
OFFENCES AGAINST WOMEN UNDER THE OLD & NEW CRIMINAL LAWS: A CRITICAL ANALYSIS

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Abstract

The rising incidence of crimes against women in India has long called for a comprehensive and responsive legal framework. While the Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act served as the foundation of criminal jurisprudence since colonial times, they were increasingly seen as inadequate in addressing the evolving socio-legal challenges of modern India, particularly in the context of women's safety. Recognizing this need, the Government of India repealed these outdated statutes and introduced three new legislations, Bhartiya Nyaya Sanhita (BNS) 2023, Bhartiya Nagrik Suraksha Sanhita (BNSS) 2023, and Bhartiya Sakshya Adhiniyam (BSA) 2023 which came into effect from 1st July 2024.

This research offers a critical comparative analysis of the old and new criminal laws concerning the protection of women. It highlights the progressive steps taken, such as the inclusion of gender-neutral definitions, recognition of digital evidence, protection mechanisms like Zero FIR and witness protection, and the consolidation of offences against women. It also applauds provisions like mandatory audio-visual recording of rape survivors' statements, recognition of deceitful sexual intercourse as a crime, and making many offences gender-neutral.

However, the paper also underscores significant gaps and contradictions that weaken the intended impact. The continued exemption of marital rape from the definition of rape, the wide discretionary powers granted to police under Section 173 of BNSS, and the vague language in key sections like "outraging modesty" are critical oversights. Furthermore, issues relating to judicial discretion in sentencing, lack of clarity on fines, potential privacy infringements due to digital surveillance, and the need for capacity building among legal stakeholders are discussed in detail.

While the new laws signify a welcome shift toward a more victim-centric and technologically attuned justice system, their real-world impact remains to be seen. The research concludes that legal reform, though crucial, must be accompanied by judicial sensitivity, administrative efficiency, and greater societal awareness to truly ensure justice and safety for women in India.

Key Word :Crime, Women in India, Rising Crime

INTRODUCTION:-

The main laws outlining the criminal jurisprudence principles in India are by and large the Indian Penal Code 1860, The Code of Criminal Procedure 1973 (created in 1882 further amended in 1898) and the Indian Evidence Act 1872. This was the position, however till last year. All three of the above enactments were repealed and were replaced by Bhartiya Nyaya Sanhita 2023, Bhartiya Nagrik Suraksha Sanhita 2023 and the Bhartiya Sakshya Adhiniyam 2023 respectively which came into effect from the 1st July 2024. There new enactments bring about major changes as not only the

earlier offences and procedures along with their respective punishments have been revised but also some new offences have been introduced which were not in place earlier. It is true that from time to time the old laws have been amended or sections added or removed, as per the needs felt but this time, from 2024 the new laws bring about a total shift of blueprint or prototype will there laws being about a welcome change and positive shift or have adverse implications and would lack impact, only time will tell because they have been brought into force recently but it is necessary to critically evaluate at present whether they have some provisions with sharper teeth to prevent and curb the constantly rising offences, violence and crimes against women of the country, thereby bringing about a much sought positive socio-economic and cultural change in our society.

NEED FOR NEW LAWS:-

From a long time since independence, the country has been in need of a complete and reforms in the criminal justice system. It is significant to note that the old laws like IPC, CrPC and IEA were enacted in the colonial period by English foreigners that time we were under their slavery and rule and as such the provisions placed therein and brought into force were not mainly to bring about law and order, harmony or peace but instead to rule, control the various protests which according to them were offences and punish Indian in general. As a result, after India gained independence, these laws overall though continued to be in effect, were proving insufficient fruits and worthless in dispensing equity and equitable justice. Moreover, often since India gained independence, lot of circumstances; environment and socio-economic culture changed in the last 76 years, and if we see in respect to present subject matter, the position of women in the country has seen a major change, mostly positive specially in the last two decades. Further in this past independence period, technology has made exemplary progress in communications, computerized and digital world and as such it was necessary to incorporate these changes in the dispensing of justice and enhancing security systemways of presenting evidences and accountability in the criminal justice system. Technological advancement like mobile recordings, WhatsApp chats, e-mails and electronic evidences were required to be included in dispensing justice for fair trials. Some procedures of old forms also needed to be replaced in justice dispensing and investigation of crimes and offences. Over the period, some new offences which were last out under the old criminal laws were crucial to be included, like mob lynching, stalking, marital rapes, terrorist acts, deceitfully having sex etc. and punishment fixed for them. A much needed to focus on advanced technology techniques of investigation digital evidence and providing protection to women child and society at large from offences, especially the vulnerable and excluded from the mainstream people, has encouraged the parliament to bring a complete change in Criminal Justice System by introducing new laws and it is anticipated that they bring about positive and desired results¹.

