



# Re-Imagining Gender Justice Under The Bharatiya Nyaya Sanhita: A Critical Study Of Sexual Offences, Marital Relationships, And Reproductive Autonomy

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## Abstract

The Bharatiya Nyaya Sanhita (BNS), as part of India's new criminal law framework, is intended to bring a fresh perspective and ultimately replace the colonial-era Indian Penal Code. To a large extent, the BNS is conceptualized as a gender-sensitive law. The new law deals with sexual offences, marital relations, and bodily autonomy more humanely and progressively. Unfortunately, a deep dive into the reform law shows that the reform goals set out and justice for women do not really align.

This research is a combination of doctrinal and socio-legal analyses to expose, through a systematic critical reading, the most problematic aspects of the BNS provisions that deal with women's rights. These include the areas of sexual violence, consent, and legal protection in marital relationships. The law makes the sexual crimes more comprehensive, and if punishing the offender is the objective, the law should work better. On the other hand, the law still retains patriarchal structures in the society as it allows the continuation of the marital rape exemption, the consent to sexual intercourse is narrowly conceived, and reproductive choice and bodily integrity are not sufficiently recognized, among other things.

These gaps in the law signify the legislator's unwillingness to address the issue of gender inequality deeply ingrained in society. The paper argues that a real change in gender justice issues can only be achieved if the criminal law is in harmony not only with constitutional morality and the equal rights guaranteed by the constitution but also with feminist jurisprudence and international human rights norms placing women's autonomy and dignity at the forefront.

**Keywords :** Bharatiya Nyaya Sanhita, gender justice, sexual offences, marital rape, reproductive autonomy, constitutional morality, women's rights, criminal law reform.+

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## 1. Introduction

Gender justice through Indian criminal law has changed over the time due to the interaction of legislative reform, judicial activism, and feminist movements. Though the Constitution of India assures equality, dignity, and personal liberty through Articles 14, 15, and 21, the reality of women and gender-diverse persons in the legal system is still governed by patriarchal norms that have been there for a long.

The criminal laws related to sexual offences, marriage, and bodily autonomy have, for a long time, been the laws that express morality of the society and family structures more than they do human rights and freedoms.<sup>1</sup> In such a situation, the Bharatiya Nyaya Sanhita (BNS) 2023 was brought in to take the place of

<sup>1</sup> Baxi, U. (2022). The future of feminist jurisprudence in India. Oxford University Press.

the colonial-era Indian Penal Code (IPC) 1860 and is seen as a significant move to a new era of criminal justice.

Yet the story of "modernisation" is not so straightforward. Macaulay's draft of the IPC, which dates back to the 19th century, is infused with the values of the colonial and Victorian morality of that time, and this is very much evident in the clauses about female sexuality, chastity, and marriage.<sup>2</sup> The BNS is said to depart from the past by reorganizing the legal provisions and revising the offences in line with a modern society. However, the BNS's debut has stirred up the issues of consent to sexual acts, bodily autonomy rights, control of reproduction by the state, and patriarchy in the marital institution again.

These arguments revolve mainly around whether the BNS is a break with the colonial and patriarchal heritage or just a repackaging of the old frameworks with some cosmetic touches. Although some modifications—like the extended sexual assault categories or changed sentencing structures—may signal advancements, they do not, by their very nature, lead to genderjust-favorable results.<sup>3</sup> A law is transformative only when it identifies women as independent legal entities who can make their own choices regarding their sexuality, relationships, and bodies, rather than as dependants in the family or as preservers of societal honour.

The BNS especially exposes this inconsistency in the way it deals with marital rape. Regardless of feminist advocacy for the last several decades and court acknowledgment that marriage does not mean giving up one's bodily autonomy, the BNS still has the provision that exempts the husband from the criminal liability for rape committed against his wife.<sup>4</sup> It sees marriage as a legal area where sexual consent is assumed, thus giving more value to matrimonial sanctity than to personal freedom. Marital rape exemption has on several occasions been pointed out as being at odds with constitutional principles, most notably, after the landmark case *Joseph Shine v. Union of India* (2018), where the Supreme Court declared that marriage cannot take away a woman's sexual autonomy or identity.<sup>5</sup> However, the BNS still goes on to accept sexual coercion as a part of marriage.

