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BEYOND CRIMINALISATION: MAPPING LEGISLATIVE AND INSTITUTIONAL GAPS IN INDIA'S RAPE LAWS AND EVALUATING REMEDIAL MECHANISMS

Ilma Meraj Kidwai¹ & Dr. Srijan Mishra²

I. ABSTRACT

Rape law in India stands at a critical crossroads: despite successive legislative reforms and enhanced penal consequences, the everyday experience of survivors continues to be shaped by delayed trials, modest conviction outcomes, and persistent institutional deficits in investigation, prosecution, and adjudication. This paper undertakes a doctrinal and socio-legal analysis of the evolving statutory architecture governing rape and allied sexual offences, with particular emphasis on the transition to the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhiniyam, 2023 (BSA). It maps how BNS consolidates and prioritises offences against women and children, including rape and aggravated variants, while retaining key contestations such as the marital rape exception for adult wives. The paper further evaluates BNSS-led procedural changes concerning investigation management, timelines, and victim participation, and examines how BSA's reworked evidentiary regime, including rules around testimony, presumptions, and electronic records, may recalibrate proof and trial strategy in sexual offence litigation. Beyond the core codes, the research situates rape adjudication within a broader ecosystem of special statutes and remedial schemes, including POCSO (as amended), the Protection of Women from Domestic Violence Act, 2005, and the Information Technology Act, 2000 read with the Intermediary Guidelines Rules, 2021, which collectively address child sexual abuse, intimate-partner sexual abuse, and technology-facilitated sexual violence. It also assesses the operational efficacy of victim compensation frameworks carried forward under BNSS and protective measures such as the Witness Protection Scheme, 2018,

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highlighting fragmentation, uneven capacity, and weak coordination as recurring barriers to meaningful redress. The paper concludes that India requires a second-generation reform agenda focused on institutional accountability, trauma-informed procedures, and enforceable survivor-centric remedies, so that the promise of the new criminal justice codes translates into timely, dignified, and effective justice in practice.

II. KEYWORDS

Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), Bharatiya Sakshya Adhinyam, 2023 (BSA), survivor-centric remedial mechanisms.

III. INTRODUCTION

A. Background of Research

Rape law in India now stands at a difficult crossroads. The legal framework appears stronger on paper after successive reforms, yet official crime data still show thousands of registered rape cases every year and a significant burden of crimes against women.³ Conviction rates remain modest and many trials take years to finish. These patterns suggest that criminalisation by itself does not secure safety or justice for survivors. They also reveal deeper institutional and procedural gaps in policing, prosecution practice and trial management that continue to blunt the promise of rape laws.

Public outrage after the 2012 Delhi gang rape, followed by the detailed work of the Justice J. S. Verma Committee, forced the State to rethink rape laws in a more structural way.⁴ The Committee put consent and bodily autonomy at the centre of sexual offence law, and it demanded accountability for failures of police, medical professionals and other public authorities. It also criticised routine practices such as invasive medical examination, insensitive interrogation and reliance on stereotypes during trial. Parliament then

³ Nat'l Crime Records Bureau, Crime in India 2023 (Ministry of Home Affs. 2025), <https://ncrb.gov.in/en/crime-india> (last visited Feb. 13, 2026).

⁴ Justice J.S. Verma, Leila Seth & Gopal Subramaniam, Report of the Committee on Amendments to Criminal Law (Gov't of India 2013), <https://mib.gov.in/sites/default/files/JusticeVermaCommitteeReport.pdf> (last visited Feb. 13, 2026).

enacted the Criminal Law (Amendment) Act 2013 and later the Criminal Law (Amendment) Acts of 2018 and 2019. These amendments broadened the range of sexual offences, raised minimum sentences and introduced some victim-oriented procedures. However, many systemic recommendations, including serious police reform and robust, well funded victim support systems, still remain only partly implemented in practice.

A second major shift now arises from the Bharatiya Nyaya Sanhita 2023, the Bharatiya Nagarik Suraksha Sanhita 2023 and the Bharatiya Sakshya Adhiniyam 2023, which together replace the old penal, procedural and evidence codes.⁵ BNS clusters offences against women and children and rearranges the law of rape and allied sexual offences in a more consolidated manner. BNSS seeks to modernise investigation, timelines and victim participation. BSA reworks rules on testimony, presumptions and electronic records, which directly affect proof in rape cases. The State presents these codes as victim-centric and technology driven, but their rapid rollout creates new challenges. Courts must decide how far older precedents under the Indian Penal Code and the Code of Criminal Procedure continue to apply. Police and prosecutors must learn fresh procedures. Survivors and their counsel need to navigate transitional provisions that may impact pending and future rape prosecutions.

B. Research Questions

1. To what extent do the Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023 address the substantive, procedural, and evidentiary limitations that existed in India's earlier rape law framework?
2. What are the major legislative and institutional gaps that continue to hinder effective investigation, prosecution, and adjudication of rape cases in India despite successive criminal law amendments?

⁵ Ministry of Home Affs., *New Criminal Laws* (2024), <https://www.mha.gov.in/en/new-criminal-laws> (last visited Feb. 13, 2026).

3. How effective are the existing remedial and survivor-protection mechanisms, including victim compensation schemes, witness protection measures, and special statutes such as POCSO, in ensuring access to justice and rehabilitation for survivors of sexual violence?
4. What structural and policy reforms are necessary to transition India's rape law regime from a predominantly punitive model toward a comprehensive, survivor-centric and accountability-based justice framework?

C. Research Objectives

1. To examine and critically evaluate the contemporary statutory framework governing rape and allied sexual offences in India, with specific emphasis on the substantive changes introduced under the Bharatiya Nyaya Sanhita, 2023, and the continuing influence of prior criminal law amendments.
2. To analyse procedural and institutional dimensions of rape adjudication by assessing the Bharatiya Nagarik Suraksha Sanhita, 2023, including investigation management, procedural safeguards, victim participation, and the systemic factors contributing to delay and attrition in rape trials.
3. To assess the evidentiary framework applicable to rape prosecutions under the Bharatiya Sakshya Adhiniyam, 2023, focusing on testimonial standards, admissibility of electronic evidence, and evidentiary rules relevant to sexual history, consent, and credibility determination.
4. To identify and map legislative and institutional gaps that persist in India's rape law regime, including issues of gendered framing, the marital rape exception, and uneven protection for gender-diverse survivors, and to evaluate their impact on access to justice.