¹ See for reference "Paper on Implementation of three Criminal Laws" presented by Lt. Gen. Gurmit Singh, Governor of Uttarakhand at Conference of Governors, New Delhi from 2nd to 3rd August 2024, available as PDF at <https://cdnbsr.s.3wass.gov.in>; also see "Exploring India's New Criminal Laws: A paradigm shift in legal framework", 2nd Sept 2024, blog by Team my gov Manipur, at blog.mygov.in; see article "New Indian criminal laws 2024: key highlights, impact", 1st July 2024, by Abhinandan, available at authbridge.com/blog

OLD AND NEW CRIMINAL LAWS VIS A VIS WOMEN PROTECTION: -

Considerable changes have been made in the women protection provisions under the new law and some new offences have also been included which were not there earlier. The details have been explained as below in the way of chart for easy access and understanding: -

(I) The Indian Penal Code 1860 and Bhartiya Nyaya Sanhita 2023

Definitions	Sec. under IPC 1860	Sec. under BNS 2023	Comments
(i) Child	No defined	Sec. 2(3)	Any person below 18 yrs of sage
(ii) Gender	8	2(10)	Transgender included under BNS
(iii) Man	10	2(19)	Definition separate under BNS
(iv) Woman	10	2(35)	Definition separate under BNS
(v) Punishment	53	4	Community services has been included

Offences	Sec. under IPC 1860	Sec. under BNS 2023	Comments
(i) Rape	375	63	Sexual intercourse or sexual acts b a man with his wife, wife not being under 18 yrs of age is not rape under BNS In IPC the age bar was 15 yrs
(ii) Punishment for rape	376	64	No change only military word replaced by army
(iii) Punishment for causing death or ----- in persistent vegetative state of victim	376A	66	No change
(iv) Punishment for rape of woman under 12yrs of age	376AB	65(2)	-
(v) Sexual intercourse by husband upon his wife during separation	376B	67	-
(vi) Sexual intercourse by a person in authority	376C	68	-
(vii) Gange rape	376D	70(1)	-
(viii) Punishment for gang rape on woman under 16yrs of age	376DA	70(2)	However under 70(2) of BNS 2023, gang rape of woman under 18 yrs is specified
(ix) Punishment for gang rape of woman under 12yrs	376DB	70(2)	Under BNS 2023, gang rape of woman 18yrs carries same punishment of life imprisonment or death
(x) Punishment for repeat offences	376 E	71	-
(xi) Sexual intercourse by employing deceitful means	No provision	69	This is a new addition under BNS 2023 making sexual intercourse by deceitful means or by promising to marry without any intention of fulfilling punishment prescribed can extent to 10 years

