
COMPARATIVE ANALYSIS OF IPC, CRPC & IEA WITH BNS, BNSS & BSA: A GENDER JUSTICE PERSPECTIVE IN INDIA'S CRIMINAL LAW REFORMS

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ABSTRACT

The protection of women in India has been a key focus of criminal law reforms, particularly in the face of evolving societal challenges and increasing awareness of gender-based violence. This paper examines the strengthening of laws for the protection of women under the new criminal law reforms in India. It explores the historical context of legal protections for women, tracing the evolution from the Indian Penal Code of 1860 to the contemporary legislative changes, including the introduction of the Bhartiya Nyaya Sanhita and Bhartiya Nagrik Suraksha Sanhita. The research highlights key legal provisions related to crimes against women, such as rape, domestic violence, harassment, and the protection of witnesses, comparing them across different legal frameworks. Additionally, the paper delves into the incorporation of technological advancements, the establishment of fast-track courts, and the importance of a supportive legal environment to address the needs of survivors. The study emphasizes the significance of a holistic approach, which includes social and cultural reforms alongside legal changes, to foster a safer environment for women. The paper concludes by outlining the potential for India to create a more equitable and just society through comprehensive and proactive legal reforms, ensuring women's rights and dignity are upheld in both law and practice.

Keywords: Bhartiya Nyaya Sanhita (BNS), Bhartiya Nagrik Suraksha Sanhita (BNSS), Bhartiya Sakshya Adhinyam (BSA), Criminal law reform, Fast-track courts, Women's protection, Gender justice, Legal safeguards, Cybercrime and women, Sexual violence, Domestic violence, Witness protection, Victim rights, Stalking and voyeurism.

Introduction

The evolution of criminal laws in India is a captivating journey that mirrors the country's socio-political landscape, cultural complexities, and its dedication to justice. Deeply rooted in historical traditions, the development of these laws has been shaped by indigenous legal customs, colonial influences, and modern societal demands. This paper aims to trace the progression of criminal laws in India, highlighting significant milestones, shifts, and ongoing efforts to meet the challenges of the 21st century.

Ancient Indian legal systems, such as the *Manusmriti* and *Arthashastra*, laid the groundwork for early criminal jurisprudence. These texts provided guidelines on offenses and punishments with a focus on justice and fairness. They reflected a moral and social order that emphasized duties, responsibilities, and proportionality in punishment.

However, a more organized and codified framework emerged during the colonial era, when the British introduced the Indian Penal Code (IPC) in 1860. Drafted by Lord Thomas Babington Macaulay, the IPC aimed to consolidate and standardize criminal laws, establishing a unified legal structure across British India. Despite criticisms of its colonial roots, this code remains a foundational element of India's criminal justice system.

Post-independence India witnessed significant reforms to align its criminal laws with the aspirations of a sovereign nation. The adoption of the Constitution of India in 1950 enshrined principles of justice, equality, and the rule of law, laying a foundation for further legislative developments. The Criminal Procedure Code (CrPC) and the Indian Evidence Act were updated to include provisions that protect individual rights and streamline legal processes.

In the latter half of the 20th century, various amendments and new laws were enacted to address emerging challenges. Specialized laws, including the *Narcotic Drugs and Psychotropic Substances Act, 1985*, the *Prevention of Terrorism Act, 2002*, and the *Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013*, demonstrate the adaptability of India's criminal legislation to evolving social and legal demands.

In recent years, awareness has grown around the need for comprehensive reforms to tackle contemporary issues like cybercrime, white-collar crime, and crimes against marginalized groups. The *Criminal Law (Amendment) Act, 2013*, enacted in response to the Nirbhaya case,

underscores how legislation can evolve to address public demands and the changing nature of criminal offenses.

In 2023, India witnessed a landmark transformation with the introduction of three major pieces of legislation: the *Bharatiya Nyaya Sanhita*, the *Bharatiya Nagarik Suraksha Sanhita*, and the *Bharatiya Sakshya Adhinyam*. The *Bharatiya Nyaya Sanhita* marks a significant step in criminal justice reform, aimed at strengthening the legal framework and improving judicial efficiency, with a focus on fairness, speed, and accountability in justice delivery.