D. Research Methodology

This study employs a doctrinal research methodology, grounded in systematic analysis, interpretation, and critical evaluation of the governing legal framework on rape and

allied sexual offences in India. The inquiry is anchored in primary sources, namely the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, the Bharatiya Sakshya Adhiniyam, 2023, and relevant special statutes and amendment enactments, read together with allied rules and notified schemes where applicable. Judicial materials, including binding decisions of the Supreme Court of India and persuasive High Court precedents, are analysed to distil operative principles on consent, credibility assessment, admissibility of evidence (including electronic records), survivor protections, and remedial directions.

IV. CONCEPTUAL, CONSTITUTIONAL AND INTERNATIONAL FRAMEWORK

A. Conceptualising “Rape” and Sexual Violence: Gendered and Intersectional Dimensions

Rape in contemporary Indian criminal law no longer appears only as a question of physical penetration or loss of “chastity”. It is now framed as a grave violation of bodily integrity, decisional autonomy and sexual self-determination.⁶ Section 63 of the Bharatiya Nyaya Sanhita 2023 embeds this shift when it focuses on sexual acts without consent and on a range of coercive circumstances such as fear, deception and abuse of authority. The move from a morality centred view to an autonomy centred view follows global feminist thought and also resonates with the understanding of gender-based violence in international human rights law.⁷ In this sense rape law attempts to speak about power, not only about individual injury.

Sexual violence in india still remains deeply gendered because it grows out of unequal social structures and not just isolated acts. Empirical work and doctrinal analysis show

⁶ Kiran Bhogal & Sandeep Kaur, Dynamics of Rape Laws in India in the Context of Bharatiya Nyaya Sanhita, 2023, 5 Int’l J. Civ. L. & Legal Rsch. 137 (2025), <https://www.civillawjournal.com/article/156/5-2-23-937.pdf> (last visited Feb. 13, 2026).

⁷ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, U.N. Doc. CEDAW/C/GC/35 (2017), <https://atlas-of-torture.org/entity/ax9w47qylqe/file/1543234998465bo0n01cjui.pdf> (last visited Feb. 13, 2026).

that women and girls bear the major brunt of rape and other forms of sexual abuse, both within intimate relationships and in public spaces.⁸ Patriarchal norms cast women as sexual property and as bearers of family or community honour, so offenders often use rape to punish, shame or discipline them. At the same time, law and policy have begun to recognise that some boys, men and gender diverse persons also face sexual assault. The Protection of Children from Sexual Offences Act adopts a largely gender-neutral design for child victims, while the BNS provisions on rape still name the victim as a “woman”, which leaves gaps for adult male and trans survivors. This tension shows how rape law sits inside a wider debate on gender identity and recognition.

Intersectionality helps to explain why sexual violence harms some women much more intensely than others. Kimberlé Crenshaw used the term to describe how race, gender and class combine to produce distinct forms of oppression. Indian scholarship and advocacy have since adapted this lens to caste, tribe, religion, disability, sexuality and location.⁹ Studies on Dalit and Adivasi women reveal that perpetrators often select them because of both gender and caste status, and they use rape as a tool of social domination in rural and peri-urban settings.¹⁰ Research on women with disabilities shows how dependence on caregivers and institutions, or inaccessible police and court processes, increases exposure to abuse and reduces chances of remedy. These accounts push rape law beyond a simple “man versus woman” binary and demand that legislative design, procedure and remedies respond to layered vulnerabilities.

⁸ Jaya George, *Intersectionality at the Heart of Oppression and Violence Against Women*, 1 J. Moral Theology 1 (2023), <https://jmt.scholasticahq.com/article/75196-intersectionality-at-the-heart-of-oppression-and-violence-against-women.pdf> (last visited Feb. 13, 2026).

⁹ Centre for Law & Policy Research, *Intersectionality: A Report on Discrimination Based on Caste with the Intersections of Sex, Gender Identity and Disability in Karnataka, Andhra Pradesh, Tamil Nadu and Kerala* (2019), <https://clpr.org.in/wp-content/uploads/2019/08/Intersectionality-A-Report-on-Discrimination-based-on-Caste-with-the-intersections-of-Sex-Gender-Identity-and-Disability-in-Karnataka-Andhra-Pradesh-Tamil-Nadu-and-Kerala.pdf> (last visited Feb. 13, 2026).

¹⁰ Bhavna Sharma, *Casteing Gender: Intersectional Oppression of Dalit Women*, 22 J. Int’l Women’s Stud. 35 (2021), <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=2670&context=jjws> (last visited Feb. 13, 2026).

B. Constitutional Guarantees and Substantive Due Process

Equality and dignity provisions in the Constitution give the basic normative frame for rape law in India. Articles 14 and 15 prohibit State action that is arbitrary or discriminatory, and they permit special measures in favour of women and children under Article 15(3).¹¹ Article 21 protects life and personal liberty and, through judicial expansion, now covers bodily integrity, privacy and the right to live with dignity.¹² In *Bodhisattwa Gautam v. Subhra Chakraborty*, the Supreme Court described rape as a violation of basic human rights and recognised that it strikes at the core of Article 21 protections.¹³ This constitutional matrix requires that the criminal law of rape, including its new codification in the Bharatiya Nyaya Sanhita, must not only punish offenders but also respect the survivor's autonomy, security and equal citizenship.

Substantive due process under Article 21 emerged when the Court moved away from the narrow reading in *A.K. Gopalan v. State of Madras* and adopted a rights-expansive approach in *Maneka Gandhi v. Union of India*.¹⁴ The Court held that any "procedure established by law" must be just, fair and reasonable, and cannot be arbitrary, fanciful or oppressive.¹⁵ Later decisions such as *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* deepened this understanding and tied personal liberty to minimum conditions of human dignity.¹⁶ Scholarship on Article 21 now treats substantive due process as a check on both legislative design and executive action, insisting that criminal statutes and investigative practices must satisfy standards of reasonableness, non-arbitrariness and proportionality.¹⁷ In the context of rape, this means that definitional choices, evidentiary presumptions under the Bharatiya Sakshya Adhiniyam and

¹¹ INDIA CONST. arts. 14-15.

¹² INDIA CONST. art. 21.

¹³ *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490.

¹⁴ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

¹⁵ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

¹⁶ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

¹⁷ Nidhi Gandhi, *Expanding and Evolving the Ambit of Article 21 of the Constitution of India with the Developing Scenario*, 2 *Indian J. Integrated Rsch. L.* 1 (2021), <https://ijirl.com/wp-content/uploads/2022/07/EXPANDING-AND-EVOLVING-THE-AMBIT-OF-ARTICLE-21-OF-THE-CONSTITUTION-OF-INDIA-WITH-THE-DEVELOPING-SCENARIO.pdf> (last visited Feb. 13, 2026).

investigative timelines in the Bharatiya Nagarik Suraksha Sanhita must align with these constitutional demands.