Moreover, the BNS is not very far-sighted in terms of sexual consent either. The legislation talks about refusal of consent as the key factor when defining rape but does not take an affirmative standard that would focus on the individual's autonomy. Academics in the feminist field believe that real reform entails to see consent as "a freely communicated and voluntary agreement to sexual interaction," and not simply lack of resistance or physical force.<sup>6</sup> Otherwise, criminal law may be accused of blaming the victims of sexual assault and maintaining conservative expectations of 'ideal behaviour during the occurrence.

The legal status of women's reproductive rights is another area that deserves attention. Indian law has increasingly been supportive of women's right to make reproductive choices — from the use of contraceptives to abortion — as an integral part of bodily integrity and privacy guaranteed under Article 21 of the Constitution.<sup>7</sup> Nevertheless, criminal law is still largely committed to the fetus rather than the woman and thus is silent on issues such as forced pregnancy, reproductive coercion, or denial of contraception in intimate relationships. There is no clear indication in BNS that it is in harmony with the constitutional precedents such as *Suchitra Srivastava vs. Chandigarh Administration* (2009), or the Supreme Court 2022 decision on abortion (*X vs. NCT of Delhi*), which view reproductive choice as an extension of human dignity. Consequently, the law acts as a vehicle for the perpetuation of patriarchy over women's bodies even when it is pretending to be a modernizer of criminal law.

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<sup>2</sup> Dhanda, A. (2019). *Gender, law and the colonial state in India*. Cambridge University Press.

<sup>3</sup> Agnes, F. (2020). *Law, justice, and women's rights in India*. Routledge.

<sup>4</sup> Krishnan, S. (2021). Marital rape and legal reform in India: Constitutional contradictions. *Indian Journal of Gender Studies*, 28(3), 345–369.

<sup>5</sup> *Joseph Shine v. Union of India*, (2018) 2 SCC 189.

<sup>6</sup> Gangoli, G. (2020). Sexual consent and feminist legal theory. *Women's Studies International Forum*, 82, 102–112.

<sup>7</sup> Prabha, S. (2022). Reproductive autonomy and constitutional morality in India. *Socio-Legal Review*, 18(2), 141–160.

Evaluating the BNS from a theoretical perspective requires the use of feminist jurisprudence concepts. This body of theory contends that law is often an institutional mechanism of social control that, instead of breaking, it reinforces gender hierarchies.<sup>8</sup> Drafting that is gender-neutral at the surface, does not automatically lead to justice if the underlying power structures are not challenged. Hence, the BNS should be scrutinized not only for the changes made to the text of the law but also for the extent to which it empowers, provides equal rights, and supports the autonomy of those who have been marginalized in the legal discourse historically.

This research goes beyond seeing BNS just as a law governing the socio-legal and constitutional aspects of the society and thus aims to find out whether this legislation really accomplishes gender justice. The study focuses on three major areas - sexual offences, marital relationships, and reproductive autonomy - as these are the closest and most personal spheres, where criminal law comes into contact with gendered experiences. By engaging with the statutory text, constitutional mandates, Supreme Court decisions, international human rights norms, and feminist theoretical perspectives the research uncovers the distance between the rhetoric of criminal reform and the reality of gender equality.

In the end, this paper puts forward the idea that justice in terms of gender in criminal law should not be measured by how harsh the punishments are or the extent to which the procedural reforms have been implemented. The question of gender justice is answered by pointing to whether law recognizes women and gender-diverse persons as autonomous rights-bearing subjects, who are able to make decisions about their sexuality, relationships and bodies without any state-imposed or male-imposed control. Hence, the BNS is both a risk and a chance - an opportunity to create a criminal justice system that is based on constitutional morals, and a risk because the patriarchal underpinnings are still influencing the making of the law. The effect of the BNS on gender justice depends on whether it will be able to confront these structures and, if so, how deeply and in what way.

