
WOMEN AND CHILDREN RELATING CRIMINAL LAW REFORMS IN INDIA

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ABSTRACT

The criminal justice system in India has undergone significant transformation with the introduction of the **Bharatiya Nyaya Sanhita (BNS), 2023** and the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, replacing the colonial-era Indian Penal Code, 1860 and Code of Criminal Procedure, 1973. These reforms aim to create a victim-centric, technology-driven, and efficient justice delivery system, with particular emphasis on the rights and protection of **women and children**, who remain among the most vulnerable groups in Indian society. The paper critically examines the historical background of criminal law reforms, their constitutional foundations, and India's international obligations in safeguarding women and children from violence, exploitation, and abuse. The women-centric reforms such as mandatory recording of victim statements by the women magistrates, provisions for zero FIR and e-FIR, and enhanced safeguards for victims of sexual offences. Similarly, child-centric reforms under the BNS consolidate and strengthen provisions against child exploitation, trafficking, and sexual violence while prescribing stringent punishments. A comparative analysis between the **IPC/CRC and BNS/BNSS** highlights the progressive steps taken, including gender-neutral definitions of certain crimes, though challenges remain in harmonizing personal laws and ensuring practical enforcement. While these reforms mark a decisive break from colonial frameworks/shadow of colonial frameworks, their effectiveness depends on robust implementation, infrastructural preparedness, and consistent judicial interpretation. The reforms represent a shift towards **restorative justice**, privacy of victim, prioritizing dignity, safety, and empowerment of women and children within India's evolving criminal jurisprudence in the present age.

Keywords: Women's Rights, Child Protection, Bharatiya Nyaya Sanhita, Criminal Law Reform, Victim-Centric Justice

INTRODUCTION

The enactment of the **Bharatiya Nyaya Sanhita (BNS), 2023** and the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023** marks a watershed moment in India's criminal law framework, replacing the shadow of colonial Indian Penal Code and Code of Criminal Procedure that governed the criminal justice system for over a century and a half. These reforms seek not only to modernize substantive and procedural criminal law but also to ensure that justice delivery system becomes more **victim-centric, technology-enabled, and sensitive to the needs of vulnerable groups**. Among the most significant areas of reform are provisions that directly impact **women and children**, who have historically been subjected to systemic marginalization, violence, and inadequate legal protection. By consolidating offences, strengthening punishments, and introducing procedural safeguards such as e-FIRs, audio-video recording of statements, and mandatory involvement of women officers in cases of sexual violence, the new laws attempt to make justice more accessible and responsive. At the same time, child-centric reforms expand protection against exploitation, pornography, and trafficking, reflecting India's commitment to both constitutional guarantees and international conventions. This paper critically examines these reforms, their socio-legal context, and the challenges of implementation, while highlighting their transformative potential in strengthening the criminal justice system for women and children.

CONSTITUTIONAL AND LEGAL CONTEXT

The Indian Constitution lays a strong foundation for the protection of women and children, ensuring that their dignity and rights are preserved as part of the broader framework of fundamental rights. **Articles 14 and 15¹** guarantee equality before the law and prohibit discrimination on the grounds of sex, while **Article 15(3)²** empowers the State to make special provisions for women and children, acknowledging their vulnerability. **Article 21**, which protects the right to life and personal liberty, has been expansively interpreted by the Supreme Court to include the right to live with dignity and freedom from violence. In *Vishaka v. State of Rajasthan*³, the Court recognized sexual harassment at the work place as a violation of Articles 14, 15, and 21⁴, mandating protective guidelines until legislation was enacted. Similarly, in *Laxmi v. Union of India*⁵, the Court directed regulatory measures on acid sales to safeguard women, emphasizing

¹ Articles 14 and 15 <https://share.google/tvRrElV0t9xUEmXN>

² Article 15(3) <https://share.google/tvRrElV0t9xUEmXN>

³ *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

⁴ Articles 14, 15, and 21 <https://share.google/tvRrElV0t9xUEmXN>

⁵ *Laxmi v. Union of India* (2014) 4 SCC 427

the State's duty to protect. For children, **Article 39(e) and (f)**⁶ under the Directive Principles mandate the State to prevent abuse and ensure opportunities for healthy development.

