowers their self-respect, and causes physical and emotional pain. Sexual violence laws in India have evolved over time through social reform movements, judicial interpretations, and legislations. BNS, 2023 provides many provisions and penalties against offences of sexual violence as a current legal framework in India, including all types of sexual violence with their punishments. It focuses on actions taken by the government and how legal systems protect victims. This paper highlights awareness more on victim-centric issues and addresses gender-related issues more sensitively.

Keywords : Sexual Violence, Consent, Marital Rape, Victim centric issues, Human Rights.

I. INTRODUCTION

"No country can ever truly flourish if it stifles the potential of its women and deprives itself of the contributions of half of its citizens".

- **Michelle Obama**

Violence is the use of force, characterised by the imposition of physical dominance over another individual. It entails the utilisation of physical power to inflict injury, abuse, damage, or destruction. Currently, there has been a significant deterioration in moral standards globally, and India is no different. Violence against women and children exists globally, transcending cultural, social, educational,

financial, ethnic, and age borders. Violence often encompasses physical aggression that a woman endures; however, it also includes verbal abuse, mental torment, economic hardship, and social neglect. Sexual assault occurs when an individual coerces or manipulates another into unwanted sexual engagement without their consent. Both children and adults may experience sexual violence, which may be perpetrated by family members, trusted individuals, or strangers. Given these facts, it is reasonable to assume that a woman is not secure in her own house in contemporary society. Inter-cultural research on family violence and rape has identified four critical predictors of violence against women in

society: gender disparity; reliance on violence for conflict resolution; notions of masculinity and male authority; and the restriction of violence in resolving conflicts. Violence against women include physical aggression, including slapping, punching, beating, and pushing, with or without the use of a weapon. Sexual assault encompasses any deliberate efforts to diminish the victims' concerns and induce feelings of guilt. Psychological violence encompasses any threat executed or intended to inflict financial or emotional harm, coercion, shame, or financial dependency. Sexual assault is a harsh reality for women, representing a stigma within civilised society. Currently, women may experience sexual harassment in several locations, including homes, educational institutions, workplaces, public transportation such as metros, buses, trains, and densely populated venues like festivals and fairs.

Thus this Research Paper is formulated to achieve the following objectives:

1. To analyze the evolution and recent laws related to offence of sexual violence laws in India.
2. To examine the effectiveness of legislative reforms.
3. To identify the time limit for execution of sexual violence laws, including issues faced by victims during investigation and trial.
4. To suggest major reforms in laws against sexual violence that can make it more victim-centric and effective in protecting from sexual Violence.

RISK FACTORS FOR SEXUAL VIOLENCE

Lower levels of education contribute to both the perpetration and victimisation of sexual assault. A record of exposure to child abuse. Observing domestic violence Detrimental alcohol use and detrimental male actions, including promiscuity or attitudes that endorse violence. Community standards that elevate males and diminish women. Inadequate access to paid jobs for women and insufficient gender equality resulting from discriminatory legislation, among

other factors. In India, violence against women denotes physical and sexual violence perpetrated against a woman, often by a male. For an act to qualify as violence against women, it must be perpetrated exclusively due to the victim's female gender. These atrocities are mostly perpetrated by males because to the entrenched gender inequality in the society. It may include domestic abuse, sexual assault and rape, stalking and harassment, trafficking of women, female genital mutilation, intimidation and harassment in the workplace, educational settings, or public spaces, forced marriage, and 'honour' crimes.

DETERMINANTS OF SEXUAL VIOLENCE

There are following determinants of sexual violence are :

1. The disparity of power relations between men and women is the most fundamental determinant of sexual violence. Vulnerability stems from the fact that society has an unbalanced distribution of power.
2. The violence that stems from unequal power between men and women may also involve regular damage excused or exempted by customs, tradition, religion, etc.
3. Control over sexual activity ensures the paternity of time of a kid born to the lady which is very essential to ensure that the legacy of the successor is guaranteed.
4. Man's supremacy in each system prevailed and women were seen as an object of pleasure.

