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# **FROM THEORY TO PRACTICE: THE REAL-WORLD IMPACT OF THE BNS, BNSS, AND BSA ON WOMEN'S RIGHTS**

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## **ABSTRACT**

This essay explains what is the real-world impact of our newly introduced criminal law. It explains in detail the changes made in Bharatiya Nagarik Suraksha Sanhita (BNSS), Bharatiya Nyaya Sanhita (BNS), and Bharatiya Sakshya Adhiniyam (BSA) related to women's rights. The essay highlights how many progressive changes have been made on the paper for the protection of women but on ground reality, there is a lack of implementation of these laws. There is a big gap between the legislative intent and the practical implementation. The essay analyses many recent cases of BNS related to women's rights, including the RG Kar rape-murder case and the Badlapur sexual assault incident, which shows how systemic failures in police response and judicial handling continue to undermine women's safety. It also throws a discussion on the controversial stance of BNS on marital rape. The next part of the essay focuses on the reform's positive aspects including gender-neutral language in various sections, improvement of the procedure for recording victim's statements, and the addition of electronic records as evidence. However, with India ranking remaining at ranked 128<sup>th</sup> among 177 countries in the Women, Peace and Security Index and also showing a 12.9% rise in crimes against women between 2018-2022, the effectiveness and implementation of these reforms still remain questionable. The essay argues that meaningful change requires more than legislative reforms - it demands comprehensive systemic changes involving coordinated efforts from law enforcement, judiciary, and society at large.

The laws of the Bharatiya Nagarik Suraksha Sanhita, the Bharatiya Nyaya Sanhita and the Bharatiya Sakshya Adhiniyam sound so promising and progressive on paper but in reality, how many people

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are even aware of them? Our new and reformed criminal manual itself contains words like NYAYA and Suraksha but to which extent this Suraksha and Nyaya is true for the women.

## **I. BHARATIYA NYAYA SANHITA, 2023**

The newly introduced criminal laws promised to address the needs of our ever-evolving and progressive society are said to include increased punishment for offences against women.

Additionally, the law has also raised the age limit of women in certain cases to whom these enhanced protections apply like in sections 63,69,70 and 73 of Bhartiya Nyaya Sanhita.

Now let's take a brief look at all the changes made in the sections mentioned above. Starting with the most debatable section of BNS, Section 63 talks about rape but controversially provides immunity to husbands in cases of marital rape. The changes are made in exception (ii) of this section which enhanced the minimum legal age of the wife from 15 years to 18 years providing legal safeguards in cases of marital rape but what about the married women who are above the age of 18 years which is still a separate topic to debate for.

The latest Survey was conducted by NFH5 on the topic “attitudes towards negotiating safer sexual relations with husband” where a set of questionnaires was given. around 80% of the women and only 66% of the men are of the opinion that a female is justified in saying no to sex to her husband, as the percentage has increased in relation to the NFH4 by 12%, the attitude toward women if she refuses to have sex with her husband is showing some other truths. The percentage of men who do not agree with any of the behaviours such as the right to get angry or defying to give monetary aid to his wife or even use force to have physical relation or can have sex with other women has decreased by 5% since NFH-4 (77%) instead of increasing. As shown by the survey, Punjab is the state where only 21% of the men do not agree with any of the behaviour, likewise in Chandigarh the percentage is 28, Karnataka 45 and Ladakh 46%. This survey clearly indicates the behaviour of the men towards women when it comes to sexual intercourse, larger group of men still believes that they can have sexual intercourse with their wife even if she does not give content for the same.

With the advent of new criminal law, which raised the marital rape immunity threshold from 15 to 18 years, it failed to criminalize non-consensual intercourse for adult married women. Thus, it

is important to mention that till now women's consent is still uncertain and it has not been considered yet. There are plenty of cases where the Court ruled that Marital Rape is an issue which infringes the right of a woman in many aspects, like in Nimesh Bharat Desai versus State of Gujarat<sup>2</sup>, the court stated that concept of 'implied consent' in a marital relationship should be erased. Furthermore, in Anuj Kapur versus UOI<sup>3</sup>, the court noted that the formulation of the law on marital rape should be made by the centre and not by the judiciary as the duty of the court is to interpret the law. But when the centre finally got the opportunity to come up with the law on marital rape, the legislation failed to honour the suggestions introduced by the courts.