India's commitments under international law further reinforce these constitutional safeguards. As a signatory to the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979**, India is obliged to eliminate gender-based discrimination and adopt legal frameworks that protect women. The **Convention on the Rights of the Child (CRC), 1989**, ratified by India, requires the State to protect children from all forms of exploitation and abuse, while ensuring access to justice and rehabilitation. These commitments have influenced Indian jurisprudence, as seen in *M.C. Mehta v. State of Tamil Nadu*⁷, where the Court invoked international obligations to prohibit child labour in hazardous industries. Together, the constitutional provisions and international conventions provide a robust normative framework, within which the **BNS and BNSS reforms** seek to further institutionalize protections for women and children.

WOMEN-CENTRIC REFORMS UNDER THE BNSS

The **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023** introduces significant procedural reforms aimed at strengthening women's access to justice and ensuring sensitivity in handling cases involving sexual and gender-based violence. One of the most important provisions relates to the **recording of victim statements**. The BNSS mandates that statements of women victims, particularly in cases of sexual assault, be recorded by a **woman magistrate or police officer**, and wherever possible, through **audio-video means**. This aligns with the jurisprudence of the Supreme Court in *State of Punjab v. Gurmit Singh*⁸, which emphasized that the dignity of victims must be safeguarded at every stage of the criminal process.

The BNSS also strengthens **medical and procedural safeguards for victims**. Medical examinations of women must be conducted by female medical practitioners, ensuring privacy and sensitivity. This framework builds on the directions issued in *Lillu @ Rajesh v. State of Haryana*⁹, where the Court prohibited the degrading "two-finger test," holding it violative of a woman's right to dignity under Article 21. By codifying safeguards, the BNSS ensures that medical evidence collection respects the victim's autonomy and dignity while maintaining evidentiary

⁶ Article 39(e) and (f) <https://share.google/tvRrEItV0t9xUEmXN>

⁷ *M.C. Mehta v. State of Tamil Nadu* (1996) 6 SCC 756

⁸ *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384

⁹ *Lillu @ Rajesh v. State of Haryana* (2013) 14 SCC 643

integrity.

A further innovation is the recognition of **Zero FIR and e-FIR**, enabling victims to file complaints at any police station, regardless of jurisdiction, or even electronically. This reform addresses the chronic delays and jurisdictional hurdles that previously discouraged victims from reporting offences. The provision reflects the spirit of *Lalita Kumari v. Govt. of Uttar Pradesh*¹⁰, where the Court held that registration of FIR in cognizable offences is mandatory. By integrating technology and expanding access points, the BNSS enhances victim rights in investigation, reduces procedural barriers, and seeks to make the criminal justice system more responsive to the needs of women.

CHILDREN-CENTRIC REFORMS UNDER THE BNS

The **Bharatiya Nyaya Sanhita (BNS), 2023** consolidates offences against children into a focused cluster (Sections **93–99**)¹¹ that criminalise conduct ranging from exposure/abandonment and concealment of birth to hiring, procurement, kidnapping of young children and the sale/purchase of children for prostitution thereby bringing previously scattered provisions under a coherent heading. The BNS also adopts a clear, uniform definition by treating a **“child” as any person below eighteen years of age** Section 2(3) of BNS, which creates a more consistent baseline for protection across offences. In particular, the Sanhita expressly targets sexual and commercial exploitation procurement, selling and buying children for prostitution, and related acts are specifically criminalised, signalling a legislative intent to punish the market for child sexual exploitation. Recognising the gravity of trafficking and sexual exploitation of minors, the government and BNS provide for harsher penalties and graduated punishments where victims are children, and official commentary and press releases outline stringent sentences for trafficking and sexual exploitation of trafficked children. Importantly, while the BNS raises protective standards, it also creates some differentiated age thresholds for specific offences (for example, separate treatment for very young children such as under-10 in certain kidnapping provisions), which practitioners must note when assessing charges and sentencing. Judicial practice has reinforced the need for proactive institutional response courts have upheld NGO and State roles in rescuing and rehabilitating exploited children and directing systemic measures to prevent abuse (e.g., *Childline India Foundation v. Union of India*), a line of authority that complements the BNS’s victim-centric thrust. Together, these reforms mark a decisive legislative

¹⁰ *Lalita Kumari v. Govt. of Uttar Pradesh* (2014) 2 SCC 1

¹¹ *Bharatiya Nyaya Sanhita (BNS), 2023* under Sections 93–99 <https://share.google/FyIQdwchiGNHj7Sga>

move to strengthen criminal protection for children by clarifying definitions, consolidating offences, enhancing penalties for exploitation, and reinforcing state responsibilities for prevention, rescue and rehabilitation.