Offences	Sec. under IPC 1860	Sec. under BNS 2023	Comments
Acid attack			
(i) Voluntarily causing grievance hurt by use of acid	326A	124(1)	Same
(ii) voluntarily throwing or attempting to throw acid	326B	124(2)	Same
KIDNAPPING/ABDUCTION			
(i) kidnapping classified	359	137(1)	Same
(ii) kidnapping from India	360	137(1) (a)	Same
(iii) kidnapping from lawful guardian	361	137(1) (b)	Under IPC this section applied for male under 16 yrs of age or female under 18 yrs of age but under BNS 2023, this application is changed to child which means any gender below 18 yrs of age
(iv) abduction	362	138	Same
(v) Punishment for kidnapping	363	137(2)	Same
(vi) kidnapping or abducting in order to murder	364	140(1)	Same
(vii) kidnapping for ransom	364A	140(2)	Same
(viii) kidnapping or abducting with intent secretly and wrongfully to confine person	365	140(3)	Same
(ix) kidnapping, abduction or inducing woman to compel her marriage	366	87	Same
(x) Procreation of minor girl	366A	96	Same
(xi) Importation of girl from foreign country	366B	141	Offence made gender neutral under BNS 2023. Applies to importation of girl under 21 yrs of age and boy under 18 yrs of age. Under IPC it applied only to girl. Also, word 'State of Jammu & Kashmir' removed
(xii) kidnapping or abduction in order to subject person to grievous hurt, slavery	367	140(4)	Same
(xiii) wrongfully concealing or keeping in confinement kidnapped or abducted person	368	142	Same
(xiv) kidnapping or abducting child under 10 yrs with intent to steal from its person	369	97	Same
IDENTITY OF VICTIM			
(i) disclosure of identify of victim of certain offences	228A	72	Same

(ii) Printing or publishing of any matter relating to court proceedings without permission	228A explanation (2)	73	Same
ASSAULT AGAINST WOMEN			
(i) Assault or criminal force to women with intent to outrage her modesty	354	74	Same
(ii) sexual harassment and punishment for sexual harassment	354 A	75	Same
(iii) Assault or use of criminal force to woman with intent to disrobe	354 B	76	Applied under IPC to any man but under BNS 2023 is replaced by 'whoever' made gender neutral
(iv) Voyeurism	354 C	77	As above, made gender neutral under BNS 2023 and word 'man' replaced by 'whoever'
(v) Stalking	354 D	78	Same
DOWRY RELATED			
(i) Dowry death	304 B	80	Same
OFFENCE RELATED TO MARRIAGE			
(i) Cohabitation caused by a man deceitfully inducing a belief of lawful marriage	493	81	Same
(ii) Marrying against during lifetime of husband or wife	494	82(1)	Same
(iii) Same offence with concealed of former marriage from person with whom subsequent marriage in contracted	495	82(2)	Same
(iv) Marriage ceremony fraudulently gone through without lawful marriage	496	83	
(v) adultery	497 (scrapped by supreme court on 27 th Sept. 2018)	-	-
(vi) enticing or taking away or detaining with criminal intent a married woman	498	84	Same
CRUELTY BY HUSBAND OR RELATIVES			
(i) Husband or relative of husband of a woman subjecting her to cruelty	498A	85	Same
(ii) Cruelty defined	498A explanation	86	Same
OFFENCE RELATING TO MISCARRIAGE			
(i) Causing miscarriage	312	88	Same
(ii) causing miscarriage without woman's consent	313	89	Same

(iii) Death caused by act done with intent to cause miscarriage	314	90	Same
(iv) Act done with intent to prevent child being born alive or to cause it to die after birth	315	91	Same
(v) Causing death of quick unborn child by act amounting to culpable homicide	316	92	Same
HUMAN TRAFFICKING			
(i) Trafficking of person	370	143	The word 'minor' under IPC has been replaced with 'child' meaning any gender below 18 yrs of age
(ii) exploitation of trafficked person	370 A	144	---ditto----
(iii) Habitual dealing in slaves	371	145	Same
INSULTING MODESTY OF WOMEN			
(i) Word gesture or act intended to insult the modesty of woman	509	79	Same

II. The Code of Criminal Procedure Act 1973 and the Bhartiya Nagrik Suraksha Sanhita 2023

Matter	Provision under CrPC 1973	Provision under BNSS 2023	Comments
(1) Power to compel restoration of abducted females	98	101	Same
(2) Order for maintenance of wives, children & parents	125-128	144-147	Same
(3) Medical examination of victim of rape	164 A	184	Same
(4) Procedure for investigation	157	176	Special provision added under BNSS 2023 to record statement of victim of rape through audio video electronic means including mobile phones
(5) Recording of confession and statement	164	183	In BNSS 2023, under Section 183(6)(a), provision has been provided that for some offences against women, her statement shall as far as practicable be recorded by a woman magistrate, and in her absence, by a male magistrate in the presence of a woman.
(6) Medical examination of victim of rape	164 A	184	Under BNSS 2023 section 184 the medical practitioner examine victim of rape is bound to send examination report with 7 days to the Investigating officer
(7) Power to summon persons	175	195	A proviso under 195(1) has been specifically added in BNSS 2023 whereby any woman shall not be required to attend by way of summons except at the place where she resides