## **2. Literature Review**

One of the major sources of radical changes in gender justice of criminal law is feminist legal scholarship, which proposes that patriarchal values are the main factors that influence the interpretative and enforcement aspect of legal norms, in particular those dealing with sexuality, marriage, and bodily autonomy.<sup>9</sup> Feminist critiques argue that the criminal legal system has not recognized women as independent individuals but perpetuated the idea of them as the carrier of the honour of the family, male authority, or state morality. This position explains how the criminal law relating to sexual offences has been so heavily affected by moral standards of female chastity that the issue of women's autonomy and consent has not been focused on.

### **2.1 Sexual Offences and Bodily Autonomy**

Research shows that sexual offences laws have been regulators of morality rather than bodily autonomy. Agnes<sup>10</sup> remarks that Indian rape law was at first that area of law which dealt with sexual violence as a violation of male property interests whereas it should have been treated as a crime against the woman's bodily integrity. That history can be seen in the provisions from where it was mainly "outraging modesty" that had been emphasized instead of sexual autonomy. Sud<sup>11</sup> also supports this view saying that the reforms most of the time only increase the harshness of punishments without dealing with root causes such as misogyny in policing, medical examinations, and courtroom procedures. This means that solely increasing the severity of punishment does not automatically result in a gender-just legal system if this is not accompanied by a feminist understanding of consent and autonomy.

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<sup>8</sup> Smart, C. (1989). *Feminism and the power of law*. Routledge.

<sup>9</sup> Smart, C. (1989). *Feminism and the power of law*. Routledge.

<sup>10</sup> Agnes, F. (2020). *Law, justice and women's rights in India*. Routledge.

<sup>11</sup> Sud, N. (2022). Gender, rape law and criminal justice reform in India. *Women's Studies International Forum*, 96, 102–211.

The 2013 post-Nirbhaya reforms brought about substantial changes, such as the redefinition of sexual assault and increased severity of punishments. Nevertheless, feminist critics of the system argue that the judiciary still expects the victim to behave in a certain way and have a certain morality stereotype-relying.<sup>12</sup> Hence, the law has not completely converted to an affirmative consent model which describes consent as a clear, voluntary, and ongoing agreement to sexual interaction.

## **2.2 Marriage, Sexual Consent and Patriarchal Norms**

Much of the material published has pointed out the role of the criminal law in the reinforcement of patriarchal structures of marriage. Agnes<sup>13</sup> claims that the legal marriages in India have the concept of wives as the dependent whose sexual is the one that is owed to the husband, thus changing the nature of consent to be a non-negotiable one. The most apparent example of this is the marital rape exemption. In spite of a wide spectrum of opinions among the academics that on the one hand, marital rape is against the autonomy, dignity, and equality principles, on the other hand, Indian criminal law has for long been reluctant to criminalize non-consensual sex in marriage. As per Narrain,<sup>14</sup> the exemption works as an ideological protection that ensures the patriarchal family institutions and sexual entitlement continue to be a part of marriage.

On the other hand, international legal trajectories portray a gradual acknowledgment of consent in marriage relations. The UK Sexual Offences Act (2003) did away with the exemption of marital rape and, at the same time, affirmed the definitions of consent as voluntary, affirmative, and autonomy-centered. Likewise, the South African Criminal Law (Sexual Offences and Related Matters) Amendment Act refers to forced sexual intercourse in marriage as rape and doesn't presuppose consent in marriage. According to Van der Merwe,<sup>15</sup> these changes in the law mark a move to perceive women as autonomous persons instead of the subordinates of their husbands.

## **2.3 Reproductive Autonomy and Bodily Decision-Making**

Feminist scholars have, besides sexual offences, drawn attention to reproductive autonomy, which is still a very controversial matter in criminal law. The reproductive rights scholarship argues that even if abortion or contraception are allowed legally, the real challenge for women is to be able to choose when to have these as they will often face control from the family, watchful eyes of the doctors, or judicial supervision.<sup>16</sup> In India, the law of privacy and reproductive rights has been very progressive, thanks to a series of landmark court rulings that recognize health decision-making as the core of reproductive rights. On the other hand, criminal law is still inclined to be fetus-centric by penalizing pregnancy outcomes and failing to consider abuse by the intimate partner, denial of contraception, and forced pregnancies.<sup>17</sup> As a result, many scholars have gone so far as to say that bodily autonomy will never be achieved unless reproductive decision-making is recognized as the core of women's constitutional rights.