Supreme court in recent case, the centre argued that labelling the marital rape as 'rape' is harsh and disproportionate.

Despite several opportunities, the centre failed to fill the affidavit, this silence of the centre-left no choice for the apex court but to hear a bunch of pleas and decide the legality of the immunity granted to husbands from prosecution for nonconsensual intercourse with their wives solely on the legal principles, even if the centre government does not take any stand on this issue. "It's a matter of law. They will have to argue on the point of law if they have chosen not to file an affidavit," said a bench headed by Dhananjaya Y Chandrachud (CJI).

Now moving on to the next section which has been introduced in BNS, Section 69 dealing with physical relation by employing fraudulent means, etc. This section is a step towards a positive change in safeguarding the rights of women. 70 that deals with gang rape has been amended. Section 70 Clause 2 of BNS introduces a new penalty which is the death penalty in cases of gang rape involving a minor girl. The age to which protection is given has also been increased from 16 years to 18 years. Earlier the punishment for gang rape in the case of a minor was life imprisonment, and with a fine but now under the revised law, every offender will be awarded life imprisonment and with fine, or with death.

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2 Nimeshbhai Bharatbhai Desai v. State of Gujarat 2018 SCC OnLine Guj 732, [128] 65.

3 Anuja Kapur v. Union of India Through Secretary, 2019, 2019 SCC OnLine Del 12339.

Proceeding on to the newly added Section 73 of BNS which prohibits publishing or printing the trial court proceedings related to different kinds of sexual offences without the prior permission of the court.<sup>4</sup> The addition of this section is a commendable step towards protecting the privacy of the victims. It also serves as a shield preventing the media from tarnishing their images in society which doesn't take seconds to question the character of a woman. All of these changes have been done on paper but too how far they have been implemented in reality remains a question. In a recent Suo moto plea related to the case of Badlapur school sexual assault, the High Court Bombay remarked orally that the ground reality is that people are not aware about the law. The court noted that "implementation and sensitisation" are lacking.<sup>5</sup>

Only by making a law, one cannot expect it to work. The creation of law is only the half battle in ensuring justice and safety for all. Equally crucial is the implementation of these laws, which often fall short due to systemic issues within our legal system. The police and court which are seen as the guardians of justice, sometimes struggle to fulfil their roles effectively. The police and the courts are crucial parts of our justice system but they have often been seen as lacking while enforcing the laws.

Take, for instance, one of the most recent rape cases which shook the entire nation, THE “RG KAR RAPE MURDER CASE” where the supreme court said “very disturbed” when the status report presented by CBI pointed out how there were serious faults in the way which the Kolkata police have collected evidence from the crime scene. The supreme also as what was the police doing when the hospital was invaded by the mob and the evidence was destroyed. Sadly, this isn't an isolated incident of law enforcement failing to protect women's rights. The recent Badlapur sexual assault case is another troubling example, where the mother of the victim alleged saying she faced excessive delay in getting help from the police and as a result, it led to a public outrage for mishandling such a sensitive situation. More recently, a viral video surfaced featuring a woman

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4 The Bhartiya Nyaya Sanhita, 2023, § 73, No. 46, Acts of Parliament, 2023 (India).

5 Narsi Benwal, *We Always Speak About Victims, Why Not Teach the Boys? Bombay High Court While Hearing*

*Badlapur School Sexual Assault Case*, LIVE LAW.IN (Oct. 15, 2024, 11:42 PM),

<https://www.livelaw.in/topstories/badlapur-school-sexual-assault-bombay-high-court-gender-sensitizing-boysteaching-equality-at-home267804?fromIpLogin=52167.70127853345>.

who claimed that the police tried to sexually assault her when she went to ask for their help. The police in response said that the woman was drunk and was acting in an aggressive manner so they had to arrest her but 3 days after the arrest the high court granted bail to the woman and condemned the lower court and police who jailed her. "On careful examination of the record, it appears that the allegations are very serious in nature... They are anathema to the very concept of a democratic and orderly society," Justice Aditya Kumar Mohapatra said, adding that the "police had failed to follow the procedure laid down in law while arresting her". Justice Mohapatra said that the lawyer of the government has informed him that "drastic action has been taken against the erring police officers... and appropriate action shall be taken against those found guilty". He also said that the magistrate had "failed to apply their judicial mind" in denying the woman bail. <sup>6</sup>

All of these examples highlight the pressing need to reform our legal system. The lack of our police system while handling sensitive matters related to women can be seen often. They are the ones who should guide the people about the law but in many cases, they seem to be the ones not following it properly. They wait for an incident to happen to take any action.

