

BNSS and Gender Justice: Special Provisions for Women and Children

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Abstract

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a significant shift in India's criminal law framework, replacing the colonial-era Code of Criminal Procedure, 1973 (CrPC). Envisioned as a step towards a more victim-centric, rights-based, and gender-sensitive criminal justice system, BNSS incorporates several provisions designed to safeguard the rights of women and children, who remain among the most vulnerable groups in society. The enactment of these provisions must be understood against the historical backdrop of gendered crimes in India, where social realities such as dowry harassment, sexual assault, domestic violence, and child exploitation have exposed the limitations of procedural safeguards under previous legislations. Landmark moments, including the Mathura custodial rape case, the Nirbhaya gang rape incident, and subsequent reforms like the Criminal Law (Amendment) Act, 2013, underscore the urgent need for systemic transformation.

This article employs a doctrinal and analytical methodology, critically examining statutory provisions of the BNSS alongside judicial pronouncements, constitutional principles, and policy reports. It interrogates how BNSS provisions concerning arrest, custody, recording of statements, trial procedures, bail conditions, and child protection measures align with the constitutional mandate of Articles 14, 15(3), and 21.

The findings reveal that while BNSS makes progressive strides—including safeguards for women during arrest and trial, recognition of child-friendly procedures, and reinforcement of protections against sexual offences—it also faces implementation challenges, infrastructural gaps, and questions of harmonization with special legislations such as the Protection of Children from Sexual Offences (POCSO) Act and the Juvenile Justice Act.

Keywords

BNS, Children , Women, JJ Act, POCSO Act.

Introduction

One of the most recent and the most significant legislations affecting the criminal justice system in India has been the enactment of the BharatiyaNagarik Suraksha Sanhita, 2023 (BNSS). It replaces one of the statutes of the colonial era, the Code of Criminal Procedure, 1973; though much added, was broadly criticised to be poorly adequate to meet the transformation need of justice in a constitutional democracy[1]. It is within the scope of the above aim of BNSS to reform procedural law, simplify access to justice, and to provide procedures that are more responsive to the needs and rights of citizens, that are particularly exposed to discriminatory procedures and to protections against the abuses of the procedural law.

Objective of study

The objective of this article is to critically analyze BNSS provisions through the lens of gender justice, highlighting both their transformative potential and the need for institutional reforms, capacity-building, and enforcement mechanisms to ensure that the promise of gender justice is realized in practice.

Review of Literature

The operations of gender justice within the new structure are the critical area of concern in this transition that must be addressed very seriously. The criminal law life of women and children in India has been playing a precarious role in history. On the one hand, they are overrepresented as victims of terrible crimes such as sexual assault, and are the witnesses to violence, victims of trafficking, and child abuse. They have lacked effective responses on the other, in failure of measures in inquiries, examination and witness security. The publicity surrounding the Mort rape case in the 1970s in Mathra and Nirbhaya gang rape case in 2012 brought to light what was perceived as disturbing structural vices in the criminal process and created a wave of legal remedies[2]. This highlighted the urgency to have a justice system not only to correct violators and offenders, but also to protect both the dignity and the agency of survivors.

The BNSS attempts to address these problems with clauses that offer procedural safeguards to women and children in matters as reasonable as protections in the event of arrest and imprisonment up to finer points, by recording the statements and trial results. These actions are an indication that there is an intent to slow the transition to a more victim-sensitive model, one whereby the justice system would put into consideration the vulnerabilities of the people to which it seeks to offer protection, though of the execution of the law by the police, prosecutors and even the judges themselves[3].

This paper targets a critical overview of the provisions stipulated within the bulletin on gender elements about the BNSS using the constitutional vow of inclusion and self-respect. It will trace the historical progress of gender justice in the Indian criminal law, study the new protectors that have been proposed under the BNSS and comment on how the new protectors can help in rectifying historical gaps. By so doing it shall also attempt to make contributions to debate whether the BNSS represents the event of radical innovation or representative resurgence of formalistic legal change(s).[4]

Main Text

Evolution of Gender Justice in Indian Criminal Law

The Indian criminal law can be traced to the colonial era during which the Indian Penal Code, 1860 A most recent and one of the most significant legislation in a criminal justice system in India in recent years is the introduction of the BharatiyaNagarik Suraksha Sanhita, 2023 (BNSS). It replaces a colonial-era Act, the Code of Criminal Procedure, 1973, long since ensured and which was prone to many amendments, however, but being susceptible to reform demanded to stay commensurable to the reforms the and justice in a constitutional democracy necessitates[5]. The above goal of the BNSS is to reshape the concept of procedural law, simplify access to justice and deliver assurances that are increasingly responsive to the interests and requirements of citizens, particularly citizens who are most vulnerable to procedural processes and the excesses of the procedural law.