Constitutional guarantees have also shaped specific doctrines around rape procedure and survivor protection. In *Delhi Domestic Working Women's Forum v. Union of India*, the Supreme Court held that the State must provide legal aid, counselling and compensation to rape survivors and framed guidelines to ensure dignified treatment during investigation and trial.¹⁸ In *Nipun Saxena v. Union of India*, the Court read the right to privacy into rape proceedings and strictly prohibited any disclosure of the survivor's identity, linking anonymity to Article 21 and to her dignity and safety.¹⁹ In *Lillu v. State of Haryana*, the Court rejected the "two-finger test" as unscientific and degrading, and found that such practices violate the survivor's privacy and bodily integrity.²⁰ More recently, in *Aparna Bhat v. State of Madhya Pradesh*, the Court invalidated stereotypical bail conditions in sexual offence cases, such as directing the accused to tie a rakhi, and held that such orders trivialise sexual violence and are inconsistent with constitutional values of equality and dignity.²¹ These decisions use substantive due process not only to protect the accused from unfair procedures, but also to shield survivors from secondary victimisation by State institutions.

C. International Human Rights Framework on Sexual Violence

International human rights law treats rape and sexual violence not only as offences in domestic penal codes, but as violations of a cluster of fundamental rights. Core treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights protect bodily integrity, security of person, health and equality, and these guarantees frame sexual violence as an issue of

¹⁸ *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14.

¹⁹ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

²⁰ *Lillu v. State of Haryana*, (2013) 14 SCC 643.

²¹ *Aparna Bhat v. State of Madhya Pradesh*, (2021) 3 SCC 247.

discrimination and unequal power, not just individual harm.²² The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) goes further and obliges States to eliminate discrimination “in all its forms”, which includes gender-based violence that impairs women’s enjoyment of rights.²³ This language lays the normative foundation for reading rape as a human rights violation that engages State responsibility even when private actors commit the assault.

The CEDAW Committee, through General Recommendation No. 19 on violence against women, first clarified that gender-based violence is a form of discrimination under Article 1 of the Convention.²⁴ It stressed that States must exercise due diligence to prevent, investigate and punish acts of violence against women and to provide compensation and support. This approach moves the focus away from the individual offender alone and scrutinises the conduct of police, prosecutors, courts and welfare agencies as well. General Recommendation No. 35 later updated and deepened this framework. It recognised rape and other sexual offences as forms of gender-based violence that may amount to torture or cruel, inhuman or degrading treatment and explicitly addressed structural inequality, intersecting forms of discrimination and the continuum of violence in both public and private spheres.²⁵ These interpretive texts strongly resonate with debates in india on gaps between criminalisation on paper and the lived experience of survivors before institutions.

The United Nations Declaration on the Elimination of Violence against Women (DEVAW) gives a more detailed and political articulation of these obligations. It defines

²² International Covenant on Civil and Political Rights arts. 2, 3, 7, 9, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights arts. 2-3, 12, Dec. 16, 1966, 993 U.N.T.S. 3.

²³ Convention on the Elimination of All Forms of Discrimination against Women arts. 1-3, Dec. 18, 1979, 1249 U.N.T.S. 13.

²⁴ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence Against Women, ¶¶ 1, 6-7, U.N. Doc. A/47/38 (1992), <https://digitallibrary.un.org/record/169708> (last visited Feb. 13, 2026).

²⁵ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19, ¶¶ 9-16, U.N. Doc. CEDAW/C/GC/35 (2017), <https://digitallibrary.un.org/record/1305057> (last visited Feb. 13, 2026).

violence against women to include physical, sexual and psychological violence in the family, in the community and when perpetrated or condoned by the State.²⁶ It calls on States to develop penal, civil, labour and administrative sanctions, to adopt preventive measures, and to ensure access to mechanisms of redress. Special Rapporteurs on violence against women have built on DEVAW and CEDAW to elaborate what due diligence requires in practice, for example, training of officials, survivor-centred procedures, protection orders and reparation schemes.²⁷ Their reports highlight systemic problems such as victim-blaming, evidentiary stereotypes and institutional indifference. Many of these concerns closely mirror the critiques directed at investigative and trial practices in rape cases under Indian law, even after the Criminal Law (Amendment) Acts and the adoption of the new codes.

V. CONTEMPORARY STATUTORY FRAMEWORK ON RAPE IN INDIA

A. Rape and Sexual Offences under the Bharatiya Nyaya Sanhita, 2023 (BNS)

Chapter V of the Bharatiya Nyaya Sanhita, 2023 places “Offences Against Woman and Child” at the very front of the substantive offence structure and sets out sexual offences from sections 63 to 71.²⁸ This re-organisation signals that crimes like rape, gang rape and abuse of authority now receive textual priority within the new code. The chapter clusters rape, aggravated rape, gang rape, sexual intercourse by persons in positions of power and disclosure of victim identity, and it links these offences to enhanced punishments and repeat-offender provisions. The drafting choice reflects a clear policy message that sexual offences against women and children should form the core of the new penal vision and not appear as scattered provisions.

²⁶ G.A. Res. 48/104, Declaration on the Elimination of Violence Against Women, annex arts. 1-4 (Dec. 20, 1993), <https://digitallibrary.un.org/record/179739> (last visited Feb. 13, 2026).

²⁷ Rashida Manjoo (Special Rapporteur on Violence Against Women, Its Causes and Consequences), Report on the Due Diligence Obligation to Address Violence Against Women, ¶¶ 15-30, U.N. Doc. A/HRC/23/49 (2013), <https://digitallibrary.un.org/record/753183> (last visited Feb. 13, 2026).

²⁸ Press Information Bureau, Govt. of India, Crimes Against Women and Children Given Precedence in Bharatiya Nyaya Sanhita, Press Release (Mar. 11, 2025).