Also, our government in such cases instead of providing more security to the women tries to suppress their movement only. The chief justice D.Y. Chandrachud showed disapproval of the notification of the state which stated that female doctors should avoid from working during night for their safety, Justice Chandrachud observed that the government's response to safety concerns was misguided. Rather than implementing stronger security protocols to protect women, authorities were opting to limit women's movements and opportunities. "How can you say women cannot work at night? Why limit the women doctors? They don't want a concession...women are ready to work at exactly the same time shift," CJI said.<sup>7</sup>

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<sup>6</sup> Geeta Pandey, *India anger over alleged sexual assault on woman inside police station*, BBC (Oct.15, 2024, 11:53 PM), <https://www.bbc.com/news/articles/cx2k96ne33po>.

<sup>7</sup> Live Law News Network, *RG Kar Case | 'You Can't Say Women Doctors Can't Work at Night, Your Duty Is To Provide Security' Supreme Court to West Bengal Govt*, LIVE LAW.IN (Oct. 15, 2024, 11:42).

In a recent ruling, the Bombay High Court showed their distress by the way the Maharashtra police handled the inquiry of rape case of a girl (minor), the private hospital discarded all the evidence related to the abortion. The judges strongly criticized the Maharashtra Police, stating that they often fail to carry out their duties diligently unless there is public outrage and protests over an issue. The court expressed concern that the police seem to require external pressure to perform their responsibilities effectively.

"Every day, we come across at least four cases of serious crimes against women which aren't probed properly... This is pathetic... Don't you have specialised officers or women officers? Why to let only constables and head constables probe the cases. Why isn't the Police sensitive in such cases," the judges observed.

Our government has brought broad changes in BNS including harsher punishments for crimes against women but the number of cases of rape recorded by the National Crime Records Bureau (NCRB) has a different story to tell altogether. According to the data collected by NCRB in 2022, the number of rape cases reported is almost more than 31,000 and the conviction rate is just 27%-28% from 2018 to 2022. In the latest article by Reuters in Rebecca M. John which a senior criminal lawyer, who has advocated for many victims of rape said that many rapists still don't fear when they commit the heinous offence of rape as "One of the factors would be the absence of fear of the law," and also that "There is no consistent application of the law, that's one aspect. There is very poor policing, that's another aspect."<sup>7</sup>

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PM) <https://www.livelaw.in/top-stories/rg-kar-case-you-cant-say-women-doctors-cant-work-at-night-your-duty-is-to-provide-security-supreme-court-to-west-bengal-govt-269777?fromIpLogin=65611.34542766058>.

<sup>7</sup>REUTERS, <https://www.reuters.com/world/india/indias-struggles-with-high-rape-cases-low-conviction-rates-2024-08-15/> (Last visited Oct. 15, 2024).

India is ranked 128<sup>th</sup> out of 177 countries in the “Women, Peace and Security Index of 2023 released by Georgetown Institute for Women, Peace and Security<sup>8</sup>”. According to recent data produced by the National Crime Records Bureau, there is a 12.9 per cent rise in the crime committed against women between 2018 and 2022. All of these cases and data highlight how the situation is worsening day by day. Even though there have been many changes in the law by lawmakers still the offences committed against women are somehow increasing.<sup>9</sup>

So just by making a law, one can expect it to change reality. Changes have to be brought at every level for a law to be impactful, just by merely changing the sections the work is not done. We have to start work from a lower level. Ultimately, achieving a society where women’s rights are fully realized demands a concerted and collaborative effort from the government, law enforcement agencies, the judiciary, and society at large, transcending mere legislative amendments.