Introduced in the same year, the *Bharatiya Nagarik Suraksha Sanhita* adopts a comprehensive approach to citizen security. It implements measures to protect individuals and ensure a safe environment, thereby fostering public trust. This law highlights a commitment to safeguarding citizens' rights and well-being while upholding national security.

Additionally, the *Bharatiya Sakshya Adhinyam*, also enacted in 2023, represents a crucial step forward in the modernization of evidence law. It aims to streamline the evidentiary process and enhance the use of technology in legal proceedings, ensuring transparency and reliability in the administration of justice. This reform reflects India's broader goal of a responsive, efficient, and citizen-centric criminal justice system.

Transition From IPC To BNS: A Positive Step Towards a Safer Society For Women

Protecting women from violence and discrimination has long been a priority in India's legal landscape. The Indian Penal Code, introduced in 1860 during the British colonial period, has been foundational in addressing crimes against women. In 2023, India introduced major legal reforms with the *Bhartiya Nyaya Sanhita*, bringing significant changes to the criminal justice system. To evaluate the evolution and impact of these protections, the following sections provide a comparative analysis of provisions for women's protection under the IPC, 1860, and the *Bhartiya Nyaya Sanhita*, 2023.

Provisions under the Indian Penal Code, 1860:

Rape Sections 375 and 376 IPC: The IPC criminalizes rape under Sections 375 and 376, recognizing it as a severe crime. Over time, amendments have broadened the definition of rape and increased penalties, with factors like consent, age, and mental state of the victim being critical in determining the offense.

Dowry Death Section 304-B IPC: This section addresses dowry-related deaths, providing recourse when a woman dies under suspicious circumstances within seven years of marriage, aiming to curb dowry violence and hold offenders accountable.

Domestic Violence Section 498-A IPC: Section 498-A targets cruelty by husbands or relatives towards married women, covering mental and physical abuse and serving as a deterrent against domestic violence.

Outraging the Modesty of Women Section 354 IPC: Section 354 criminalizes offenses like molestation and harassment, acknowledging the need to protect women from unwarranted advances¹.

Self-Defense Sections 96-106 IPC: The IPC provides for self-defense, allowing individuals, including women, to protect themselves from immediate threats to safety.

Kidnapping and Abduction Sections 359-369 IPC: These sections address kidnapping and abduction offenses, underscoring the protection of women's liberty and security³

Provisions² under Bhartiya Nyaya Sanhita, 2023:

Expanded Definition of Rape: The Bhartiya Nyaya Sanhita³ redefines rape, encompassing various forms of sexual violence and recognizing broader offenses that constitute sexual assault, reflecting modern perspectives on consent and bodily autonomy. In the Case *Vishaka v. State of Rajasthan*⁴: The Vishaka guidelines were pivotal in shaping laws on workplace harassment, which later led to the Sexual Harassment of Women at Workplace Prevention, Prohibition and Redressal Act, 2013. The BNS includes provisions on women's safety in workplaces and public spaces, which can be interpreted with reference to this case. *Nirbhaya Case*⁵: This landmark case led to the Criminal Law Amendment Act, 2013, which expanded the definition of sexual violence and introduced stricter penalties. The BNS incorporates similar expanded definitions of sexual offenses, including new provisions for cybercrimes and sexual violence, which could be interpreted in light of the principles from the Nirbhaya case. : *Independent Thought v. Union*

¹ Indian Penal Code by KD Gaur 8th Edition 2023

² The Indian Penal Code by Ratanlal & Dhirajlal 35th Edition

³ Bharatiya Nyaya Sanhita, 2023. by K D Gaur. Edition: 9th Edition, 2024

⁴ AIR 1997 SC 3011

⁵ (2017) 6 SCC 1

*of India*⁶ This case led to the declaration that sexual intercourse with a wife under the age of 18 constitutes rape, even within marriage. The BNS has provisions for defining sexual offenses more broadly and incorporating changes that align with the understanding of consent and sexual autonomy. *State of Punjab v. Ramdev Singh*⁷: The BNS provides enhanced provisions for domestic violence, including harsher penalties and better protection for survivors. This case reinforced the need for effective legal protection for women in abusive relationships, which will likely align with the BNS's approach to domestic violence. *Laxmi v. Union of India*⁸: This case strengthened legal provisions for acid attack survivors, including providing compensation and stricter penalties. The BNS includes enhanced punishment for crimes like acid attacks, and the BNSS may draw from the victim protection principles established here, including provisions for witness protection and post-crime support for victims.