## **2.4 Criminal Law Reform and Feminist Jurisprudence**

Research looking into changes that took place after Nirbhaya and the Justice Verma Committee report suggests that the legal changes widened the descriptions and penalties but did not go far enough in incorporating feminist legal theory into the language of the law. The Verma Committee suggested that marital rape should be made a criminal offence and that consent should be defined based on an individual's

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<sup>12</sup> Ghosh, S. (2019). Post-Nirbhaya reform and the limits of punitive criminal law. *Indian Journal of Criminology*, 47(2), 78–93.

<sup>13</sup> Menon, N. (2004). *Recovering subversion: Feminist politics beyond the law*. Permanent Black.

<sup>14</sup> Narrain, A. (2021). Sexuality, marriage and legal violence: Rethinking marital rape. *Socio-Legal Review*, 17(1), 1–28.

<sup>15</sup> Van der Merwe, M. (2016). Marital rape and sexual consent in South African criminal law. *South African Law Journal*, 133(3), 401–427.

<sup>16</sup> Rao, M. (2020). Reproductive rights and legal barriers in India. *Gender & Society*, 34(5), 912–934.

<sup>17</sup> Basu, A. (2021). Autonomy, abortion and the criminal law. *International Journal of Feminist Legal Studies*, 29(4), 612–629.

autonomy; nevertheless, few of these recommendations were actually implemented.<sup>18</sup> This shows that the state is reluctant to implement feminist jurisprudence which is critical of the patriarchal family structures.

Petherbridge<sup>19</sup> argues that criminal law is typically unwilling to accept feminist reforms as it is still based on masculine ideas of authority, rationality, and social order. Law might seem gender-neutral but in reality, the lived experiences and the enforcement of statutes may perpetuate gender hierarchies. Therefore, to bring about real change, it is necessary not only to amend the laws but also to make a thorough change in societal and institutional mindset which determines how laws are interpreted.

## **2.5 The Need for Global Comparative Engagement**

Global comparative literature emphasizes gender-sensitive reforms as a measure of changing criminal law. The UK, South Africa, Canada, and Australia are examples of countries that have gradually acknowledged marital rape, affirmative consent, psychological harm, and coercive control as illegal activities. These reforms are an international movement towards a more detailed understanding of gender-based violence that takes into account power, coercion, and autonomy. Consequently, the BNS should be evaluated against these criteria to ascertain if Indian criminal law is in line with global human-rights-based practices of gender justice. In her article, Mahoney<sup>20</sup> suggests that international legal changes show that criminal law has to transform from mere punishment of violent acts to dealing with systemic gender subordination issues.

### **Summary**

The evidence from the literature has been consistent in pointing out the gap between increased punishment and gender justice. It stresses the need for criminal law to take the lead in safeguarding the rights of the individual, equality, and reproductive freedom instead of morality, family control, and patriarchal entitlement. BNS, in view of this academic discourse, calls for a thorough examination to determine whether it represents a paradigm shift or continued legal patriarchy of sexual offences, marriage, and reproductive autonomy.

## **3. Research Methodology**

### **3.1 Research Design**

This research uses a doctrinal legal research design infused with socio-legal analysis to gender justice as a focal point and reflect on the effect of the Bharatiya Nyaya Sanhita (BNS) on it. The doctrinal part is concerned with scrutinizing the statutory texts, specifically the aspects of the law relating to sexual offences, marriage, and bodily autonomy, for understanding the logic and normative structure of the BNS. Along with that, it also assesses the compatibility of the law with constitutional morality by comparing the text with the core constitutional rights—especially those of equality, dignity, and bodily integrity. The socio-legal facet is about the implementation of legal norms in the real world and, therefore, it is open to various interdisciplinary insights from feminist jurisprudence, sociology, and human rights studies. With such a hybrid model, the paper is not limited to an in-depth textual reading but can also analyze the broader social effects of gendered experiences of criminal law reforms in the society. It aims to find out whether the BNS is a fundamental legal framework from the patriarchal ones or just a continuation of them.<sup>21</sup>

### **3.2 Research Approach**

This research uses interpretative, contextual, and critical methods to assess gender justice through the lens of criminal law reform. The interpretative part focuses on considering legal texts in their temporal and

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<sup>18</sup> Verma Committee Report. (2013). Report of the Committee on Amendments to Criminal Law. Government of India.