IMPACT OF SEXUAL VIOLENCE

Violence experiences are dangers to women's lives that challenge the fundamental requirements of human safety at every level such as personal, community, economic and political. In *Nicholas A. Groth's* words, rape is "a pseudo-sexual action that deals with status, hostility, control, and dominance, rather than sexual pleasure or sensual satisfaction." There are various forms of sexual violences such as Eve-teasing, sexual harassment at the

workplace, Rape, and others all pervasive and present in every spheres of society Rape or other sexual violence is a crime where often involves a female victim, and a male attacker, in which the he feel that they are in a position to dominant over victim. The lack of security for women may be the prime reason of sexual assault. Violence against women interferes with the most fundamental demands of her i.e. demand for monetary, political, social and psychological safety.²³⁹⁷

II. HISTORICAL DEVELOPMENT RELATING TO SEXUAL OFFENCES

LAWS IN INDIA

The Word *Rape* is a crime against a woman..Sexual crime of rape is penetration of male organ to the female genitals. From ancient times, The Indian scripture Manusmriti includes the verse "*yatra naryastu pujiyante ramante tatra devata yatraitastu na pujiyante sarvastatraphala kriya*", which means "*Where women are honoured, divinity blossoms there and where they are dishonoured, all actions remain unfruitful*". Our society's social structure comprises both men and women, who are equally essential and whose roles, duties, and rights complement and supplement each other. But unfortunately, this state of affairs was not to continue for long as with the progress of time and the impact of different cultures and technological advancements being made, man, under being the more vigorous sex, slowly started asserting his rights against women and dominating her.

India is confronting the alarming reality of a significant gender disparity. While males may possess more physical strength, women have superior inner strength in terms of psychological and emotional resilience. Women are associated with Shakti in our civilisation for a valid reason. During that era, it is posited that a woman served as her husband's companion in prosperity and as a partner in all his worldly and spiritual endeavours. During the religious

era, women were given a prominent status.²³⁹⁸ Women educated at Gurukul experienced equality in the study of the Vedas. Notable figures such as Ghosa, Apala, Lopamudra, Visbara, Gargi, Indrani, Yami, and others have unique talents in painting, music, dance, and martial prowess.

In Vedic culture, the husband referred to his wife using the Sanskrit phrases path (the one who leads the husband through life), Dharampathni (the one who directs the husband in dharma), and Sahadharmacharini (the one who accompanies the husband on the path of dharma, justice, and duty). Manu asserts, "The truth, however, is that the male is the enjoyer and the female is an object to be enjoyed." He asserts that the purpose of marriage extends beyond mere sexual gratification; rather, its primary objective is the adherence to religious ceremonies, which ultimately leads to the attainment of bliss in both this life and the next.²³⁹⁹

India's Middle Ages as the "Dark Ages" in India. The Mughals and the British were foreign invaders who introduced their cultures to India, sometimes emancipating women and sometimes worsening their lot. In India, women have historically been denied autonomy and have been viewed as the entire property of their husbands, fathers, or brothers. The desire of the native Indians to protect their women folk from the savage Muslim invaders was another factor contributing to the fall in women's status and freedom. Women were then exploited and the targets of violence as a result of a vicious cycle about their status in society. All of this led to the creation of new sins, including child marriage, Sati, Jauhar, and educational barriers for girls.

STATUS OF WOMEN In 19TH And 20TH CENTURY

The modern period began in the 19th century; during this period many efforts were made by the British rulers and many people from the

²³⁹⁷ Tukaram v. State of Maharashtra AIR 1979 SC 1857

²³⁹⁸ P Asthana, women's Movement in India, Vikas publishing house, NewDelhi (1974) page 1

²³⁹⁹ Manus smriti, ch -v sloka P -147-157

Indian society to put an end to social evils. The Modern Age can be classified into two periods. These are :

- i) Pre- Independence Period (1800- 1947)
- ii) Post Independence Period (1947 till date)

PRE- INDEPENDENCE PERIOD(1800-1947)

During the British period, the position of women and children had undergone drastic

changes because of the colonial impact in India which affects its socio-cultural pattern. Two important movements took place during the British regime.

- i) Social Movement; and
- ii) Nationalist Movement,

Movements in which social reformers articulated concerns over sati, the prohibition of second marriages, the limitation of women's property rights, child marriage, and women's access to education. The reformers believed that social advancements for women could be achieved via access to education and the implementation of progressive legislation. Annie Besant, Dayanand Saraswathi, and Swami Vivekananda believed that women's status should be reinstated to that of the Vedic period.