The role of gender justice under the new structure is the crucial area of concern in this transition that must be urgently handled. Women and children in the Indian criminal law life have been playing a marginal role, historically. On the one hand, they are being over-represented as those who experience such heinous crimes as sexual assault, lives in violence, trafficking and child abuse. On the other they have lacked effective solutions, in inadequacies of procedures in investigation, trial and witness protection. Sensational media events such as the Mort rape case in the 1970s in Mathra and Nirbhaya gang rape in 2012 brought to light what some viewed as deep institutional vices within the criminal process and generated the tremor of legal reform. This highlighted the fact that there was a pressing requirement to have a justice system that does not just remedy violators and offenders but also protects the dignity and the agency of survivors.

The BNSS attempts to address these problems with clauses that offer procedural guarantees to women and kids in cases as straightforward as protections in case of arrest and custody all the way to a more intricate involvement of documenting the statements and trial processes. These are the steps towards a contemplation of a shift, as seen into having a more victim-sensitive model whereby the justice system would carefully consider the vulnerabilities of the individuals that it seeks to accord security. It remains to question though just whether this will make any significant difference not merely in what is spelt in the law but also in its enforcement by the police, the prosecutors themselves, and even the judiciary[6].

The purpose of this article is the critical analysis of the provisions introduced in the bulletin of gender elements of the BNSS based on the constitutional vow of inclusion and self-respect. It will trace the historical progress of gender justice of Indian criminal law, scrutinize the new protections, which are being suggested by the BNSS and explain how the new protections can be used to address historical gaps. That way, it will also attempt to contribute to the discussion of whether the BNSS represents radical innovation or a customary rebirth of formalistic law change(s).[7]

BNSS: Special Provisions for Women

The idea of placing procedural sparsification to directly react to the vulnerabilities of women in the criminal procedure represents one of the most eye-catching aspects of the BharatiyaNagarik Suraksha Sanhita, 2023 (BNSS). These provisions will reflect a shift back towards a more attuned and victim-oriented approach, however, their true worth is how successfully they are applied in practice.

One major reform is connected with arrest and custody protections. The BNSS contains and reinforced protections that have been previously introduced in previous amendments of the Code of Criminal Procedure. This is because section 43 of the BNSS B forbids arrest of women after the sun goes down and before the sun rises except in extraordinary cases and with conviction by Judicial Magistrate before the sun rises[8]. It is also prescribed by law that no woman is to be arrested or searched unless by a woman police officer, and in this way, the probability of abuse or harassment in the custodial processes is lowered. These sections are in line with the constitutional grounds to uphold the dignity of the women who are subordinated to the state power.

The BNSS also covers declaration of statements by women victims especially in instances when sexual offences are involved. Woman police officer or woman judicial magistrate should record the statements; in cases where the victim is mentally and physically disabled an interpreter, special educator or provision of video-recording facility should aid the process in such cases[9]. These conditions are aimed to minimize the trauma of re-victimization and make sure that a collection of evidence is made as understanding of the condition of the survivor as possible.

Regarding trials, the BNSS does not deal away the in-camera proceedings in instances of sexual offences or does not provide how proceedings in sexual cases are to be carried out on a day-to-day basis and therefore prevent excessive delays in proceedings of such cases [10]. This sole focus on cold cases was part of the recognition of the secondary victimization women may undergo because of a lengthy legal process. It also highlights the fact that the State is obliged to implement effective remedies in a reasonable time structure.

Mothers and pregnant women, too, are accorded a special status. The BNSS gives a discretionary authority to the courts when giving bail to women accused particularly in cases where child bearing or pregnancy is factored in[11]. This demonstrates a wider humanitarian stance, which sees a compromise between the demands of justice with the realities of the life of women. The second area which is crucial is the area of sexual offences. Despite the fact that the substantive definitions still hold the status of the part of the Bharatiya Nyaya Sanhita, the BNSS has instituted investigative and trial processes of these crimes with the assurance that the women victims are provided with protective structures at all levels[12]. It is important to note that victim redress and support has been included in the law as an aspect of the justice process since the law recognizes that redressal does not just stop at the process of punishing the culprits. Although these progressive steps have been made, there are still barriers. These safeguards have been undermined by structural aspects, such as the under-representation of women in the head of the police, lack of training on gender sensitive processes, and unsuitable infrastructural impacts to record a video capture to conduct a trial in camera. Moreover, some elements of the algorithm are inherently degradanoman, such as obtaining arrests during the night as protective ones, which further hinder the investigation, in particular, in emergency cases. The existence of those tensions highlights the very thin line upon which protecting and enforcing that criminal procedure should be. In a broader meaning, what the BNSS offers women is a constitutional measure to develop action regarding Articles 14, 15(3) and Articles 21. human |What BNSS proposes women is in a broader sense therefore, an endeavor by the Constitution to reify Articles 14, 15(3) and Articles 21. Sensitisation of the processes is required of the processes hence the statute recognizes equality and dignity, but such should be offered to a woman through special considerate. Nevertheless, institutional hysteria, recalcitrant social bias, and limited capacity of institutions means that formulation of legislation may not always be turned into lived justice. It will be a question of how these reforms will be observed to finally play out that all will depend on how the law enforcement agencies and the courts themselves will follow the shell rather than the text when enforcing the laws enacted.