## **II. BHARTIYA NAGARIK SURAKSHA SANHITA, 2023.**

The CODE OF CRIMINAL PROCEDURE, 1973, (CrPC) has now been changed to Bhartiya Nagarik Suraksha Sanhita 2023 has introduced some minor changes in how the procedure act used to work. The new criminal law BNSS has more women-friendly provisions that to some extent reduce the discrimination between males and females. Allowing them the power they are entitled to.

Section 66 of BNSS deals with summons to be served to some adult members when the person summoned is not available. Earlier in CrPC there were “some adult male members” but BNSS has removed the term male making it gender neutral.

Section 145 of BNSS has included the residence of parents in the maintenance proceedings. Earlier the place of initiation of a maintenance proceeding was the place where the son was residing. This will have a positive effect on the mother as well as the father enabling them to maintain themselves

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<sup>8</sup> GIWPS, Women Peace and Security Index, (oct,15,2024,10:03 PM), <https://giwps.georgetown.edu/the-index/>.

<sup>9</sup> Mohd. Rehan Ali & Syeda Bintul Huda, The Constitutionality of West Bengal's Anti- Rape Laws, LIVE LAW.IN

(Oct. 15, 2024, 11:42 PM), <https://livelaw-cnlu.refread.com/articles/constitutionality-west-bengals-anti-rapelaws269893?fromIpLogin=8895.520936390478>.



by reducing extra changes which they would have incurred during travelling from one city to another to appear in the court.

The provision for filing zero FIR given under section 173 (1) of BNSS <sup>10</sup> enables the person to lodge the complaint immediately without any distress in finding an appropriate police station, this is also helpful in addressing the crime quickly which is vital for effective investigation. The provision for E-FIR enables the person to file the complaint through digital devices, which is essential in reporting the crime quickly and conveniently. In the case of a female complainant, it is crucial to maintain confidentiality and keep the complainant out of immediate danger or distress.

Section 173(1)(i) and section 173(1)(ii), in both of these sections, it states that when the information received related to cognizable offence shall be reduced to writing by him if taken orally and when taken by digital communication shall be duly record by him. Both of these sub-sections have used the term 'HIM' it is quite confusing that there are many sections in this provision which have been made gender neutral so why there is a specific mention of 'HIM'?

Section 176 – the second proviso of sub-section (1) reads as the 'statement of a rape victim shall be recorded through audio-video electronic which also includes mobile phone means at her residence or any place she chooses'. This provision will help in curbing the manipulation of statements and the investigating officer will also be exempted from the accusation of torturing the victim during investigation.

Moreover, this will also help in accessing some of the important leads which may have been overlooked at the initial stage.

Section 179 of the BNSS is another section which favours' women, it exempts women from going to the police station and the provision also implies that the person(woman) is permitted to attend the police station if they are willing to, and has the privilege to visit police station any place other than their residence. This exemption for females is very useful as still there are many stigmas that exist in society.

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<sup>10</sup> BNSS,2023, § 173 (1).

The next part we'll look at is Section 183(6)(a) Proviso 1 which basically talks about how in certain offences against women the statement provided by the victim should be recorded by a woman magistrate and in her absence by a male magistrate in the presence of women<sup>11</sup>. This a welcoming step forward in how we handle sensitive cases involving crimes against women. It feels like a breath of fresh air. Although this is a very small change such small changes in reality provide great comfort and support to the victims. Imagine a woman who has gone through a traumatizing incident she will definitely feel much at ease sharing her story with other women.

It's heartening to see the law evolving to be more considerate and empathetic towards those it's meant to protect.

The next small but impactful change has been brought in section 184(6) which now mandates the medical practitioner to send the medical report of a rape victim within 7 days to the investigating officer. Previously the section used the term “without delay” which sounds good right but in reality, it is vague as it leaves room for interpretation and delays. In this also the change might be seen as small on the surface that is changing “without delay” to “within 7 days” but it makes a big impact as it doesn't slow down the process of delivering justice which is a major issue of our justice system.