Section 63 defines rape by listing specific acts of penetration by a man against a woman, into the vagina, mouth, urethra or anus, or by making her do so with him or another, together with insertion of objects or manipulation of body parts in a sexually invasive way.²⁹ The provision lays out familiar circumstances that vitiate consent, such as fear of death or hurt, intoxication, unsoundness of mind, deception about identity and abuse of authority, and it retains a broad understanding of lack of “free and voluntary” agreement. At the same time it preserves an exception where sexual intercourse or sexual acts by a man with his own wife, not under eighteen years of age, do not amount to rape. The Bharatiya Nyaya Sanhita (Amendment) Bill, 2024 has already drawn attention to this exception and notes the long-standing criticism of the marital immunity, but the core text of section 63 still keeps it in place.³⁰

Section 64 provides the basic punishment framework for rape and prescribes rigorous imprisonment of not less than ten years, extendable to imprisonment for life and fine.³¹ Section 65 then enhances penalties where the victim is under sixteen or under twelve years of age, including the possibility of life imprisonment for the remainder of the natural life or the death penalty. Section 66 adds further enhancement where the rape results in the woman’s death or persistent vegetative state. Section 70 deals with gang rape and aligns punishment with the aggravated model, especially when the victim is below eighteen years. Section 71 prescribes stricter consequences for repeat offenders, including mandatory life sentences or death in certain circumstances. This dense matrix shows a strong retributive and deterrent orientation, which emphasises severity of sentence as the primary legislative response to rape.

Alongside the core definition and punishment of rape, BNS creates allied sexual offences that try to capture abuse in relational and institutional contexts. Section 67 addresses sexual intercourse by a husband with his wife during separation and criminalises non-consensual intercourse in that specific situation. Section 68 covers sexual intercourse by

²⁹ The Bharatiya Nyaya Sanhita, No. 45 of 2023, § 63, INDIA CODE.

³⁰ The Bharatiya Nyaya Sanhita (Amendment) Bill, 2024, Statement of Objects and Reasons.

³¹ The Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 64–66, 70–71, INDIA CODE.

persons in authority, such as public servants, jail or hospital staff and management of shelter homes, when they exploit their official position. Section 69 introduces a new offence of sexual intercourse by employing deceitful means, including false promise of marriage, employment or promotion, or by concealing identity. Section 72 criminalises disclosure of the identity of victims of certain sexual offences. Analytical work on the BNS notes that these additions respond to long-standing judicial and feminist concerns regarding misuse of authority and deception in intimate relationships, but they also raise concerns of over-criminalisation and uneven interpretation across police stations and trial courts.³²

B. Procedural Safeguards and Victim-Centric Provisions under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

BNSS reframes criminal procedure and claims a clear victim-centric approach, which becomes crucial in rape and other sexual offence cases. Section 173 permits information relating to a cognisable offence to be given orally or by electronic communication and requires immediate reduction into writing and signature.³³ The first proviso mandates that information from a woman alleging rape or other specified sexual offences under sections 64 to 71 BNS be recorded by a woman police officer, and if she is mentally or physically disabled, at her residence or a place of choice with interpreter or special educator and videography. This structure tries to reduce first-contact trauma and align procedure with dignity and accessibility.

The codification of zero FIR and e-FIR under section 173 further strengthens early access to process in sexual offence cases. Scholarship on FIR under BNSS notes that information can be given irrespective of territorial jurisdiction, and the receiving police station must

³² The Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 67–69, 72, INDIA CODE; see also PRS Legislative Research, *The Bharatiya Nyaya Sanhita, 2023: Highlights and Issues* (2024), <https://prsindia.org/billtrack/the-bharatiya-nyaya-sanhita-2023> (last visited Feb. 13, 2026).

³³ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 173, 183(6)(a), 193, 230, 360, INDIA CODE.

register and later transfer the case.³⁴ This avoids the common practice of turning away rape complainants on jurisdictional grounds and encourages prompt recording of allegations, which is vital for medical and forensic evidence. The same literature highlights how electronic communication, followed by signature within three days, lowers practical barriers for survivors who may fear entering a police station or face mobility constraints.

BNSS introduces strict timelines for investigation in sexual offences and ties them to obligations towards the victim. Section 193 requires every investigation to conclude without unnecessary delay and mandates that investigations in offences under sections 64 to 71 BNS and specified POCSO provisions be completed within two months from the date of recording information.³⁵ Government explanatory material also emphasises that the investigating officer must inform the progress or result of investigation to the informant or victim within ninety days, by any means including electronic communication.³⁶ Training manuals on “victimology and compensation” under the new laws treat these timelines and progress updates as part of a broader duty of care owed to rape survivors who often remain in the dark during the pre-trial phase.³⁷

Access to case material forms another important safeguard. Section 173(2) ensures a free copy of the recorded information to the informant or victim, while section 230 obliges the Magistrate to supply copies of the police report, statements and documents not only to the accused but also to the victim within a maximum period of fourteen days. Parliamentary responses and Ministry of Home Affairs briefs describe this dual

³⁴ Raminder Singh Romi, Section 173 BNSS and the FIR: An Analytical Study of Legal and Procedural Dimensions, PENACCALAIMS (2025), <https://penacclaims.com/wp-content/uploads/2025/06/Raminder-Singh-Romi.pdf> (last visited Feb. 13, 2026).

³⁵ Section 193 in Bharatiya Nagarik Suraksha Sanhita, 2023, INDIA CODE; see also Section of BNSS 193(3)(i), Bureau of Police Rsch. & Dev. (2025), https://bprd.nic.in/uploads/table_b/Section%20of%20BNSS%20193%283%29%28i%29.pdf (last visited Feb. 13, 2026).

³⁶ Press Info. Bureau, Govt. of India, New Criminal Laws – Accountability of Police (Aug. 6, 2024), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2042126> (last visited Feb. 13, 2026).

³⁷ High Ct. of Orissa, Victimology and Compensation Under New Criminal Laws (2024), <https://cdnbbsr.s3waas.gov.in/s3ec01a0ba2648acd23dc7a5829968ce53/uploads/2024/12/2024122730.pdf> (last visited Feb. 13, 2026).

entitlement as a structural change from the CrPC regime, where the victim's access to documents largely depended on prosecutorial discretion.³⁸ It empowers survivors of rape to follow the case, consult counsel, and challenge delay or dilution, rather than remain passive observers in a State-versus-accused narrative.

C. Special Legislations Intersecting with Rape Law

The Protection of Children from Sexual Offences Act 2012 creates a self-contained code for sexual offences against children that constantly overlaps with BNS rape provisions when the survivor is below eighteen.³⁹ POCSO defines penetrative and aggravated penetrative sexual assault in broad, consent-neutral terms and treats every sexual act with a child as inherently exploitative. It mandates child-friendly procedures for reporting, recording of statements, in-camera trial and protection of identity, and requires designation of special courts with a focus on speed and sensitivity.⁴⁰ Empirical work on POCSO special courts, however, shows heavy backlogs and patchy compliance with child-friendly norms, which weakens the promise of specialised protection and makes the child victim still dependent on the general criminal process.⁴¹ The Supreme Court in *Independent Thought v. Union of India* linked POCSO with the marital rape exception and held that forced intercourse with a wife below eighteen years amounts to rape, thereby using special child-protection law to pierce a long-standing immunity in child marriages.⁴²

The Protection of Women from Domestic Violence Act 2005 sits at the civil-remedial edge of the rape framework. Section 3 explicitly includes sexual abuse within "domestic

³⁸ Ministry of Home Affs., India, New Criminal Laws - Written Reply to Unstarred Question No. 1989, Rajya Sabha (Dec. 17, 2025), <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2025-pdfs/RS17122025/1989.pdf> (last visited Feb. 13, 2026).