(8) police officer's power to require attendance of witness	160	179	In this matter also under BNSS section 179 proviso first a woman is exemplified to attend at any place other than her residence as a witness
(9) Information in cognizable cases	154	173	The provision for zero FIR has been provided under BNSS 2023 whereby information relating to commission of a cognizable offence can be given to any nearby police station even being outside jurisdictional limits
(10) Withdrawal from prosecution	321	360	Court not to allow without given victim opportunity of hearing
(11) witness protection scheme	-	398	Every state to prepare witness protection

III. The Indian Evidence Act 1872 and Bhartiya Sakshya Adhiniyam (BSA) 2023

Matter	Provision under IEA 1872	Provision under BSA 2023	Comments
(1) Definition of document	3 para 5	2(1) (d)	Now under BSA 2023 the electronic and digital records are included as document including emails, server, logs document on computer laptop, smart phones, messages, websites, location. Voice mails etc.
(2) Definition of Evidence	3 para 6	2(1) (e)	Again, under oral evidence statement given electronically is included, also under document evidence digital records are included
(3) Electronic or digital record	-	61	New addition under BSA 2023 provides that electronic or digital record in evidence cannot be denied and shall have the validity as any other document
(4) Birth during marriage conclusive proof of legitimacy	112	116	The word 'son' in IEA 1872 has been replaced by 'child' hence BSA section 116 has been gender neutral

NEW & OLD LAWS RESPECT TO WOMEN PROTECTION : A CRITICAL VIEW:-

Despite amendments made from time to time under the IPC, CrPC and IEA and having come out with extensive amendment to by way of criminal law Amendment Act 2013 in all the three laws, the government as well as law enforcers have been facing challenges in containing the crime against women continuously. Thus, when the new laws BNS 2023 which replaced IPC 1860, BNSS 2023 which replaced CrPC 1973 and BSA 2023 which replaced IEA 1872 were brought into force last year it was anticipated that they would bring about desired relief in this grave human right violation trends. The changes brought about by the new laws are to an extent laudable.

Under the BNS 2023, the offences against women and children have been consolidated and put under chapter V and thus given desired priority. Also provisions like gang rape being made punishable against any woman below 18 years of age rather than being made punishable differentially for woman below 16 or 12 year making provisions for recording of statement of victim of rape through audio-video means, statement of victim of sexual offences to be recorded by a woman magistrate

and making provision for submitting of medical report of victim of rape to the Investigating officer within 7 days are some of the positive changes brought about by new laws. Besides this allowing the woman victim to give statement and attend from her residing place is also a very protective shield for them. A very significant change brought about under new laws has been accomplished by making many offences gender neutral with respect to both victim and offender, a change in line with the justice Verma Committee report 2013. Further, inclusion of some new offences like sexual intercourse by employing deceitful means or by promising marriage without any intention of fulfilling it punishable will curb a recent spate of several such cases across the country. 'Child' under the new laws has been made to mean any gender below 18 yrs of age. Introduction of 'Zero FIR' whereby any cognizable offence committed can be reported to the nearest police station and that of directing states to make schemes of witness protection would also prove beneficial for woman victim and her supporters and relatives.

With the country moving ahead with various technological advancements, it is necessary for the laws to come in line and become more adoptive to new technology, digitalization in audio and visual fields and thus has quite satisfactorily been accomplished by making electronic and digital records, WhatsApp chats, laptop, messages etc. included within the definition of 'document' and thus admissible as evidence in the court.