POST INDEPENDENCE PERIOD

The makers of the constitution realized the unequal social position of women and were concerned with basic rights of women. The preamble of the constitution of India which aimed at providing social, political, and economic justice to the people of India. So, changing in favor of women, empowerment of women by Welfare legislation:

- I. Provisions under Constitution of India
- II. Provisions Under Criminal Laws

I. PROVISIONS UNDER CONSTITUTION OF INDIA

The Fundamental Rights under part III and Directive Principles of state policy under part IV of the Indian Constitution are instruments for realizing the national objectives of Justice,

Liberty, and Equality. The majority of women are still extremely far from enjoying the rights and possibilities that the Constitution grants them, as evidenced by the limitations and restrictions placed on them by sociocultural institutions. As was rightly observed by Jus. K. Ramaswamy in the case of **Madhu Kishwar v. State of Bihar**²⁴⁰⁰

a. Fundamental Rights Guaranteed under the Indian Constitution

There are many Constitutional provisions for the safety of Women. According to

Justice Bhagwati stated in the **"Maneka Gandhi v. Union of India"**²⁴⁰¹ that the fundamental rights show the basic values which have been cherished by the people of India since the Vedic times and they protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent."

Equality before Law : Article 14 states that everyone has the right to equality before the law or equal protection under the law. It states that everyone on Indian land is treated equally and that no one is given any preference and captures the spirit and core of the right to equality respectively.

Prohibition of Discrimination on Grounds of Sex : Prohibition of Discrimination Article 15 (3) of the Constitution of India, 1950 states that the State creates any statutory provisions for the welfare of women and children. Also, in **Dattatraya Motiram v. State of Bombay**,²⁴⁰² Chagla, C.J. Found that the State could not discriminate in favour of males against women due to the simultaneous operation of Article 15 (1) and Article 15 (3).²⁴⁰³

Equality of Opportunity in Matters of Public Employment : Article 16 of Constitution of India, 1950 states that the employment or appointment of any position given irrespective

²⁴⁰⁰ [AIR 1996 SC 1864]

²⁴⁰¹ [AIR 1978 SC 597]

²⁴⁰² [AIR 1952 SC 181]

²⁴⁰³ [Article 15 (1)] "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them". And Article 15 (3) "Nothing in this article shall prevent the State from making any special provision for women and children."

of their gender, class, etc. and this article applicable to both Article 14 as well as Article 15(1).

Freedom of Trade and Occupation : According to Article 19(1)(g) every individual has the right to practise any profession, engage in any employment, trade, or industry, The Supreme Court provides guidelines in the case of **“Vishaka and others v. State of Rajasthan and others”**²⁴⁰⁴ to protect working women from sexual harassment at workplace.

Safeguarding of Life and Individual Freedom: Article 21 The Constitution of India, 1950, stipulates that “No person shall be deprived of his life or personal liberty except in accordance with a procedure established by law.” “In the matter of **State of Maharashtra v. Madhukar Naray Mandikar**”²⁴⁰⁵ The Supreme Court said that “even a woman of ill repute is entitled to privacy, and no one may infringe upon her privacy at will.”

Right Against Exploitation and Prohibition of Trafficking in Human Beings: Article 23 of the Constitution of India, 1950 encompasses human trafficking, forced work, and begging, all of which are forbidden under this article to safeguard women and children from exploitation. A guideline was provided to the Government to legislate a legislation governing international adoptions, as mandated by their constitutional responsibilities under Articles 15(3)²⁴⁰⁶, 24,²⁴⁰⁷ and 39(c)²⁴⁰⁸ and (f)²⁴⁰⁹ of the Constitution.

b. The Role of Directive Principles of State Policy in Protecting the Rights of

Women and children are :

DPSP Part IV of the Constitution are the guidelines or the directions to meet social, economic and cultural reform, considered ideas of the new order. Some of which are relevant for the upliftment of women. They are:²⁴¹⁰ Article 39 (a)²⁴¹¹

Article 39 (d)²⁴¹² Article 42²⁴¹³

II. PROVISIONS UNDER CRIMINAL LAWS

Many legal provisions in respect of women and children are against Sexual Violence offences in India such as :

a. **Bharatiya Nyaya Sanhita, (BNS), 2023** includes sections from 63–73 and 74–79, 85–86 and 96, 98–99 dealing with offences against sexual offences.

b. **Bharatiya Sakshya Adhiniyam (BSA), 2023**

section 120 (Presumption as to absence of consent in certain prosecution for rape.)²⁴¹⁴

c. **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, includes many procedural and safeguards that impact the handling of sexual offences cases. The key legal provisions

of BNSS, 2023 are as follows: Section 184,²⁴¹⁵ Section 52²⁴¹⁶ and Section 173²⁴¹⁷ in the case

²⁴⁰⁴ [AIR 1997 SC 3011]

²⁴⁰⁵ [AIR 1991 SC 207]

²⁴⁰⁶ Supra note 11 at 8

²⁴⁰⁷ [e article 24 of Indian Constitution provides the provision of “prohibition of employment of children that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”]

²⁴⁰⁸ [Article 39 (c) of Indian Constitution provides the provision that “certain principles of policies to be followed by the state and the state shall in particular direct its policy towards ensuring that the operation of the economic system does not result in the concentration of wealth and means of production to common detriments.”]