³⁹ The Protection of Children from Sexual Offences Act, No. 32 of 2012, INDIA CODE.

⁴⁰ A Decade of Protection of Children from Sexual Offences Act, Jharkhand Judicial Acad. 7-10 (2023), <https://jajharkhand.in/wp-content/uploads/2023/07/POSCO-Book-July-23.pdf> (last visited Feb. 13, 2026).

⁴¹ Lunavath Ramesh, Special Courts and the POCSO Act, 2012: A Study on Structural Compliance, 11 Int'l J. L. 31 (2025), <https://www.lawjournals.org/assets/archives/2025/vol11issue2/11036.pdf> (last visited Feb. 13, 2026).

⁴² *Independent Thought v. Union of India*, (2017) 10 SCC 800.

violence” and covers wives, live-in partners, and other women in domestic relationships.⁴³ The Act allows protection orders, residence orders, monetary relief and compensation through a summary procedure before the Magistrate, even when criminal prosecution for rape under BNS may be socially or practically difficult to pursue.⁴⁴ Commentators describe PWDVA as combining civil and criminal features to provide immediate, low-threshold relief in situations of intimate-partner sexual violence, including marital rape that remains outside the BNS definition for adult wives.⁴⁵ This creates a parallel track, where women may seek safety, housing and compensation despite the limits of the substantive rape provision, though the quality of implementation and awareness is uneven across states.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989 adds a caste-sensitive layer to sexual offences. Section 3(1)(w) and related provisions criminalise acts of sexual harassment and assault against SC or ST women when motivated by their caste identity, and section 3(2)(v) enhances punishment when any offence, including rape, is committed on this ground.⁴⁶ Recent Supreme Court analysis in *Patan Jamal Vali v. State of Andhra Pradesh* stressed that courts must adopt an intersectional approach, recognising how gender, caste and disability combine in cases of sexual violence and how this demands a contextual reading of evidence and of the SC/ST Act.⁴⁷ Training material and case-law compilations on the PoA Act underline that many Dalit

⁴³ The Protection of Women from Domestic Violence Act, No. 43 of 2005, § 3, INDIA CODE.

⁴⁴ Dep’t of Women & Child Dev., Govt. of NCT of Delhi, Protection of Women from Domestic Violence Act 2005: An Overview (2024), <https://wcd.delhi.gov.in/scert/protection-women-domestic-violence-act-2005> (last visited Feb. 13, 2026).

⁴⁵ UN Women, Global Database on Violence Against Women: Protection of Women from Domestic Violence Act, 2005 (India) (2023), <https://data.unwomen.org/global-database-on-violence-against-women/country-profile/India/measures/Protection%20of%20Women%20from%20Domestic%20Violence%20Act> (last visited Feb. 13, 2026).

⁴⁶ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, §§ 3(1)(w), 3(2)(v), INDIA CODE.

⁴⁷ *Patan Jamal Vali v. State of Andhra Pradesh*, AIR 2021 SC 2190.

and Adivasi women still face barriers in registration of cases, fear retaliation, and see low conviction rates despite the aggravated structure of the statute.⁴⁸

Sexual violence at the workplace falls under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, which operates alongside BNS offences and, in grave cases, rape.⁴⁹ The Act requires every employer to establish an Internal Complaints Committee, lay down a complaints mechanism, and ensure time-bound inquiry. In *Aureliano Fernandes v. State of Goa*, the Supreme Court issued detailed directions for effective implementation of the POSH Act and criticised institutional apathy towards complaints of sexual harassment in universities.⁵⁰ These directions emphasise that administrative and disciplinary remedies must work in tandem with criminal law where allegations disclose rape or attempted rape, otherwise survivors may receive only partial redress.

VI. LEGISLATIVE GAPS IN INDIA'S RAPE LAWS UNDER THE NEW CODES

The Bharatiya Nyaya Sanhita, 2023, reorganises sexual offences in Chapter V and formally updates the language of rape, yet it keeps the core structure of rape as an act “by a man” against “a woman” and retains the marital rape exception where spouses are not living separately by decree or otherwise.⁵¹ This placement of rape under “Offences Against Women and Children” and the continued immunity of most husbands from prosecution still treat sexual violence as a status-based wrong, not as a violation of individual sexual autonomy and bodily integrity for all persons. Contemporary doctrinal work on BNS rape provisions flags that the new code largely copies the earlier framework

⁴⁸ Centre for Law & Policy Rsch., Cases and Materials on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (2021), <https://clpr.org.in/wp-content/uploads/2021/07/Cases-Materials-on-SC-ST-Prevention-of-Atrocities-1989.pdf> (last visited Feb. 13, 2026).

⁴⁹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, INDIA CODE.

⁵⁰ *Aureliano Fernandes v. State of Goa*, 2023 SCC OnLine SC 574; see also 2023 LiveLaw (SC) 424 (India), <https://mpsja.mphc.gov.in/Joti/pdf/LU/424-aureliano-fernandes-v-state-of-go-12-may-2023-474853%20%281%29.pdf> (last visited Feb. 13, 2026).

⁵¹ Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 63–70 (India).

while updating terminology, and therefore carries forward the same gendered and marital assumptions that Justice Verma Committee had already found incompatible with equality and dignity.⁵²

The new codes also sit uneasily with the Supreme Court's own equality and identity jurisprudence. In *NALSA v. Union of India* the Court recognised gender identity and sexual autonomy as central to the guarantees under Articles 14, 15 and 21, and required the State to protect transgender persons from violence and exploitation in all institutional settings.⁵³ However, BNS provisions on rape remain strictly binary, while transgender survivors must mostly rely on the Transgender Persons (Protection of Rights) Act, 2019, which prescribes far lower penalties for sexual assault than those applicable when the victim is a cisgender woman. This fragmented approach creates a hierarchy of vulnerability and signals that the law still values some bodies, and some harms, more than others.