COMPARATIVE ANALYSIS: IPC/CRPC VS. BNS/BNSS

The transition from the **Indian Penal Code, 1860 (IPC)** and **Code of Criminal Procedure, 1973 (CrPC)** to the **Bharatiya Nyaya Sanhita (BNS), 2023** and **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023** represents not just a linguistic modernization but also a substantive reorganization of offences relating to women and children. Under the IPC, provisions were scattered across different chapters (e.g., Sections 354–376 for sexual offences, 366–373 for exploitation of minors, 494–498 for matrimonial offences)¹². The BNS consolidates these into granted into chapter 5 such as **Sections 64–94** dealing with sexual offences and exploitation, and **Sections 82–86** relating to marriage offences making the law more accessible and victim-focused¹³.

A key development is the introduction of **gender neutrality** in several offences. While IPC provisions like Section 375¹⁴ defined rape only in terms of a male perpetrator and female victim, the BNS broadens definitions of sexual assault to cover all genders, aligning with constitutional equality under Articles 14 and 15. Enhanced punishments are also notable: trafficking of children, rape of minors, and aggravated sexual assaults now carry stricter mandatory minimums, reflecting judicial observations in cases like *State of Punjab v. Ramdev Singh*¹⁵, where the Court stressed deterrent sentencing in sexual crimes.

At the same time, the **decriminalisation of adultery** in *Joseph Shine v. Union of India* (2018)¹⁶ finds reflection in the BNS, where adultery no longer appears as an offence, consistent with the Court's emphasis on autonomy and equality. However, **bigamy remains punishable** under Section 82 BNS¹⁷, much like Sections 494–495 IPC¹⁸, signifying the legislature's intent to preserve monogamy as a legal standard. This tension highlights the distinction between offences

¹² Sections 354–376 for sexual offences, 366–373 for exploitation of minors, 494–498 for matrimonial offences IPC <https://share.google/G8gt5UqPyWGie1mIn>

¹³ Sections 64–94 & Sections 82–86 BNS <https://share.google/FyIQdwchiGNHj7Sga>

¹⁴ Section 375 IPC <https://share.google/G8gt5UqPyWGie1mIn>

¹⁵ *State of Punjab v. Ramdev Singh* (2004) 1 SCC 421

¹⁶ *Joseph Shine v. Union of India* (2018) 2 SCC 189

¹⁷ Section 82 BNS <https://share.google/FyIQdwchiGNHj7Sga>

¹⁸ Sections 494–495 IPC <https://share.google/G8gt5UqPyWGie1mIn>

perceived as private immorality (adultery) and those seen as threatening institutional stability (bigamy).

JUDICIAL AND POLICY PERSPECTIVES

Judicial interpretation has consistently expanded the scope of protection for women and children, often filling legislative gaps. In **Mahender Chawla v. Union of India**¹⁹, the Supreme Court upheld the *Witness Protection Scheme, 2018* as law under Articles 141 and 142²⁰, recognizing that victims and witnesses in cases of sexual violence and child exploitation require protection to ensure fair trial and justice. Similarly, in *Bodhisattwa Gautam v. Subhra Chakraborty*²¹, the Court treated rape as a violation of Article 21, mandating interim compensation, thereby reinforcing victim-centric jurisprudence. These decisions resonate with the BNSS and BNS reforms, which institutionalize victim rights and procedural safeguards.

Policy bodies have also emphasized systemic reform. The Justice **Malimath Committee Report (2003)**²² advocated for a victim-oriented criminal justice system, recommending victim participation, compensation schemes, and witness protection measures. The **Law Commission of India**, in its 172nd and 262nd Reports²³, underscored the need for gender-neutral definitions of sexual offences and enhanced sentencing in crimes against children. These recommendations shaped the trajectory of reforms, culminating in the 2013 Criminal Law Amendment and now in the BNS/BNSS, which codify many of these suggestions into binding law. Together, judicial directions and policy reports have laid the foundation for a more inclusive and responsive criminal justice system.