²⁴⁰⁹ [Article 39 -(f) of Indian Constitution provides that the “ children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”]

²⁴¹⁰ Mamta Rao, Constitutional Law, p. 431.

²⁴¹¹ [Article 39 (a) of Indian Constitution provides the guidelines “ for the right to an adequate means of livelihood.”]

²⁴¹² [Article 39 (d) of Indian constitution provides the provisions related to the Equal pay for equal work for both men and women.]

²⁴¹³ [Article 42 of Indian constitution provides the provisions of securing just and humane work conditions and also maternity relief.]

²⁴¹⁴ [Section 120 of Bharatiya sakshya adhiniyam 2023 provides a provisions that “ sexual intercourse by the accused is proved and the question is whether it was the consent of the women alleged to have been raped and such women states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent. Explanation in this section the word , "sexual intercourse" shall mean any of the acts mentioned in section 63 of the Bharatiya Nyaya Sanhita, 2023.”]

²⁴¹⁵ [This section provide the provision of “Medical Examination of a victim of rape conducted by a registered medical practitioner within 24 hours of the incident being reported to the police.”]

²⁴¹⁶ [This section provides the provision of “Examination of the accused must be done by a medical practitioner at the request of a police officer not below the rank of SI. This is to ensure timely collection of biological and DNA evidence which are critical for investigations.”]

²⁴¹⁷ [This section provides the provisions related to the “recording of the statements through audio - visual electronic means, reducing trauma of

of **Ajay Kumar Behera v. State of Karnataka**²⁴¹⁸ the Karnataka HC Medical examination of rape victims only conducted under supervision of the female registered medical practitioners; also that medical practitioners must provide medical reports in writing.

d. The Protection of Children from Sexual offences (POCSO) Act, 2012 was enacted to safeguard children from sexual offences. This statute defines a child as an individual under the age of 18 years, according to Section 2(1)(d) of the statute. This statute delineates several offences classified as Penetrative, Aggravated, and Non-penetrative sexual assaults. The Supreme Court elucidates that "sexual intent" is a fundamental component in offences under POCSO, particularly with non-penetrative sexual assault. The legal stipulations outlined in the Act of 2012 are as follows: Section 4²⁴¹⁹, Section 6²⁴²⁰, Section 8,²⁴²¹ and Section 10.²⁴²² These provisions delineate the penalties as substantive law for offences including penetrative assault, aggravated penetrative assault, sexual assault, and aggravated sexual assault, respectively.

e. **The Protection Of Women From Domestic Violence Act, 2005** section 3 explanation 1(ii)²⁴²³

repeated depositions and ensuring accuracy relevant for child victims under POCSO.”]

²⁴¹⁸ [2024 KHC 27306]

²⁴¹⁹ [The section of BNS provide that “any person who commit penetrative sexual assault shall be punished with imprisonment of either description for a term not less than 10 years which make sent to the improvement for life and shell also Libra to fine. Where the offence is committed against a child below sixteen years of age, the punishment shall be imprisonment for a term not less than twenty years, which may extend to imprisonment for the remainder of the offender’s natural life, along with a fine.”]

²⁴²⁰ [The section of BNS provides the provisions related to the “aggravated penetrative sexual assault that any person who commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for not less than twenty years, which may extend to imprisonment for life meaning for the remainder of the offender’s natural life or with death, and shall also be liable to pay a just and reasonable fine to the victim for medical and rehabilitation expenses.”]

²⁴²¹ [The section of BNS provides” that any person who commit sexual assault shall we punished with imprisonment of either description for a term which shall not less than 3 years but which may extend to five years, and shall also be liable to fine.”]

²⁴²² [The section of BNS provides that” any person who commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not less than 5 years but which may extend to 7 years and also liable to find .”]