The legislative response also leans heavily on increased punishment rather than structural reform. Under the new code, minimum sentences for rape rise to ten years and the death penalty continues for certain aggravated forms, including rape leading to death or a persistent vegetative state.⁵⁴ Scholarly analysis of these provisions points out that penalties have become harsher without any corresponding clarification of sentencing standards, and with very limited guidance on mitigating or aggravating factors beyond the bare text. NCRB data for 2022 still shows rape conviction rates lingering at about 27 per cent, which means that most reported cases do not end in conviction despite successive waves of reform.⁵⁵ The combination of severe mandatory minimums, low

⁵² Sandhya Devi S, A Critical Examination of the Bharatiya Nyaya Sanhita's (BNS) Provisions on Rape: A Gendered Perspective, 12 Int'l J. Creative Res. Thoughts e931 (2024), <https://ijcrt.org/papers/IJCRT2412535.pdf> (last visited Feb. 13, 2026).

⁵³ *NALSA v. Union of India*, (2014) 5 SCC 438 (India).

⁵⁴ Neha Dhillon & Arti Sharma, Dynamics of Rape Laws in India: A Legal Analysis with Special Reference to Bharatiya Nyaya Sanhita, 2023, 5 Int'l J. Civ. L. & Legal Rsch. 156 (2025), <https://www.civillawjournal.com/article/156/5-2-23-937.pdf> (last visited Feb. 13, 2026).

⁵⁵ National Crime Records Bureau, Crime in India 2022, Vol. 1 (Ministry of Home Affairs 2023), <https://ncrb.gov.in/en/crime-india-2022> (last visited Feb. 13, 2026).

conviction rates and weak investigation capacity risks encouraging acquittals and under-reporting, particularly in cases involving intimate partners or known offenders, instead of producing meaningful deterrence.

At the procedural level, the Bharatiya Nagarik Suraksha Sanhita preserves and rearranges several victim-oriented provisions inherited from the CrPC, such as in-camera trials and some participatory rights, but it does not yet embed a clear, codified charter of victim rights in sexual offence cases. Recent work on victim-centric governance in India shows a persistent gap between formal schemes for compensation, participation and protection, and their actual delivery on the ground, largely because there is no unified rights-based statute, no guaranteed psycho-social support services, and only a patchwork Witness Protection Scheme operating through executive and judicial directions.⁵⁶ BNSS continues this piecemeal model; it does not impose strong, enforceable obligations on police, prosecutors and courts to proactively inform, support and protect rape survivors at each stage of the process.

VII. EVALUATING REMEDIAL AND ACCOUNTABILITY MECHANISMS

Remedial mechanisms around rape in India now operate through a layered framework of compensation, support services and institutional duties, and not only through punishment of the offender. Section 357A of the Code of Criminal Procedure, carried forward into the BNSS architecture, mandates every State to frame a Victim Compensation Scheme and to pay compensation in cases of rape and other serious harms, including where the offender is acquitted or not traced.⁵⁷ Empirical analysis of these schemes describes this as a shift from a purely retributive model to one that at least

⁵⁶ Ashi Bansal & Manisha Matolia, *Victim-Centric Governance in the Criminal Justice System: Policy and Practice Analysis with Special Reference to India*, 2 *Advances in Consumer Rsch.* 2128 (2025), <https://acr-journal.com/article/download/pdf/1922/> (last visited Feb. 13, 2026).

⁵⁷ S.V. Kumar, *Victim Compensation Scheme in India*, *IJCRT* 10, 45 (2025), <https://www.ijcrt.org/papers/IJCRT2511249.pdf> (last visited Feb. 13, 2026).

aspires towards restorative and reparative justice, treating victims as rights-bearing participants and not merely witnesses in a State-driven prosecution.

Implementation of victim compensation, however, remains uneven and often fragile. Comparative studies of State schemes show wide variation in notified amounts for rape survivors, from as low as a few tens of thousands to up to ten lakh rupees, with no clear rationale for these differences.⁵⁸ Field-based research notes frequent delays in processing claims, poor coordination between District Legal Services Authorities and trial courts, and a lack of proactive information to survivors about their entitlement.⁵⁹ Scholars evaluating compensation in sexual assault cases argue that, despite some progressive judgments, only a small fraction of eligible survivors actually receive timely and adequate compensation, and that present frameworks rarely cover long-term needs such as housing, education or psychosocial care.⁶⁰ In practice the remedial promise of section 357A often collapses into a one-time *ex gratia* payment rather than a comprehensive package of support.

The new BNSS seeks to insert some accountability through procedural rights for victims, which operate as a softer form of remedy. Provisions on zero FIR, electronic registration and free copies of the recorded information and police report are particularly relevant for rape survivors who may fear approaching the police.⁶¹ Section 193(3)(ii) requires the investigating officer to inform the victim or informant about the progress or result of investigation within ninety days, by any mode including electronic communication.⁶²

⁵⁸ Devika Dube, *Victim Compensation Schemes in India: An Analysis*, 3 *Int'l J. Crim. Just. Sci.* 21 (2018), <https://ijcjs.com/menu-script/index.php/ijcjs/article/download/224/163> (last visited Feb. 13, 2026).

⁵⁹ Pooja Gupta, *Victim Compensation Schemes in India (Gujarat, Delhi, Telangana and Kerala): A Comparative Study*, 17 *Int'l J. Law, Crime & Just.* 35 (2022), <https://www.redalyc.org/journal/3373/337371748002/html/> (last visited Feb. 13, 2026).

⁶⁰ Sukanya Singha & Shakshi Goyal, *Compensation for Sexual Assault Victims: Necessity of a Robust Legal Framework*, 7 *NLUA L. Rev.* 87 (2023), <https://nluassam.ac.in/docs/Journals/NLUALR/Volume-7/Article%204.pdf> (last visited Feb. 13, 2026).

⁶¹ Ministry of Home Affs., India, *Victim-Centric Provisions in the New Criminal Laws* (Press Release, July 30, 2025), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2150269> (last visited Feb. 13, 2026).

⁶² Bureau of Police Rsch. & Dev., *Section of BNSS 193(3)(i)* (2025), https://bprd.nic.in/uploads/table_b/Section%20of%20BNSS%20193%283%29%28i%29.pdf (last visited Feb. 13, 2026).