Stalking and Voyeurism: This new legislation explicitly criminalizes stalking and voyeurism, acknowledging the evolving nature of crimes against women and offering specific provisions for these forms of harassment.

Stricter Penalties: The Bhartiya Nyaya Sanhita introduces tougher penalties for crimes against women, reflecting the seriousness of such offenses and reinforcing society's commitment to women's safety and well-being.

Fast-Track Courts: The legislation advocates for fast-track courts to expedite trials in cases related to crimes against women, addressing delays in justice and reducing prolonged trauma for victims. This comparative analysis highlights how the legal protections for women have evolved to address new forms of violence and align with contemporary social values.

Cybercrime Provisions: The Bhartiya Nyaya Sanhita includes measures to tackle cybercrimes against women, recognizing the rising threat of online harassment. These provisions cover offenses such as cyber stalking, online bullying, and the unauthorized sharing of intimate images.

Electronic Evidence: The legislation emphasizes the importance of electronic evidence in cases involving crimes against women, streamlining the process for its use in court. This provision

⁶ AIR 2017 SC 4904

⁷ 2004 SCC (Cri) 307

⁸ 2014 SCC (4) 427.

reflects an awareness of technology's role in both enabling and combating such offenses.

The comparative analysis shows a notable progression in legal protections for women from the IPC of 1860 to the Bhartiya Nyaya Sanhita of 2023. While the IPC laid the groundwork for addressing crimes against women, the Bhartiya Nyaya Sanhita provides a more refined approach to today's challenges. This new legislation not only revisits and strengthens existing protections but also introduces innovative measures that align with evolving societal norms. The inclusion of provisions specifically targeting stalking, voyeurism, and cybercrimes demonstrates a proactive legislative response to emerging forms of violence. Stricter penalties and the establishment of fast-track courts further reflect a commitment to swift justice and deterrence. The technological advancements in the legislation underscore the recognition of the digital context in addressing crimes against women. The shift from the IPC, 1860, to the Bhartiya Nyaya Sanhita, 2023, marks a positive step in the pursuit of gender justice. This evolving legal framework not only addresses longstanding issues but also anticipates new threats, underscoring a commitment to creating a safer and more equitable society for women in India.

Analysis of Criminal Procedure Code and Bhartiya Nagrik Suraksha Sanhita in Ensuring Women's Safety

Technological Integration in Investigations: The Bhartiya Nagrik Suraksha Sanhita emphasizes the use of technology in investigations, showcasing a commitment to leveraging advancements for greater efficiency within the criminal justice system.

Safeguards during Trial: The legislation introduces safeguards aimed at reducing trauma during cross-examination, marking a significant step toward prioritizing victims' well-being throughout the legal process.

Provision for Special Courts for Expedited Trials: The Bhartiya Nagrik Suraksha Sanhita establishes special courts to accelerate trials related to crimes against women. This provision addresses the issue of lengthy legal processes and responds to the need for timely justice. In the Case *Shakti Vahini v. Union of India*⁹: The case emphasized the need for the protection of women in situations of inter-caste or inter-religious marriages, and stressed the state's role in

⁹ AIR 2018 SC 1601

protecting the rights of individuals against honor-based violence. The BNSS could use this precedent to enforce protective measures for women who are at risk due to forced marriages, or honor-related crimes. In *The Case Jagdish v. State of Haryana*¹⁰: The BNSS includes provisions for the prevention of dowry-related violence, along with the establishment of special courts to expedite cases related to dowry death. This case will guide the interpretation and enforcement of such legal reforms. In *Rupan Deol Bajaj v. K.P.S. Gill*¹¹: The case set a strong precedent for dealing with sexual harassment, which is covered under the BNS and BNSS. The provisions relating to the legal empowerment of women, especially in public and private workplaces, could be influenced by this ruling. In the area of women's safety, the *Bhartiya Nagrik Suraksha Sanhita* introduces progressive and modern approaches to overcome existing challenges. The use of technology, added safeguards during trial, and the establishment of special courts underscore the evolving commitment to a more secure and efficient legal process for women in India. Together, these reforms represent a coordinated effort to create a legal environment that not only effectively addresses crimes against women but also prioritizes victim well-being throughout their journey in the criminal justice system.