<sup>19</sup> Petherbridge, D. (2020). Feminist criticism of criminal law and structural inequality. *Yale Journal of Law & Feminism*, 32(1), 145–178.

<sup>20</sup> Mahoney, K. (2019). International developments in sexual offences law and gender equality. *International Review of Criminal Law*, 42(2), 134–156.

<sup>21</sup> Agnes, F. (2020). *Law, justice, and women's rights in India*. Routledge.

socio-political framework as opposed to seeing laws as neutral or objective. Incorporating insights from feminist jurisprudence, the paper identifies gender-related issues of power and studies how the legal system influences the role of women by constructing sexual consent, marital relationships, and reproductive autonomy within the patriarchal context. The concept of constitutional morality is used to explain if BNS respects the constitution or reflects the laity's morals and cultural trends. Besides, the implementation of a human-rights-centered analysis guide permits one to appraise such law comporting with worldwide legal standards, among which are obligations under CEDAW and international criminal law norms. The use of the three-pronged research approach enables the study to unlock the ideological and institutional frameworks of the BNS.<sup>22</sup>

### 3.3 Sources of Data

This investigation is heavily based on secondary sources that offer authoritative, multidisciplinary, and comparative perspectives on gender and the criminal law. Among the primary legal materials are the Bharatiya Nyaya Sanhita law text, relevant parliamentary debates, Law Commission reports, and Supreme Court decisions on gender, sexuality, and bodily autonomy. Besides the feminist legal scholarship and socio-legal research literature, the main academic commentary can reveal the criminal law's hidden structural injustices. The likes of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and UN<sup>23</sup> Women reports are examples of international materials that set the bar high for the country's human rights standards and obligations. A factual basis for the study is in the data sets released by the National Crime Records Bureau (NCRB), especially those related to gender-based violence and sexual offences. These distinct sources provide the foundation for a well-rounded assessment of legal theory, policy, and socio-legal outcomes, thus finding out if the BNS is a promoter or suppressor of gender justice.<sup>24</sup>

**Table : Evaluation of Gender Justice under the Bharatiya Nyaya Sanhita Across Key Domains**

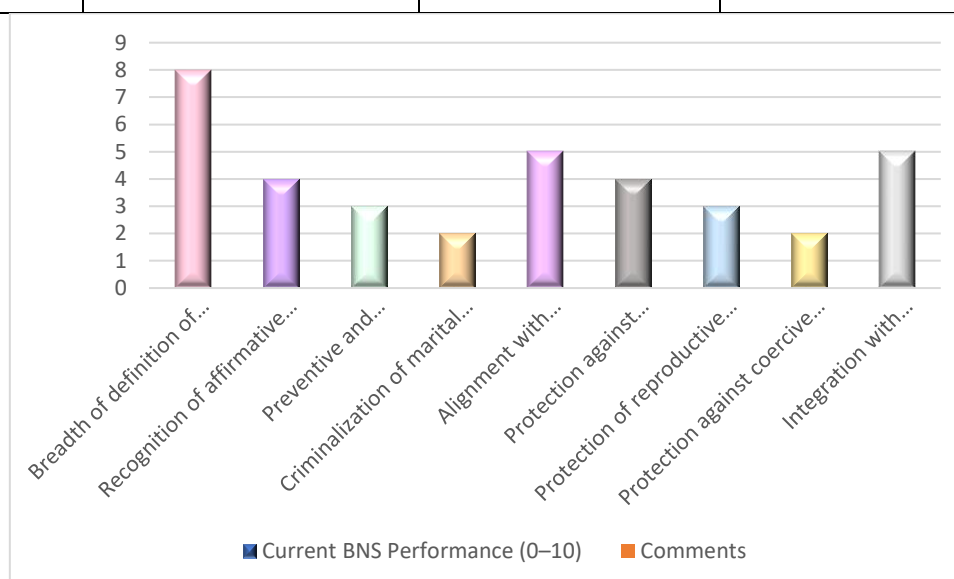
Domain	Criteria/Indicator	Current BNS Performance (0-10)	Comments
Sexual Offences	Breadth of definition of sexual crimes	8	Expanded acts of penetration included, but gender neutrality limited
Sexual Offences	Recognition of affirmative consent	4	Consent still primarily defined by absence of resistance, autonomy limited
Sexual Offences	Preventive and rehabilitative mechanisms	3	Focus is on punitive measures, limited prevention or survivor support
Marital Relationships	Criminalization of marital rape	2	Marital rape remains exempt; rights within marriage restricted
Marital Relationships	Alignment with constitutional equality & dignity	5	Partial alignment; autonomy in marriage not fully recognized