²⁴²³ [The section of BNS provide the “definition of sexual abuse which includes any conduct of sexual nature that abuse, humiliates, degrades or otherwise violates dignity of women.]

f. **The Information Of Technology Act, 2000** section 67,²⁴²⁴ 67 A ²⁴²⁵

g. **The Sexual Harassment Of Women At Workplace (Prevention ,prohibition, And Redressal) Act, 2013** in reference of **Vishakha v. State Of Rajasthan.**²⁴²⁶

III. LEGAL STRUCTURE UNDER THE BHARATIYA NYAYA SANHITA, 2023

In India, laws against sexual violence were a gift given by Britishers during colonial-era but it was incomplete and failed to provide adequate justice to victims. But, there are many landmark cases which acted as catalysts for legal reform. The Mathura rape case (1972) revealed significant deficiencies in the legal interpretation of consent and initiated the first wave of legal changes in the 1980s. The egregious Nirbhaya rape case (2012) in Delhi outraged the country, resulting in extensive demonstrations and the J. Verma Committee’s recommendations, which culminated in the Criminal Law (Amendment) Act, 2013. These incidents highlighted the deficiencies in legal definitions and processes, compelling the government to reevaluate the comprehensive framework of sexual assault legislation. The Bharatiya Nyaya Sanhita (BNS), 2023, incorporates modifications in terminology, penalties for offences, and other aspects. These laws are now entirely victim-centric rather than focused on the guilty.

²⁴²⁴ [Section 67 of IT act ,2000 provides a provisions related to the “punishment for publishing or transmitting obscene material in electronic form any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to 10 lakh rupees.”]

²⁴²⁵ [Section 67a of IT Act ,2000 provides “the punishment for publishing or transmitting material containing sexually explicit acts etc. for publishing or transmitting material containing sexually explicit acts, etc., in electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to 10 lakh rupees.”]

²⁴²⁶ Supra note 31 at 9

EVOLUTION OF LAWS AGAINST SEXUAL OFFENCES IN INDIA

In India Sexual violence laws consistently transform, and for that the judicial interpretation also played a critical role. Especially after the case of **Tukaram v. State of Maharashtra in 1979**,²⁴²⁷ which known as the 'custodial rape'. In this case the Mathura Bai, a tribal woman, was raped in the police custody, and in medical report there were no marks on her body which shows forceful or coercion act against her so the Supreme Court assumed she did not resist, and consented to the act and it was held that it was not rape, this decision led protest and result was The Criminal Law (Second Amendment) Act, 1983 which were inserted to deal with custodial rape. A major change was that the burden of proof of providing that the consent was present lies on the accused.

The second major Amendment was done after the **Mukesh & Anr v. State for NCT of Delhi & Ors in 2012**,²⁴²⁸ also known as the Nirbhaya gang rape case. This case which shook India; it was the brutal gang rape case. Where a Nirbhaya was raped in a running bus by six men including a minor. And she died after some days and in 2015, a juvenile accused was released after 3 years, and four accused were sentenced to death. The Criminal Law Amendment Act, 2013 (post-Nirbhaya case). It was based on the recommendations of the Justice Verma Committee. Some of the important recommendations were to increase the punishment for rape (not the death penalty, though), stricter provisions for registering complaints of rape, also recommend the bills of rights for women, which give dignity and respect to women over their choices of sexual relationships and for their sexual autonomy. After the Nirbhaya rape case, some changes in juvenile justice were made, such as children between the ages of 16 to 18 would be treated as adults if accused of committing heinous

crimes, have knowledge, understand, and be aware of their act.

The next important case was the **Kathua rape case 2018**²⁴²⁹. An 8-year-old Muslim girl was raped and killed by a group of men in Kathua, Jammu and Kashmir in 2018. Seven men were tried in a specially convened fast-track court on Monday, and six were found guilty. Criminal Law Amendment Act, 2018 (post-Kathua case). The main goal was to give harsher punishment to rapist, especially for the rape of minor girls below 16 years and 12 years. After the 2018 amendment, the changes were made in IPC and CRPC, and POCSO and the minimum punishment for rape was increased from 7 years to 10 years to life imprisonment, rape of a minor below 12 years minimum punishment 20 years, and up to the death penalty, and gangrape of a minor below 16 years imprisonment for the rest of their life. Also, no provision for anticipatory bail for a person accused of rape or a gang rape of a girl below years of age. If there is a different punishment in IPC and POCSO, then the punishment, whichever is higher, will be given. Now, IPC 1860 is replaced by New Penal Laws i.e. Bharatiya Nyaya Sanhita, 2023 (BNS) which provide legal provisions and punishments against sexual violence in India.