### **III. BHARATIYA SAKSHYA ADHINIYAM, 2023**

One of the most significant changes in Bhartiya Sakshya Adhiniyam is that of the evidence. One of the most prominent updates is the inclusion of Electronic Evidence as admissible in court. Our new evidence act, the BSA now acknowledges electronic records as legitimate documentary evidence. The documentary evidence mentioned in the BSA includes primary and secondary evidence. What's particularly exciting is that the primary evidence now has expanded its scope and accepts digital electronic and records as primary evidence within the category of documentary evidence. This is a very welcoming step as accepting modern forms of evidence shows a willingness to adapt to the realities of our modern, digitally-driven world. Earlier the term evidence only basically talked about oral testimony and others with no explicit mention of electronic records. Finally, we are acknowledging the part played by digital information in our day-to-day lives. This

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<sup>11</sup> BNSS,2023, § 183(6)(a).

can provide a great source of help not only to the women but to all the members of the. It's a win for everyone in society and it makes the law more relevant. In a recent case, The High Court of Punjab and Haryana ruled that courts can examine social media content as evidence when presented by a husband to substantiate claims of his wife's adultery. Furthermore, the court stated that such evidence could be grounds for contesting interim maintenance payments. The court elaborated on this decision, noting, "The current social life is now extensively and even openly, technologically, engaged on the social media platforms/apps videlicet Facebook, Twitter, Instagram, WhatsApp. et al, while the social network footprints (including photographs, textual exchanges) can be well-mapped for evidentiary purposes as also can be taken a judicial notice of."

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Overall, one can say that the recent legal reforms have undoubtedly made significant strides in bolstering women's rights. Most of the changes made in the sections provide a stronger legal shield for safeguarding rights. But one can still make out that the reality on the ground is somewhat very different from what's written on the paper, the woman still faces challenges while asserting their rights.

## CONCLUSION

The changes brought about by the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), and Bharatiya Sakshya Adhiniyam (BSA) represent a forwardlooking transformation in India's legal system regarding women's rights. Strengthened safeguards, inclusive provisions, and the incorporation of digital evidence signify a legislative aim to tackle modern issues. Nonetheless, the disparity between these legal progressions and their actual application remains striking. Despite legal protections, systemic inefficiencies such as societal prejudices, court delays, and police disinterest continue to undermine the efficacy of these laws, leaving women vulnerable. One notable legislative failure is the exclusion of marital rape from criminal

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12 Aiman J. Chishti, *Court Can Assess Materials from Social Media Produced by Husband to Prove Wife's Adultery & Resist Interim Maintenance: Punjab & Haryana HC*, LIVE LAW.IN (Oct. 15, 2024, 11:42 PM), <https://www.livelaw.in/high-court/punjab-and-haryana-high-court/punjab-haryana-high-courthusbandinterim-maintenance-to-wife-adultery-from-social-media-271333?fromIpLogin=53621.783739639126>.

responsibility under Section 63 of the BNS. The law disregards the sovereignty and dignity of adult married women by limiting safeguards to wives under the age of 18, which perpetuates antiquated ideas about marital consent. The need for reform is highlighted by court cases such as *Nimeshbhai Bharatbhai Desai v. State of Gujarat* and *Anuj Kapur v. Union of India*; nonetheless, the legislature's hesitation to act demonstrates a broader indifference to gender justice. Likewise, although aspects such as Section 69 (deceitful sexual intercourse) and Section 73 (privacy of trial proceedings) are praiseworthy, their effectiveness is weakened by inadequate enforcement and low conviction rates, as highlighted by the NCRB's 2022 statistics.

The Badlapur and RG Kar incidents highlight the pressing requirement for institutional responsibility. Law enforcement incompetence, mishandling of evidence, and slow justice undermine public confidence and empower offenders. The Bombay High Court's comment on the absence of awareness and sensitization underscores the gap between law and actual circumstances. Simply implementing strict regulations is inadequate; comprehensive reforms—like compulsory gender-sensitivity training for police, faster trial processes, and strong support systems for victims—are essential to turn legal commitments into real results. Ultimately, the BNS, BNSS, and BSA signify a crucial step, yet their effectiveness depends on comprehensive implementation. Legal reforms should be accompanied by cultural transformations that confront patriarchal standards and emphasize women's empowerment. Without coordinated action from legislators, the judiciary, police, and civil society, these reforms may end up being mere symbolic gestures instead of tools for transformative justice. The way ahead requires not only improved legislation but also a steadfast dedication to their implementation and the principles they aim to support.