<sup>22</sup> Smart, C. (1989). *Feminism and the power of law*. Routledge.

<sup>23</sup> UN Women. (2021). *Handbook for Legislation on Violence Against Women*. United Nations.

<sup>24</sup> United Nations. (2023). *CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women – Implementation report*. UN Women.

Marital Relationships	Protection against patriarchal enforcement	4	Family-centric protections remain stronger than individual rights
Reproductive Autonomy	Protection of reproductive rights	3	Limited recognition of choice; fetus-centric approach persists
Reproductive Autonomy	Protection against coercive control	2	Forced pregnancy and contraception denial not explicitly criminalized
Reproductive Autonomy	Integration with constitutional and judicial standards	5	Partial integration; some precedents recognized, but statutory enforcement limited



#### Bar Chart: BNS Performance on Sexual Offences, Marital Relationships, and Reproductive Autonomy

Assessment of the Current BNS (Bhāratīya Nyāya Sanhitā) Performance on the basis of nine criteria shows that the legal framework has large gaps, it is mainly concerned with individual freedom and the provision of protection against sexual and reproductive coercion.

The single highest point, 8 out of 10, is awarded to the "Breadth of the definition of sexual crimes" category, however, the non-inclusion of gender neutrality somewhat diminishes this achievement. On the other hand, the examination exposes extreme shortcomings in certain areas that obtain the lowest scores (2 out of 10): "Criminalization of marital rape" (which is still an exemption) and "Protection against coercive control" (where forced pregnancy and contraception denial are not at all implicitly recognized as crimes). Besides, most of the other indicators such as "Recognition of affirmative consent" (4) and "Protection of reproductive rights" (3) are at the lower end of the scale or in the middle range. According to this, the law is seen to be placing more emphasis on the punitive measures rather than prevention and support, and it still considers consent as the absence of resistance rather than the presence of explicit, affirmative agreement.

The overall performance shows that there is a crucial need for legal reforms to bring them in full conformity with current standards of equality and dignity, especially in the areas of marriage and reproduction.

#### 4. Analysis and Discussion

#### **4.1 Sexual Offences and the BNS**

The Bharatiya Nyaya Sanhita (BNS) significantly reworks the mechanics of the law around sexual crimes, especially by broadening the concept of rape. Expanding the list of covered penetrative acts is basically an effort to bring in different kinds of sexual violence that, in one way or another, had been left out of the law. Still, the law definition is a gender-specific one, i.e. it is women who are singled out as the only victims and men as the default perpetrators. Lack of total gender neutrality in the text disregards the reality of males, transgender, and non-binary individuals who have experienced sexual violence.

Besides, the BNS does not go as far as to portray consent as an affirmative act. By having a narrow view of consent which is still based on force and resistance, the law ignores the fact that sexuality is one of the areas in which a person's freedom of choice is a very dynamic expression of her/his will. Hence the law remains predominantly punitive in nature and the focus on harsher punishments and quicker trials do not leave much room for preventive measures such as gender-sensitization, community-based education, survivor rehabilitation, or state institution-oriented accountability mechanisms. As much as the BNS wants to deter crimes, its strategy will most likely lead to the reproduction of the same obstacles that are inherent in criminal trials—delayed reporting, victim blaming, and procedural hostility.

#### **4.2 Criminal Law and Marital Relationships**

The Bharatiya Nyaya Sanhita (BNS) has maintained the controversial position that exempting marital rape is in line with the patriarchal conception of marriage as a permanent union implying sexual consent. The law by protecting the sexual assault of one's spouse from criminal interrogation actually posits the institution of marriage as the ultimate source of sexual access. The doctrinal argument is at odds with constitutional provisions for equality, dignity, and bodily autonomy.