IV. LEGISLATIVE FRAMEWORK IN INDIA

Provisions against the offence of Sexual violence under BNS, 2023 such as:

1. Sexual Intercourse Which Amounting To Rape.

- i. Sexual offences from section 63 to 66 and 70

2. Sexual Intercourse Not Amounting To Rape.

- i. Assault against women from section 67-68 and 74-79
- ii. Offences relating to marriage from section 85-86

²⁴²⁷ AIR 1979 SC 185

²⁴²⁸ Mukesh and Anr v State (NCT of Delhi) and Ors (2017) 6 SCC 1 (SC)

²⁴²⁹ Mohd Akhtar v State of Jammu & Kashmir (2018) 5 SCC 499(1)

iii. Offences against children from section 96,98-99

3. Other Statutory Provisions For Sexual Violence In India.

for references mentioned above in details are

- i. Bharatiya Sakshya Adhinyam ,2023
- ii. Bharatiya Nagarik Suraksha Sanhita,2023
- iii. The Protection Of Women From Domestic Violence Act,2005
- iv. The Information Of Technology Act,2000
- v. The Sexual Harassment Of Women At Workplace (Prevention ,Prohibition, And Redressal) Act,2013
- vi. The Protection Of Children From Sexual Offences Act,2012

A. SEXUAL INTERCOURSE AMOUNTING TO RAPE

BNS 2023 provides the provisions for the offence of rape i.e. if any man commits forcefully sexual intercourse with woman without her consent he is said to commit a rape. The provisions i.e. "to any extent" which denotes the slight or partial penetration is sufficient to satisfy the definition of rape. In the case of **State of UP v Babulnath**²⁴³⁰ is the important case law on this aspect. The Supreme Court in the case observed that "To constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. The offence of Rape is defined under section 63 of Bharatiya Nyaya Sanhita,2023²⁴³¹. Rape commit

²⁴³⁰ AIR 2004 SCC 1497

²⁴³¹ [Section 63 of BNS,2023 provide the definition of " Rape" that is a man is said to commit rape of he :

- a. "penetrates his penis, to any extent, into the vagina,mouth, urethra or anus of a woman or makes her to do so with him or any other person
- b. Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person.
- c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of the body of such a woman or makes her to do so with him or any other person.
- d. applies his mouth to the vagina, anus, urethra of a woman or makes her do so with him or any other person, under the circumstances following under any of the seven descriptions i.e.

by a man without the consent of the woman which is always heinous in nature.The Depth of penetration²⁴³² ,injuries on private part of women²⁴³³are non essential factors to prove the sexual intercourse which amounting to the rape.

MARITAL RAPE – AN EXCEPTION TO "RAPE"

Black's Law Dictionary defines marital rape as "forceful sexual intercourse by a husband upon his wife without her consent." Furthermore, under BNS, 2023 Exception 2 of Section 63, it states that "sexual intercourse or sexual acts by a man with his own wife, provided the wife is not under 18 years of age, is not considered rape."This is due to the prevalent societal convention that marriage constitutes perpetual permission for sexual intercourse in all circumstances. This exception is a infringement of Articles 14, 15, 19, and 21 of the Indian Constitution.

PUNISHMENT OF RAPE

The penalties for the crime of rape are delineated in Section 64 of the Bharatiya Nyaya Sanhita, 2023, ²⁴³⁴stipulating a minimum

1. Against her will.
1. Without her consent.
2. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
3. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
4. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
5. With or without her consent, when she is under eighteen years of age.
6. When she is unable to communicate consent.

There are 2 exception under section 63 of BNS,2023

1. Exception 1.—A medical procedure or intervention shall not constitute rape.
2. 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.”]

²⁴³² Wahid Khan v. State of Madhya Pradesh (2010) 2 SCC 9; Parminder @ Ladka Pola v State of Delhi (2014) scale 368.