Analysis of Indian Evidence Act and Bhartiya Sakshya Adhiniyam:

Protection of Witnesses: The *Bhartiya Sakshya Adhiniyam*¹² goes beyond the Indian Evidence Act by explicitly emphasizing witness protection, particularly for women. Its provisions for closed-door hearings and the use of intermediaries during cross-examination demonstrate a comprehensive approach to ensuring the mental well-being of survivors.

Technological Integration: The use of video conferencing in the *Bhartiya Sakshya Adhiniyam* highlights a forward-thinking approach, recognizing the potential trauma survivors may face during physical court appearances. This is a marked improvement over the IEA, which lacks such technological accommodations.

Supportive Legal Environment: While both laws acknowledge the need for sensitivity in legal proceedings, the *Bhartiya Sakshya Adhiniyam* takes practical steps to create a more supportive environment for victims. The provision for an intermediary during cross-examination is

¹⁰ 2010 (4) SCC 216

¹¹ 1995 SCC (6) 194

¹² Textbook On *Bharatiya Sakshya Adhiniyam* | BSA | New Evidence Act By K. Swamyraj Published By Central Law Publications 2024 Edition

especially commendable, as it balances justice with the survivor's emotional well-being. *Comprehensive Treatment of Evidence*: By focusing on witness protection, the Bhartiya Sakshya Adhiniyam extends beyond the IEA¹³ in handling evidence, which is crucial in cases involving crimes against women, where sensitivity to the survivor's experience is essential.

In Section 114A - Presumption of Lack of Consent in Rape Cases: This amendment is particularly significant because it shifts the burden of proof in rape cases. When sexual intercourse is proved and the woman testifies she did not consent, the court presumes the lack of consent. In Case *State of Maharashtra v. Bharat Fakira Dhiwar*¹⁴: The Supreme Court highlighted the importance of Section 114A, emphasizing that once the victim testifies to the lack of consent, the onus is on the accused to prove otherwise.

In Section 146 - Prohibition of Character Evidence: Under amended Section 146, questions related to the sexual history or character of the rape survivor are restricted to prevent harassment during cross-examination. Previously, questions regarding the "immoral character" of the victim were often used to discredit them. In The Case *State of Punjab v. Gurmit Singh*¹⁵— The Supreme Court condemned the use of a woman's character in judging her credibility in a rape case, stressing the irrelevance of her past sexual conduct and protecting her dignity.

In Section 53A - Prohibition on Using Past Sexual History as Evidence: Section 53A was added in 2013, prohibiting the admission of evidence related to the previous sexual history of the victim in rape cases. This ensures that irrelevant and prejudicial information does not bias the court. In the Case *Mukesh & Anr v. State for NCT of Delhi (Nirbhaya Case)*¹⁶ — The court strictly applied Section 53A, excluding any evidence of the victim's past sexual history, reflecting a shift towards protecting the dignity of victims during trials. *In Section 32(1) - Dying Declaration as Evidence*: The amendment broadened the scope of the dying declaration, especially in domestic violence cases. Women who are victims of dowry harassment or domestic violence are often left in critical conditions. Dying declarations have become essential in such cases. In the Case *Satpal v. State of Haryana*¹⁷: Here, the court upheld the dying

¹³ The Indian Evidence Act by Dr. V Nageswara Rao 3rd Edition 2019

¹⁴ AIR 2002 SC 16

¹⁵ 1996 AIR 1393, 1996 SCC (2) 384

¹⁶ 2017 6 SCC 1, AIR 2017 SUPREME COURT 2161

¹⁷ AIR 2018 SUPREME COURT 2142

declaration of a woman who had been burned by her husband's family for dowry, setting a precedent for using dying declarations in dowry-related violence cases.

In *Section 119 - Protection for Victims with Disabilities*: The amendment allows differently-abled victims or witnesses, especially women with hearing or speech impairments, to provide evidence through interpreters or special assistance, ensuring their rights and making their testimonies accessible. *State of Maharashtra v. Bandu Daulat*¹⁸ — The court emphasized the need for special provisions for victims with disabilities, enabling a fair trial process for all.