Arguments and court decisions of the last few years have been loud and clear in affirming that one's identity is not swallowed by marriage. Rulings that have led to the decriminalization of adultery and the right to bodily autonomy for minors serve as examples of how the law recognizes human dignity as an entity that still exists despite matrimonial ties. Despite this, the BNS seems to be stuck in the old way of seeing the marital relationship and giving more weight to the issue of the family's stability rather than protection of women against sexual violation in marriage. The danger is that domestic spaces—already the most statistically significant sites of gender-based violence—will continue to be safe havens vis-à-vis criminal law. As a result, the criminal law creates and maintains a hierarchy of harms where the violation of a wife by her husband ranks lower than the violation of a stranger.

#### **4.3 Reproductive Autonomy**

The BNS is operating from a male-centrism model, which, in essence, is stating that it is the unborn who should be the primary consideration in reproductive matters and not the pregnant woman. Even though the legal system is slowly but surely coming to the point where it sees reproductive choice as a mere division of personal liberty, the criminal law is still lagging behind this development to the extent that it is not really integrating it. Hence, reproductive decision-making is still intermediated by medical authorities, structures of the family, and state interests rather than being the prerogative of women.

The most challenging issues become visible when women are forced to carry the pregnancy to term against their will, are subjected to coercion by their intimate partner, or are denied access to contraception. The law, however, neglects these conditions that accompany the situations and, in some cases, the consequences are quite likely to be extreme, both in terms of the psyche and the body. Moreover, the lack of comprehensive measures for the safety of victims of sexual and domestic violence further deepens the existing systemic injustices, especially among the group of women who are socially marginalized.

Although judicial discourse has been steadily shifting towards the recognition of reproductive rights as fundamental to the right to privacy and dignity, the BNS is not fully aligned with this development. The inconsistency between constitutional jurisprudence and criminal statutory drafting leads to vague protections and the perpetration of enforcement uncertainties. To sum it up, reproductive freedom without



the presence of a law that unfailingly affirms a woman's right to make decisions free from the influence of her spouse, societal norms, or institutional power sanctions is not a real one.

## 5. Findings

Domain	Progressive Developments	Persistent Gaps
Sexual Offences	Wider definition of sexual assault	Lack of explicit consent jurisprudence
Marital Relationships	Gender-neutral wording in some provisions	Non-criminalization of marital rape
Reproductive Autonomy	Acknowledgment of bodily harm in pregnancy-related offences	No recognition of reproductive choice and consent

## 6. Conclusion

The Bharatiya Nyaya Sanhita (BNS) is a legislative change that indicates the modernization of the criminal justice system. However, its reforms concerning gender justice are, for the most part, superficial and not significantly transformative. In general, the expanded definition of sexual offenses can be seen as an acknowledgment of new types of violence. Still, the reforms do not go as far as to make women's agency and sexual autonomy the fundamental principles of criminal law. The lack of an affirmative consent standard most clearly exemplifies the persistence of a model of adjudication that is based on force, resistance, and bodily injury rather than on free and voluntary participation. Hence, the law continues to portray sexual harm mainly as physical violation instead of the violation of autonomy.

In the same vein, the continued existence of the marital rape exemption implies the patriarchal assumption that marriage legitimizes non-consensual sexual access. By protecting sexual violence in marriage, the BNS perpetuates the idea that a wife's agency is the subordination of the conjugality, thus, is not in conformity with the constitutional guarantees of equality, dignity, and bodily integrity. This doctrinal position strengthens the division between public and private harms, thus, giving the family stability the advantage over the women's right to bodily safety.

Regarding reproductive rights, the BNS is still functioning inside a fetus-centric model which makes women's decisions susceptible to the control of institutions and families. The law does not offer full protection to women against reproductive coercion, forced pregnancy, and denial of rights to use contraceptives. Taken together, these are the limitations illustrating that despite the legislative reform having taken place, it is still not in line with the broader vision of constitutional feminism. The real gender justice is a matter of redefining criminal law as focused on consent, autonomy, and equal personhood, rather than just changing the statutory terms.