²⁴³³ Fateh Chand v State of Haryana, (2009) 15 SCC 543

²⁴³⁴ [Section 64 of BNS 2023 provide the "Punishment for rape (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine. (2) Whoever, a) Being a police officer commits rape—i) Within the limits of the police station to which such police officer is appointed; or ii) In the premises of any station house; or iii) on a woman in such police officer's custody or in the custody of a police officer

imprisonment of ten years, which may extend to life imprisonment, alongside a monetary fine. If an individual in a position of authority perpetrates rape, they shall face rigorous imprisonment for no less than ten years, potentially extending to life imprisonment, defined as incarceration for the duration of the individual's natural life, in addition to a fine. The case of **State of Maharashtra v Madhukar Narayan Mardikar**²⁴³⁵ is a seminal ruling in which the Supreme Court stated: "Every woman of easy virtue is entitled to privacy, and no individual may infringe upon her privacy at will." She is right to safeguard her privacy if there is an effort to infringe upon it without her consent. She has an equal entitlement to legal protection. Consequently, her status as a lady of questionable morals does not invalidate her testimony. A woman who is unchaste, has lost her virginity, or has a promiscuous nature retains the freedom to reject sexual contact with any individual. The additional stipulations of the sexual violence statute, namely under Section 65,²⁴³⁶ BNS 2023. If an individual perpetrates rape against a woman under the

subordinate to such police officer; or b) Being a public servant, commits rape on a woman in such public servants custody or in the custody of a public servant subordinate to such public servant; or c) Being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or d) Being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or e) Being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or f) Being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or g) Commits rape during communal or sectarian violence; or h) Commits rape on a woman knowing her to be pregnant or i) Commits rape on a woman when she is under sixteen years of age; or j) Commits rape, on a woman incapable of giving consent; or k) Being in a position of control or dominance over a woman, commits rape on such woman; or l) Commits rape on a woman suffering from mental or physical disability; or m) While committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or n) Commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten 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."²⁴³⁵

²⁴³⁵ AIR 1991 SC 207

²⁴³⁶ [This section provides the provision of the "punishment for rape in certain cases that 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 and also another provision that is 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."]

age of sixteen, as well as against a woman under the age of twelve. Section 66²⁴³⁷ stipulates that the penalty for causing death or resulting in a prolonged vegetative condition of the victim should be imprisonment for a period of twenty years, which may extend to life imprisonment or the death penalty.

OTHER PROVISION RELATED TO SEXUAL VIOLENCE LAWS

In BNS, 2023 Gang Rape define under section 70²⁴³⁸ of BNS, 2023.

There Are Some Judicial Pronouncement i.e. in **Pradeep Kumar v Union Administrator, Chandigarh**²⁴³⁹ the Supreme Court has laid out the essential Gang Rape are: Presence of Common Intention in group to commit rape and Participation of such members in "furtherance of the common intention" and also the Commission of rape by at least one person.

B. SEXUAL INTERCOURSE NOT AMOUNTING TO RAPE

- i. Assault against women from section 67-68 and 74-79
- ii. Offences relating to marriage from section 84-87
- iii. Offences against children from section 96, 98-99

The provisions under Section 67²⁴⁴⁰ of Bharatiya Nyaya Sanhita, 2023 defines Sexual

²⁴³⁷ [Section 66 of BNS 2023 provide the "punishment for causing death resulting in persistent vegetative state of the victim 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, or with death."]

²⁴³⁸ [Section 70 of BNS 2023 provides a provision of "Gang Rape and its punishment 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 life which shall mean imprisonment for the remainder of that person's natural life, and with fine. 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."]

²⁴³⁹ (2006) 10 SCC 608

²⁴⁴⁰ [The section of BNS provides the provision "where sexual intercourse by husband upon his wife during separation without her consent shall be punished with imprisonment of either description for a term which shall not be less than 2 years but which makes 10 to 7 years and shall also be liable to fine."]

intercourse by husband upon his wife during separation punished under this act and in Section 68²⁴⁴¹ is prescribed punishment for sexual intercourse by a person in authority. Section 74²⁴⁴² which is Assault or use of criminal force to a woman with intent to outrage her modesty and it is defined as “a virtue attached to a woman owing to her sex.”²⁴⁴³ In the case of **Ram Das v State of West Bengal**²⁴⁴⁴ The accused was charged under section 354 IPC. The person boarded the train at night, in the same compartment; two women were also travelling with their male escort. Later during the night before going to sleep he took off his trousers, under which he was wearing undergarments. After that a verbal fight broke out between both sides. Allegation against the person was that he has outraged the modesty of both women by his behavior. The section are: 75²⁴⁴⁵ (Sexual harassment),

76²⁴⁴⁶ (Assault or use of criminal force to woman with intent to disrobe), 77²⁴⁴⁷ (Voyeurism), and

²⁴⁴¹ [The section of BNS provide the provision of “ sexual intercourse by a person in authority that is whoever being in a position of authority or in a fiduciary relationship or a public servant; or superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women’s or children’s institution; or on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.”]

