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Dynamics of rape Laws in India: A legal analysis with special reference to Bharatiya Nyaya Sanhita, 2023

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Abstract

This research paper delves into the evolving nature of rape laws in India, particularly in light of the recent legislative shift from the Indian Penal Code (IPC), 1860 to the Bharatiya Nyaya Sanhita (BNS), 2023. It aims to provide a comprehensive legal analysis of how the definition of rape, procedural norms, and judicial interpretations have transformed over time. The paper investigates how legal provisions have responded to growing public awareness, media attention, and feminist critiques, especially after high-profile cases like the Nirbhaya gang rape (2012). It also highlights how the BNS, while modernizing certain aspects like punishment severity and procedural reforms, still retains controversial elements such as the marital rape exception and a gender-specific definition of rape. Furthermore, the study reviews landmark judgments, legislative amendments, and ongoing implementation gaps, drawing attention to the dissonance between written law and real-world justice delivery. Ultimately, the paper argues that despite legal advancements, systemic issues such as low conviction rates, societal stigma, and weak enforcement continue to obstruct access to justice for survivors of sexual violence in India.

Keywords: Bharatiya Nyaya Sanhita (BNS), Rape Laws in India, criminal law reform, sexual violence, marital rape exception, gender justice, legal analysis, Section 63 BNS etc.

1. Introduction

Sexual violence is one of the most pervasive and entrenched forms of gender-based oppression in India, reflecting not only legal but also deep-rooted social and cultural inequalities. For decades, rape laws in India were shaped by colonial-era definitions and often failed to provide adequate justice to survivors. However, certain landmark incidents triggered nationwide outrage and acted as catalysts for legal reform. The *Mathura rape case* (1972), involving the custodial rape of a young tribal girl by policemen, exposed major flaws in the legal understanding of consent and led to the first wave of legal reforms in the 1980s. Decades later, the horrific *Nirbhaya gang rape case* (2012) in Delhi once again shocked the nation, leading to widespread protests and the Justice Verma Committee's recommendations, which brought about the Criminal Law (Amendment) Act, 2013.

These cases not only highlighted the inadequacies in legal definitions and procedures but also forced the government to rethink the entire framework of sexual violence laws. Most recently, the Indian Penal Code (IPC), 1860 has been repealed and replaced by the Bharatiya Nyaya Sanhita (BNS), 2023, marking a historic shift in India's criminal justice system. This new legal code introduces several changes in the terminology, structure, and sentencing of crimes, including those related to rape. The redefinition of sexual offences under Section 63 of BNS, along with procedural reforms concerning investigation and trial, represents an attempt to modernize and "Indianize" the law. However, whether these changes are transformative or merely cosmetic remains a critical question, which this paper aims to explore.

2. Legal Framework under Bharatiya Nyaya Sanhita (BNS), 2023

2.1 Definition of Rape: Section 63, BNS

Under BNS, Section 63 replaces the earlier Section 375 of the IPC. The definition remains largely similar but is updated to reflect a modern understanding of consent and sexual autonomy.

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- **Section 63, BNS (2023):** A man is said to commit “rape” if he has sexual intercourse with a woman.
- Against her will
- Without her consent
- With consent obtained by threat, deception, or intoxication
- When she is under 18 years of age

The BNS retains the marital rape exception, stating that sexual intercourse by a man with his wife, if she is not living separately under a decree of separation, does not constitute rape.

2.2 Punishment: Sections 64-70, BNS

- **Section 64:** Basic punishment is not less than 10 years, extendable to life imprisonment.
- **Section 65:** In cases of rape causing death or vegetative state-life imprisonment or death penalty.
- **Section 66:** Gang rape punishable with life imprisonment.
- **Section 69:** Protection of identity and in-camera trials upheld.

3. Key Judicial Interventions

3.1 Mathura Rape Case (Tukaram vs. State of Maharashtra, 1979)

Led to the Criminal Law Amendment Act, 1983. Raised questions on custodial rape and consent.

3.2 Nirbhaya Case (Mukesh vs. State, 2017)

Catalyst for the Criminal Law Amendment Act, 2013 which broadened the definition of rape and increased punishment.

3.3 Independent Thought vs. Union of India (2017)

Exception to marital rape struck down partially-declared unconstitutional for wives aged 15-18 years.

4. Major Changes from IPC to BNS

Aspect	IPC (Pre-2023)	BNS (2023)
Legal Basis	Sec. 375-376 IPC	Sec. 63-70 BNS
Minimum Punishment	7 years	10 years
Consent Clause	Same, but less detailed	Same, more clarified
Marital Rape	Exception for all wives	Exception retained unless separated
Trial Procedure	In-camera, no identity disclosure	Same provisions retained
Age of Consent	18 years	18 years (unchanged)

5. Critical Issues and Challenges

5.1 Marital Rape Exception

One of the most contentious and unresolved issues in India's rape laws is the legal exception granted to marital rape. Despite progressive suggestions made by the Justice Verma Committee in 2013, the Bharatiya Nyaya Sanhita (BNS), 2023 continues to uphold the colonial-era provision that exempts a husband from being prosecuted for raping his wife, unless they are legally separated. This exemption stands in clear violation of Article 14 (Right to Equality) and Article 21 (Right to Life and Personal Liberty) of the Indian Constitution. It reinforces the outdated notion that marriage implies irrevocable sexual consent. In doing so, it

denies married women the same protection of bodily autonomy that unmarried women are entitled to, and undermines the broader principles of gender justice and individual dignity enshrined in the Constitution.

5.2 Gender Bias

Another major flaw in the current legal framework is its gender-specific definition of rape. Section 63 of BNS, like its predecessor Section 375 of IPC, defines rape strictly as a crime committed by a man against a woman. This excludes male and transgender persons from the ambit of legal protection, despite growing evidence of sexual violence against these groups. The law, in its current form, fails to acknowledge that sexual violence is not limited to binary gender roles. The absence of a gender-neutral definition of rape not only limits access to justice for a significant section of victims but also perpetuates harmful stereotypes about masculinity and vulnerability. There is an urgent need for inclusive legislation that recognizes the right of every individual regardless of gender identity to live free from sexual violence.

5.3 Implementation Gaps

Despite the existence of stringent laws and periodic reforms, the ground reality reflects serious implementation failures. According to NCRB data, the conviction rate in rape cases hovers around 27%, indicating systemic weaknesses in investigation, evidence collection, and trial procedures. Although fast-track courts have been set up to expedite justice in rape cases, they often suffer from staff shortages, lack of proper training, and procedural delays, defeating their very purpose. Furthermore, victims frequently face secondary victimization through hostile police behaviour, insensitive medical examinations, and judicial apathy. The practice of victim-blaming, particularly during cross-examinations and police interrogation, discourages survivors from reporting crimes and reinforces a culture of silence and shame. Unless these structural and institutional gaps are addressed, legal reforms alone will remain ineffective in delivering justice to survivors of sexual violence.

6. Recommendations

- **Criminalization of Marital Rape:** Fully remove Exception in Section 63.
- **Gender-Neutral Framework:** Recognize male and transgender victims.
- **Judicial Sensitization:** Train police, prosecutors, and judges.
- **Fast-Track Courts:** Improve infrastructure and reduce pendency.
- **Legal Aid and Counseling:** Ensure holistic victim support systems.

7. Conclusion

While the BNS marks an effort to modernize and Indianize criminal law, it retains many of the structural and gendered flaws of its predecessor. For real justice, mere legislative reform is not enough, India must address the societal, procedural, and institutional roots that prevent survivors of rape from receiving fair redressal.

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