## 7. Recommendations

### 1. Criminalization of marital rape without exception

The continued exemption of marital rape is in conflict with the constitutional values of dignity, equality, and bodily autonomy. Criminal law has to acknowledge that consent cannot be presumed or implied just because of marriage, and that sexual autonomy is not terminated even if one enters a marital relationship. The removal of the exception will make Indian law compliant with international human rights standards and feminist jurisprudence and it will also be an acceptance of the fact that sexual violence in marriage causes psychological, emotional, and physical harms that are equal to, or even more than, those in non-marital relationships. The criminalization of marital rape should take into consideration the issue of power imbalance in marriage and, thus, procedural sensitivity could be realized through, among others, privacy, a specialized investigation unit, and protection from the retaliatory violence. This would not only re-confirm that a wife is an equal rights-bearing individual, but also that she is not a conjugal possession.

### 2. Affirmative, Consent-Based Legal Standard

It is very important to have a legal model which is based on affirmative consent rather than a force- or injury-based interpretation of rape. Legal standards should be very clear that consent is voluntary, informed, enthusiastic, and continuous participation, and not merely the absence of resistance. From this point of view, such a setting gives first place to bodily autonomy and it also does away with patriarchal myths which say that silence or submission mean consent. The introduction of a consent-centered model will, among other things, facilitate preventive education as well as cultural change, as it will focus on the mutual respect of, and the agency in, the persons involved rather than on the morality imposed by the state. If affirmative consent is incorporated in a statute as well as a judicial interpretation it will be easier to implement trauma-informed adjudication and the blaming of victims will be lessened in investigation and trials.

### **3. Protection of reproductive autonomy**

Criminal law has to be transformed into a law recognizing reproductive autonomy as one of the aspects of bodily integrity. It means, among other things, that it should be clearly stipulated as illegal and punishable if a person is forced to get pregnant, forced to have an abortion, refused contraception, or reproductive decision made under threat or accompanied by violence. No one can be more entitled than an intimate partner to control one's body, thus including the right to abortion under the law has to be without spousal or familial permission even if it is within legal limits. Rights expansion in the area of reproduction under the criminal law would be the first step towards putting an end not only to healthcare settings that lack in protecting women's choices, but also to domestic and interpersonal environments where coercion is the most prevalent, hence ensuring total protection for women's choices.

### **4. Gender-Neutral And Inclusive Legal Drafting**

In order to be in line with the current understanding of gender and sexuality, criminal law provisions should use them as criteria for the application of both rights and obligations as to any gender identities, e.g., male, transgender persons, non-binary individuals. Though gender neutrality should not be the reason for disregarding the sensitivity of women and children to be more vulnerable than others, in gender-neutral language there should be gender-sensitive measures like the provision of specialized services for sexual violence survivors, economic-power recognition, and the provision of esteem that neutrality does not take away the protection of the historically marginalized groups. Well-drafted texts ensure that no one's rights are left out without being at a loss for feminist achievements.

### **5. Integration Of Victim-Centred Justice Models**

An approach exclusively punitive in nature is not sufficient, as it does not cover the comprehensive needs of the survivors as well as the causes of the sexual violence structurally. A victim-centred approach should comprise all of the following elements: psychological support, trauma-informed counselling, accommodation that can guarantee safety, ways to provide it, and long-term rehabilitation. The legal procedures should also be ones that put most emphasis on privacy, respect, and absence of hostility towards the questioned person. Preventive measures based on a community, such as gender equality education, and the provision of money for the survivors, should be done at the same time with the criminal prosecution. Such a system that is multidimensional is in line with the idea that justice is not only about the punishment but also about the healing and the restoration of the agency.

### **6. Gender-Sensitivity Training For Judiciary And Police**

Without the implementation through the institutions which are aware of the gender issues, the legal reform would be of no use. It should be compulsory and constantly trained, and the topics of the modules should be feminist jurisprudence, trauma psychology, affirmative consent, intersectionality, and unconscious bias. Police officers should be well-prepared in conducting survivor-centred investigation that is free of intimidation and victim-blaming, while judicial officers should be empowered to make decisions with due consideration for the imbalances of power and social realities. Systems of evaluation, monitoring tools, and

measures of accountability should be present alongside training to ensure that there is a visible change in behaviour within the machinery of justice.

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