²⁴⁴² [Section 74 of BNS 2023 provide the provision that “whoever uses assault or use criminal force to any women with intention of outraging or knowing it to be likely to outraging her modesty shall be punished with imprisonment of either description for a term which shall not be less than 1 year but but which extend to 5 years and shall also be liable to fine.”]

²⁴⁴³ Tarkeshwar Sahu v State of Bihar (2006) 8 SCC 560.

²⁴⁴⁴ (AIR 1954 SC 71)

²⁴⁴⁵ [Section 75 provides the provisions where a man committing any of the following acts such as

1. “physical contact and advances involving unwelcome and explicit sexual overtures; or (ii) a demand or request for sexual favours.
2. showing pornography against the will of a woman.
3. making sexually coloured remarks, shall be guilty of the offence of sexual harassment. and (2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both. and (3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”]

²⁴⁴⁶ [The section of BNS provides that “whoever a assaults or use 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.”]

²⁴⁴⁷ [Section 77 ,BNS ,2023 provides the provision related to that “whoever watches or captures the images of a woman engaging in private act in a

the other sections 79²⁴⁴⁸ (Word, gesture or act intended to insult the modesty of a woman). The above judgment was cited in **Rupan Deol Bajaj v KPS Gill**²⁴⁴⁹ by the Supreme Court. the judges held than “the alleged act of Mr. Gill in slapping Mrs. Bajaj on her posterior, amounted to outraging her modesty for “it was not only an affront to the normal sense of feminine decency, but also an affront to the dignity of the lady—sexual overtones or not, notwithstanding”. And the other sections are section 85–86²⁴⁵⁰ (Husband or relative of husband of a woman subjecting her to cruelty and Cruelty defined respectively) And the section 96²⁴⁵¹ (Procuration of child) and other offences against children and the other sections 98²⁴⁵² And section 99²⁴⁵³ (Selling and buying children for purposes of prostitution, etc.)

circumstances where she would usually have the expectation 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 3 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 3 years, but which may extend to seven years, and shall also be liable to fine.”]

²⁴⁴⁸ [The section of BNS provide the provision where “whoever intending to insult the modesty women, utters any words, makes any sound or gesture, or exhibits any object in any form, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with SI for a term which may extend to three years, and also with fine.”]

²⁴⁴⁹ (AIR1996 SC 309)

²⁴⁵⁰ [Section 85 of BNS 2023 provides the “provisions that whoever being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to 3 years and shall also be liable to fine.” and Section 86 provides the define “cruelty” which means “ any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”]

²⁴⁵¹ [Section 96 of BNS ,2023 provides the provisions that “whoever have 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 10 years and shall also liable to fine.”]

²⁴⁵² Section 98 of BNS,2023 provide provision that “whoever sells , lets to hire, or otherwise disposes 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 may extend to 10 years , and shall also be liable to fine”]

²⁴⁵³ “I Section 99 of BNS,2023 provides the provision that” 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. “]

V. CONCLUSION

The quest for life, liberty, and tranquillity includes liberation from criminality. The primary obligation of the State is to provide these fundamental rights for every person. The efficacy of a Criminal Justice System is solely determined by its ability to uphold fundamental rights both in principle and practice. The degree to which they are effectively assured will be seen in public trust in the system. "The changes in India's sexual violence laws show that social issues still exist and court decisions and new laws are still trying to balance between what laws are and how they apply practically". The law has been modified now completely, especially after case laws like Mathura and Nirbhaya. But the continuing use of the marital rape as an exemption with certain age and also not apply laws into practice and unfair treatment show that just having a strict legal statute isn't enough for justice. The sexual violence laws in India need to be a gender-targeted approach that not only protects dignity but also provides speedy justice and victim support for recovery while also protecting the accused's rights. The provisions of sexual violence laws, their enforcement, their court proceedings, and the societal change are needed to make these legal provisions work effectively. Marital rape should also be criminalised completely, as it is based on constitutional rights to equality and global human rights standards.

1. Gender neutral sexual Violence laws should be recognised. Modern understanding of sexual offences clearly recognises that both men and women can be offenders and victims of sexual offences. Therefore it should be reflected in law also.
2. Increase police investigations by way of training officers on gender issues and forensic knowledge.
3. To make victim-centric laws, services like mental counseling, compensation schemes, and victim protection are important.

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