It is a very good step that the legislature has taken by bringing about much needed changes in the criminal laws with respect to protection of woman against violence and crimes especially sexual offences. However much has been left out and there are as well contradiction provisions which tend to weaken the impact made by the statutory provision. For instance, the inhuman act of marital rape, which it was anticipated would be strictly dealt with under the new laws, has been retained as such in BNS 2023, except only increasing the age of decriminalizing it from 15 years to 18 years. This gross violation of Article 21 which guarantees the right to life and personal liberty of the Constitution and the privacy of a woman should have been dealt with strictly under the present new laws. Most of the women in our patriarchal society experience marital rape on a regular basis or have at least experienced it on some occasions. Including it as a crime and an offence of rape would have been appreciated at this juncture. Sadly this has been overlooked and a great opportunity provided by replacement of old laws has been lost. It is significant to note that way back in 1993 itself, marital rape was made a crime under sexual offences code in all the 50 States of United State, with no exception or exemptions being provided in at least 20 States in the said matter¹. Several cases of the said matter have been taken to High Court and Supreme Court but none have, except a comment here or there given a specific verdict on it².

Another aspect that seems to be contradictory to the process of curbing crimes against women is the provision of section 173 of BNSS which replaces section 154 of CrPC 1973. Under the new law under section 173(3) it has been provided that on receipt of information relating to the

¹ See article "Marital rape: New Research and direction", by Raquel Kennedy Bergen & Elizabeth barsihill, Feb 2006, published by VAW net: the National Online Resource Center on violence against women, National Resource center on Domestic violence (NRCDV), at vawnet.org/marital/P.2; See article "Marital rape and its impact on the mental health of women in India: A systematic review", by Nandini Agrawal at 21st June 2022, PLOS Glob Public Health Journal 2(6), doi10-1371/journal.pgph.0000601;

² See independent thought V Union of India & another AIR 2017 SC 4904; See state of Maharashtra V Madhukar Narayan Mardikar, AIR 1991 SC 207; Nimesh Bhai Bharat bhai Desai V State of Gujrat at 2018 SCC online Guj 732; RIT Foundation V Union of India, 2022 SC Online Del 1404;

commission of any cognizable offence which is made punishable for 3 or more years to less than 7 years the officer in-charge of the police station may with Prior permission from an officer not below the rank of Deputy Superintendent of Police, considering nature & gravity of offence proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of 14 days. This provision would not only give discretionary powers to the police, but would also prove to be a root for corruption and bribery, as many cases related to violence against women are within the periphery of being punishable with imprisonment of 3 to 7 years. Besides above for example the words ‘insult the modesty of woman’ or ‘outrage the modesty’ used sections 74 or 79 of BNS 2023 are very wide and ambiguous, and can be interpreted depending on individual’s point of view. A clearer and more detailed meaning on explanation is needed in this regard. The offence against women where fine along with imprisonment has been specified, do not clearly state the minimum or maximum amount which the court must impose depending on the severity of crime and even the punishment specified are too broad in range of years and both these aspects give a very wide discretionary powers to the court in sentencing, which could lead to conflicting and inequitable fines and punishment in similar cases.

CONCLUSION:-

There is no doubt that the old criminal laws brought into force during the colonial era needed a overhaul and change depending on the close observation of the Indian society, social environment and the recent spate in crimes. The legislature seems to have accomplished this by way of replacing the IPC, CrPC and IEA and since the new laws BNS, BNSS and BSA respectively have only been brought into force from 1st of July 2024, so only time will tell what positive changes they have brought about, but on the face of it the new laws do not completely do away with the colonial mindset and on the face of it, the draft of the opportunity gained. However as regard protection for women against various offences, the new laws do bring about some new offences into picture and prescribe punishment for them and they do being more harsher punishments for various offences, but history tells us that harsher and severe punishment have failed to prove a deterrent for offenders committing crimes and violence against women, Many of the new technology and digitalization in documentary evidence admissibility could prove to be infringement of the privacy of individual. Court will have to be upgraded too and would need skilled people. The adoptability of all stakeholder and law enforcing agencies to the new laws would take a long time. Various extensive training programmes will need to be organized for the judiciary, law enforcement and stakeholder staff last but not the least, public awareness of new law is also a major issue to be resolved and tackled. However, let’s keep our fingers crossed and pray that the difficult roads would lead to beautiful destinations.