Commentators on victims' rights under BNSS read these obligations as an attempt to cure the opacity of the old CrPC regime, where survivors were often left in the dark until charge-sheet or trial.⁶³ Yet, training materials issued to police and magistrates candidly admit that compliance will depend on caseload, digital infrastructure and local attitudes, and that without internal monitoring these "rights" may remain largely aspirational.⁶⁴

Witness protection forms another pillar of remedial and accountability design in rape cases, because many survivors face continuing threats. The Witness Protection Scheme, 2018, approved by the Supreme Court in *Mahender Chawla v. Union of India* and directed to be enforced as law under Articles 141 and 142, recognises vulnerable witnesses as rights-holders and creates graded protection measures, from police escorts and in-camera proceedings to relocation and change of identity in extreme cases.⁶⁵

The Scheme envisages a Standing Committee in each district, a threat-assessment report by senior police officers and dedicated funding through State budgets. Ministry and police academy documents stress that rape survivors, child victims under POCSO and witnesses in cases of caste-based sexual violence fall within the high-risk categories.⁶⁶ Evaluations by courts and judicial academies, however, report poor awareness among police, almost no independent budget heads, and very limited use of advanced tools like vulnerable-witness deposition complexes, suggesting that protection remains more on paper than in daily practice.⁶⁷

⁶³ Aakriti Sharma, Rights of Victims Under BNSS, 2023, LAW DRISHTI (Oct. 2, 2024), <https://lawdrishti.com/rights-of-victims-under-bnss-2023/> (last visited Feb. 13, 2026).

⁶⁴ High Ct. of Orissa, An Overview of Rights of Accused and Victims Under New Criminal Laws (2024), <https://cdnbbsr.s3waas.gov.in/s3ec0548042b1dae4950fef2bd2aafa0b9/uploads/2024/05/2024051019.pdf> (last visited Feb. 13, 2026).

⁶⁵ Witness Protection Scheme, 2018, in *State of Gujarat v. Mahender Chawla*, Writ Petition (Crl.) No. 156 of 2016 (India); see also Ministry of Home Affs., Witness Protection Scheme, 2018 (2019), https://www.mha.gov.in/sites/default/files/2022-08/Documents_PoINGuide_finalWPS_08072019%5B1%5D.pdf (last visited Feb. 13, 2026).

⁶⁶ Bureau of Police Rsch. & Dev., Witness Protection Scheme: Basic Philosophy and Operational Guidelines (2024), <https://bprd.nic.in/uploads/pdf/202401290405146446118WitnessProtectionScheme.pdf> (last visited Feb. 13, 2026).

⁶⁷ Nat'l Judicial Acad., Protection of Witness and Victim Compensation (Training Module, 2020), https://nja.gov.in/Concluded_Programmes/2020-21/P-

VIII. COMPARATIVE AND CROSS-JURISDICTIONAL PERSPECTIVES

Many common law and European systems now build rape law around an explicit, autonomy-centred concept of consent and this offers sharp contrast to India's still partial shift. The U.K. Sexual Offences Act 2003 defines rape through intentional penetration without consent and adds a general definition that a person consents only if they agree by choice and have the freedom and capacity to make that choice, coupled with a requirement that the accused's belief in consent be reasonable.⁶⁸

Canadian law similarly defines consent in sexual assault as the voluntary agreement of the complainant to engage in the sexual activity in question and lists specific circumstances where the law deems consent absent, including abuse of authority and inability to say no.⁶⁹ The Council of Europe's Istanbul Convention then pushes State Parties towards consent-based definitions of sexual violence and rape that move away from force or resistance requirements and insist on the absence of freely given agreement as the core element.

South Africa's Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 replaces the common law offence of rape with a statutory, gender-neutral definition that covers any non-consensual sexual penetration, regardless of the sex of the victim or perpetrator. Scholarly analysis of this reform underlines how recognising male and same-sex rape within the main offence, not as peripheral harms, symbolically affirms that all bodies enjoy equal sexual autonomy, even though deep stigma and institutional barriers still suppress reporting. Sweden's 2018 "consent law" goes further and defines

1230_PPTs/1.Protection%20of%20Witness%20and%20Victim%20Compensation.pdf (last visited Feb. 13, 2026).

⁶⁸ Sexual Offences Act 2003, c. 42, §§ 1, 74 (U.K.).

⁶⁹ A Definition of Consent to Sexual Activity, Dep't of Just., Gov't of Can. (July 7, 2021), <https://www.justice.gc.ca/eng/cj-jp/victims-victimes/def.html> (last visited Feb. 13, 2026).

rape on the basis of the absence of voluntary, clear consent, so sexual intercourse without explicit agreement is rape even if there is no violence or threat.⁷⁰

Evaluations by the Swedish National Council for Crime Prevention show that the reform sent a strong normative signal, yet conviction rates have not risen dramatically, which suggests that doctrinal change without corresponding institutional reform can have limited material impact.⁷¹ Comparative scholarship on this European wave of consent-based rape laws notes that such reforms help shift public understanding towards affirmative consent but cannot, by themselves, dismantle evidentiary stereotypes or investigative inertia.⁷²

Comparative work that places Indian rape law alongside these models stresses that India has adopted some aspects of the consent paradigm but still carries a strong legacy of force-centric and morality-laden reasoning. One study contrasts the Indian focus on “submission” under pressure or threat with jurisdictions that insist on positive, communicative agreement and finds that Indian courts often read consent through surrounding factors like character, relationship status or “habituation to sex,” rather than through the survivor’s expressed will.⁷³

Another doctrinal analysis tracks how English and Canadian jurisprudence moved towards a capacity-and-choice model of consent and argues that Indian law remains more tolerant of implied consent narratives and patriarchal assumptions about how a

⁷⁰ Swedish Gender Equal. Agency, Sweden’s Consent Law (2024), <https://swedishgenderequalityagency.se/gender-equality-in-sweden/sweden-s-consent-law/> (last visited Feb. 13, 2026).

⁷¹ Swedish Nat’l Council for Crime Prevention, *The New Consent Law in Practice* (2020), <https://bra.se/english/publications/archive/2020-07-01-the-new-consent-law-in-practice.html> (last visited Feb. 13, 2026).

⁷² Stefano Bergman & Sophia Thunberg, *Rethinking Rape Laws Emphasizes the Central Role of Consent in Shaping Both Legal Frameworks and Public Understanding*, *Int’l J. L. Pol’y & Policing* (2025), <https://lamintang.org/journal/index.php/ijlapp/article/view/822> (last visited Feb. 13, 2026).

⁷³ Swati Yadav, *Thinking Rape Laws: A Comparative Study on Element of “Consent,”* *PENACCALAIMS* (2020), <https://penacclaims.com/wp-content/uploads/2020/06/Swati-Yadav.pdf> (last visited Feb. 13, 2026).

“real” victim behaves, despite formal amendments after 2013.⁷⁴ These comparative insights expose a persistent gap between India’s statutory text, which now uses the language of consent, and its interpretive practices, which still sometimes treat women’s bodies as spaces of negotiation or compromise instead of sites of decisional autonomy.