The Provisions on Medico-Legal Evidence and Consent: The law also mandates that medical examinations respect the dignity of survivors and prohibits invasive "two-finger tests" to establish virginity, which were often used to question the credibility of victims in rape cases. In *The Case Lillu v. State of Haryana*¹⁹: The Supreme Court banned the two-finger test, declaring it violative of a woman's dignity, and encouraged more sensitive medico-legal protocols.

The Witness Protection Scheme 2018 This scheme aids in protecting witnesses, particularly in sensitive cases involving violence against women. It allows for identity protection and changes in residence if necessary, strengthening the testimony of women who fear intimidation. In *The Case Mahender Chawla v. Union of India*²⁰: The Supreme Court mandated the implementation of the Witness Protection Scheme to ensure that witnesses in sensitive cases, such as sexual harassment or domestic violence cases, feel safe enough to testify. In *The Case K.S. Puttaswamy v. Union of India*²¹:

The case recognized privacy as a fundamental right. The BSA incorporates technological advancements and the protection of electronic evidence. This ruling will guide the interpretation of digital crimes and privacy violations under the new laws. This comparative analysis shows that the Bhartiya Sakshya Adhiniyam surpasses the Indian Evidence Act in fostering a legal environment that is not only fair but also attentive to survivors' emotional well-being. The provisions for witness protection, technological integration, and intermediaries during cross-examination reflect a progressive shift toward a compassionate, survivor-centered legal framework. The Bhartiya Sakshya Adhiniyam marks a commendable advancement in aligning

¹⁸ 2018 (11) SCC 163, AIR 2018 SC (CRI) 179

¹⁹ 2013 14 SCC 643

²⁰ AIR 2018 SC (SUPP) 2561, 2018 SCC OnLine SC 2679

²¹ (2017) 10 SCC 1; AIR 2017 SC 4161

legal processes with the evolving understanding of justice, particularly in cases involving crimes against women.

Conclusion

The need to strengthen laws for the protection of women under criminal law reforms in India is undeniable, given ongoing challenges and changing socio-cultural dynamics. This research highlights the complex nature of crimes against women and the critical need for a comprehensive legal framework that not only addresses current gaps but also anticipates and adapts to emerging threats.

While existing laws, including the Indian Penal Code (IPC) and its amendments, have made significant progress in recognizing and penalizing offenses against women, this study identifies key areas that require further improvement. Effective criminal law reform should prioritize women's empowerment by strengthening legal protections, updating definitions, and revisiting provisions related to offenses like rape, domestic violence, and harassment—ensuring they align with modern perspectives on consent, autonomy, and gender dynamics. These reforms must also take into account the diverse experiences of women, particularly those from marginalized communities who often face compounded forms of discrimination and violence. A one-size-fits-all approach may overlook the unique challenges faced by women based on caste, class, religion, or geography.

Moreover, the study emphasizes that stringent laws alone are not enough. Effective implementation and enforcement mechanisms are essential to ensure that legal provisions translate into real-world protections. Strengthening law enforcement agencies through better training, resources, and accountability measures is key to supporting these reforms. The judiciary also plays a vital role in delivering timely and fair justice. Establishing fasttrack courts and specialized benches for crimes against women can help expedite proceedings and reduce the prolonged trauma victims endure during lengthy legal battles.

Importantly, the research advocates for a holistic approach that extends beyond legislative reforms. Legal change must be accompanied by broader social transformation. Community engagement, public awareness campaigns, and educational initiatives are necessary to challenge and change entrenched gender norms and stereotypes that perpetuate violence against women.

As India looks to the future, it must draw inspiration from international best practices while tailoring reforms to its unique socio-cultural context. Learning from global experiences can provide valuable insights into crafting a legal framework that is both effective and culturally appropriate.

Ultimately, strengthening laws for women's protection should be viewed as an ongoing, dynamic process. The legal system must remain adaptable and responsive to evolving societal needs. By adopting a comprehensive and inclusive approach to criminal law reform, India can move closer to building a safer and more equitable society—one in which justice and gender equality are not only codified in law but actively upheld in practice.