CHALLENGES IN IMPLEMENTATION

1. **Institutional & infrastructural gaps:** Practical delivery of BNSS/BNS protections depends on hard infrastructure — functioning forensic labs, child-friendly interview rooms, trauma-care centres, special/POCSO courts and adequate legal-aid cells. Many districts still lack these facilities, causing delays in evidence collection and weakening prosecutions; special courts under statutes (e.g., POCSO) cannot do their work without physical and human resources.
2. **Concerns of misuse and procedural delay:** While safeguards protect victims, the system

¹⁹ Mahender Chawla v. Union of India (2019) 14 SCC 615

²⁰ Witness Protection Scheme, 2018 as law under Articles 141 and 142 <https://share.google/tvRrEItV0t9xUEmXN>

²¹ Bodhisattwa Gautam v. Subhra Chakraborty (1996) 1 SCC 490

²² Malimath Committee Report (2003) <https://share.google/Hyimx7BYlyXfeoKBI>

²³ Law Commission of India, in its 172nd and 262nd Reports <https://share.google/ljN3Yv6KW0oEtEC84>; <https://share.google/uywftbWGpGK95WBx4>

also faces risks of frivolous or vindictive complaints; criminal law already punishes false allegations (see Section 211 IPC). More serious, however, are systemic delays long investigation and trial timelines retraumatize victims and reduce conviction rates, undermining the reforms' intent.

3. **Victim protection and procedural compliance:** Legal provisions (e.g., recording statements under Section 183 BNSS; mandatory FIR registration practice under Section 173 BNSS and judicial directions) must be implemented sensitively female officers, medical safeguards, and witness protection are essential. Without consistent adherence, victims remain exposed to secondary victimisation.
4. **Need for training, technology & oversight:** Police, prosecutors and judges require regular sensitisation and specialised training on trauma-informed investigation, child interviewing and forensic evidence. Complementary use of e-FIRs, case-management systems and regular audits (NCRB/State oversight) will improve accountability and speed otherwise law reform will remain only textual change.

FINDINGS AND SUGGESTIONS

1. **Ensuring victim-centric justice:** The primary finding is that despite progressive provisions in the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS), victims of sexual and child-related offences often remain secondary to procedural formalities. Justice must be restorative and trauma-sensitive. Suggestions include strict adherence to victim-oriented safeguards under Section 164 CrPC (statement recording before magistrates), Section 357 CrPC (victim compensation), and special court mechanisms under the POCSO Act. A dedicated victim-support cell in every district court could institutionalize this approach.
2. **Role of technology and witness protection:** Technology can strengthen access to justice through e-FIR, audio-visual recording of depositions, and digital preservation of evidence. However, findings reveal inconsistent application across states. The Supreme Court in *Mahendra Chawla v. Union of India* (2018) recognised the urgent need for a robust Witness Protection Scheme. Suggestions include full implementation of the scheme, nationwide standardisation of CCTV in police stations, and ensuring safe online platforms for reporting crimes, thereby reducing intimidation of victims and witnesses.
3. **Harmonization with personal laws and social realities:** Another finding is the conflict

between penal provisions and diverse personal laws governing marriage, divorce, and family relations. While bigamy and child marriage are criminalised, certain communities still follow customary practices. Suggestions include harmonising BNS provisions with personal laws through dialogue with religious bodies, progressive interpretations by courts, and targeted awareness campaigns. Social realities must guide law enforcement so that reforms are not merely punitive but transformative, bridging the gap between legal mandates and lived experiences.

CONCLUSION

The transition from the Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC) to the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS) marks a historic shift in India's criminal justice landscape, with a strong emphasis on safeguarding the rights and dignity of women and children. These reforms are not merely legislative changes but a conscious attempt to modernize the criminal law framework in line with constitutional guarantees under Articles 14, 15, 21, and 39, as well as India's commitments under international conventions such as CEDAW and the UNCRC.

The recognition of women-centric reforms like audio-visual statement recording, medical safeguards, zero FIR, and enhanced victim rights represents a progressive step toward a survivor-friendly justice system. Similarly, consolidation of offences against children under the BNS, with expanded definitions and stricter punishments, reflects the state's intent to strengthen protection for vulnerable groups. The decriminalisation of adultery and the nuanced treatment of offences like bigamy further demonstrate the balancing of personal liberty, morality, and social justice.

However, the effectiveness of these reforms depends on robust implementation. Institutional gaps, infrastructural deficits, and the lack of adequate training for police, prosecutors, and the judiciary remain pressing challenges. Without addressing these, even the most progressive provisions risk becoming symbolic rather than transformative.

Therefore, the path forward requires a three-fold approach: ensuring victim-centric justice through procedural sensitivity, harnessing technology and witness protection mechanisms to inspire confidence in the system, and harmonising penal provisions with diverse social and personal law realities. Only then can the new criminal law framework truly embody the constitutional vision of justice accessible, equitable, and humane ensuring that women and children receive not just protection on paper, but dignity and justice in practice.

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