IX. FINDINGS, REFORM PROPOSALS AND CONCLUSION

The overall picture that emerges from the new codes and special statutes is that rape laws in India have become more elaborate and punitive, but the incidence of sexual violence and conviction rates do not show a corresponding transformation. Official crime statistics still record large numbers of rape cases every year and conviction rates hovering below one-third, which means that most reported cases do not end with a finding of guilt.⁷⁵ Survivors continue to face delays, hostile investigative environments and social stigma. The analysis across BNS, BNSS, BSA and intersecting laws therefore suggests a structural enforcement deficit rather than a mere problem of inadequate criminalisation.

Legislatively, the Bharatiya Nyaya Sanhita consolidates sexual offences but leaves key normative gaps unchanged. The definition of rape remains gender-specific and binary and continues to exclude adult male, non-binary and transgender survivors from the core offence.⁷⁶ The marital rape exception survives for wives above eighteen, despite strong constitutional arguments from equality, dignity and autonomy and despite the Justice Verma Committee’s recommendation for its removal.⁷⁷

Comparative work shows that many jurisdictions, including the U.K., Canada, South Africa and Sweden, have moved to consent-based and largely gender-neutral rape laws

⁷⁴ Nupur Kulshreshtha, A Critical Analysis of the Standard of Consent in Rape Law in India, OÑATI SOCIO-LEGAL SERIES (2023), <https://opo.iisj.net/index.php/osls/article/view/1647/1992> (last visited Feb. 13, 2026).

⁷⁵ National Crime Records Bureau, Crime in India 2022, Vol. 1 (Ministry of Home Affairs 2023), <https://ncrb.gov.in/en/crime-india-2022> (last visited Feb. 13, 2026).

⁷⁶ Neha Dhillon & Arti Sharma, Dynamics of Rape Laws in India: A Legal Analysis with Special Reference to Bharatiya Nyaya Sanhita, 2023, 5 Int’l J. Civ. L. & Legal Rsch. 156 (2025), <https://www.civillawjournal.com/article/156/5-2-23-937.pdf> (last visited Feb. 13, 2026).

⁷⁷ Justice Verma Committee, Report of the Committee on Amendments to Criminal Law (Gov’t of India 2013).

and have removed or sharply limited marital immunity, which makes the Indian stance appear increasingly isolated.⁷⁸ Sentencing provisions under BNS have become harsher, with higher mandatory minimums and retention of the death penalty in aggravated cases, but without clear statutory sentencing guidelines or evidence that severity alone improves reporting or conviction rates.

On the procedural and evidentiary side, BNSS and BSA introduce important victim-centric and survivor-sensitive reforms but still operate in a fragmented way. BNSS codifies features such as zero FIR, electronic registration of information, time-bound investigations and mandatory supply of copies of case papers to victims, which can reduce information asymmetry and procedural opacity for rape survivors.⁷⁹

BSA incorporates a strong bar on using the complainant's sexual history to discredit her and re-articulates presumptions in certain rape prosecutions, anchoring them in a modern evidentiary framework. Yet courts still rely heavily on judge-made standards to curb degrading cross-examination, to reject unscientific "tests" and to control the use of stereotypes about "real" rape victims, and the statute does not expressly codify trauma-informed questioning or bans on invasive medical practices. Academic commentary therefore reads these reforms as necessary but incomplete steps toward a genuinely survivor-oriented trial process.⁸⁰

Remedial and accountability mechanisms under the victim compensation schemes, POCSO framework and the Witness Protection Scheme 2018 indicate a shift in policy imagination from pure retribution toward reparative justice, but practice lags

⁷⁸ Purva Kaushik & Asha Verma, *Analysing the Scope of Gender-Neutral Approach in Indian Rape Laws: Critical Lessons from the UK, South Africa, and European Union (with a Specific Focus on Sweden)*, 17 *KRYTYKA PRAWA* 28 (2025),

https://www.researchgate.net/publication/390681538_Analysing_the_Scope_of_Gender-Neutral_Approach_in_Indian_Rape_Laws (last visited Feb. 13, 2026).

⁷⁹ Nishtha Thakur, *Enhanced Role of the Victim in BNSS from CrPC: The Legislative Changes*, 1 *Int'l J. Legal & Empirical Stud.* 12 (2025), <https://ijles.in/wp-content/uploads/2025/09/2.-Nishtha-Thakur.pdf> (last visited Feb. 13, 2026).

⁸⁰ Sherin N.B. & Akshara B., *Evidence in Sexual Offences under Bharatiya Sakshya Adhiniyam, 2023: A Legal Analysis*, 5 *Int'l J. Crim., Common & Statutory L.* 206 (2025), <https://www.criminallawjournal.org/article/137/5-1-37-303.pdf> (last visited Feb. 13, 2026).

significantly behind the legal architecture. Studies on compensation for sexual assault victims show wide inter-state disparities in compensation amounts, long delays in disbursement and very low levels of awareness among survivors about their entitlements.⁸¹ Evaluations of victim-centric governance reveal that multiple schemes and guidelines have emerged over the last decade, yet India still lacks a single, enforceable victims' rights statute that binds all criminal justice actors and harmonises compensation, participation, information and protection duties.⁸²

Comparative work on consent standards and gender-neutral drafting further underlines that Indian rape laws, even in their updated BNS-BNSS-BSA form, remain only partially aligned with global best practices and with international human rights obligations on due diligence, non-discrimination and autonomy.⁸³ Taken together, the findings point toward the need for a second generation of reforms that move "beyond criminalisation" in a narrow sense and redesign rape law as part of a broader, coordinated regime of survivor-centred protection, gender-just definitions and robust institutional accountability.

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⁸¹ Sukanya Singha & Shakshi Goyal, Compensation for Sexual Assault Victims: Necessity of a Robust Legal Framework, 7 *NLUA L. Rev.* 87 (2023), <https://nluassam.ac.in/docs/Journals/NLUALR/Volume-7/Article%204.pdf> (last visited Feb. 13, 2026).

⁸² Ashi Bansal & Manisha Matolia, Victim-Centric Governance in the Criminal Justice System: Policy and Practice Analysis with Special Reference to India, 2 *Advances in Consumer Rsch.* 2128 (2025), <https://acr-journal.com/article/download/pdf/1922/> (last visited Feb. 13, 2026).

⁸³ Swati Yadav, Thinking Rape Laws: A Comparative Study on Element of "Consent," *PENACCALAIMS* (2020), <https://penacclaims.com/wp-content/uploads/2020/06/Swati-Yadav.pdf> (last visited Feb. 13, 2026).

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