BNSS: Special Provisions for Children

The BharatiyaNagarik Suraksha Sanhita, 2023 (BNSS) also insufficiently focuses on child protection, in consideration of their apparent vulnerability to criminal justice systems. The provisions to children are intended to protect children in addition to guaranteeing the child offenders are treated in a way that is in accordance with the rehabilitation philosophy embodied in the Juvenile Justice (Care and Protection of Children) Act, 2015. These reforms are attributable to the fact that the previous process map under the Code of Criminal Procedure used to take little or no consideration of the developmental, psychological, and social needs of children in conflict with the law or involved as victims of a crime[13].

One of the essential measures which are implemented as part of the BNSS is the ban on detention of children and adults as custodians. The law explicitly stipulates that any caught child has to be put under safe custody and presented to the relevant authority, or the Juvenile Justice Board, immediately without delay. This fits the domestic law and also and is in line with the international norms including the United Nations Convention on the Rights of the Child, which India is bound by[14]. The BNSS upholds the principle that children should be accorded special protection by making sure that children are not subjected to hardened offenders during a police lock up or a prison.

New steps with regards to recording statements of child victims and a witness are also brought out by the BNSS. S. 183 states that the statements should be written in a child friendly format, preferably by the police officer who is a woman and in cases possible, in the presence of a parent or other trusted guardians[15]. It also provides the application of the interpreters, special educators, as well as video-recording facilities to reduce trauma. These are the steps that are being closely coupled with the Protection of Children from Sexual Offence Act, 2012 (POCSO), which had already established guidelines regarding the sensitive treatment of child witnesses to be observed on the light of a guideline provided beforehand NOLRN. The BNSS is able to integrate the procedural law with the relevant child legislation by incorporating these practices into the general criminal procedure.

The trial of crimes involving children as perpetrators, victims or witnesses is also given special consideration. Mandatory In-camera proceedings Staff: In-camera proceedings are required to ensure confidentiality (and psychological protection) during a particular case, i.e., sexual offences or another kind of crime committed by a minor. Courts are instructed to limit the repetitive appearances of children and take measures which minimize their exposure to adversarial challenge, including allowing them to give testimony by a video-link. These propositions denote a recognition that the conventional trial procedures tend to make the predicaments of child victims worse by putting them through fear, shame and exposure to retraumatization.

The BNSS also focuses on expedited investigations and prompt trials of cases dealing with children. Minors are particularly adversely affected in causing delays in delivery of justice due to the stages of their development that render long pending litigation particularly harmful. The BNSS tries to reconcile criminal procedure with the principle of the best interests of the child by enforcing time sensitive completion of investigations and trial (where feasible) on a daily basis on a case-by-case basis.

The other area of concern is handling of child offenders. Although the substantive framework will be under the Juvenile Justice Act, the BNSS outlines procedures which will ensure that juveniles are not exposed to regular criminal proceedings. As an example, children cannot be interrogated contrary to the spirit of rehabilitative nature of juvenile justice and their cases should be taken before relevant boards as opposed to ordinary criminal courts. That is two prongs; children are not punitive, but at the same time, their rights to preserving their dignity and rehabilitation are not violated.

However, there are still a number of challenges. The gaps in the implementation process still include training law enforcement officers in child-sensitive practice, provision of special educators and interpreters, as well as, establishing proper infrastructure to serve child-friendly courts. Moreover, the BNSS and special laws such as the Juvenile Justice Act and POCSO still have certain overlap, and conflict in terms of certain terms and raising concerns on consistency over time. New harmonization is necessary to avoid cases where the children are left without clarity on which of the procedural standards are applicable in a particular case.

Even with these flaws, the provisions of the BNSS is a significant recognition of the constitutional and international responsibilities towards the child. The BNSS, in seeking to establish a platform wherein the rights of minors, be it those of a victim, witness or perpetrator, are not perceived to be but prerequisites structural components of the justice system, seeks to have what constitutes a strategic goal[16].

Comparative and Constitutional Perspective

The BharatiyaNagarik Suraksha , 2023 (BNSS) provisions related to the protection of women and children should not only be taken into consideration within the context of the domestic legal order but also against the background of constitutional and international commitments. The Fundamentals of Equality, Dignity, and Protection have been codified in the Constitution of India in Article

14, 15 and Article 21. These sections are considered the foundations of gender justice, which requires the State to avoid such acts of discrimination but also take active steps towards protecting vulnerable groups of people[17]. Article 15(3), more specifically, grants the State the authority to create special assistance to women and children; thus traditionally justifying the protectionist social actions within the BNSS itself[18]. This has always been supported by judicial interpretations. In trials of sexual offenses, sensitive treatment of such cases has been pointed by the Supreme Court, in instances like *State of Punjab v Gurmit Singh*, which dictates that such trials must not be in-camera trials and that the names of the victims must be kept confidential[19]. Likewise, in *Sakshi v Union of India*, the Court pointed to the fact that child friendly trial modalities, which could involve providing comfort to the victim by challenging the perpetrators of sexual abuse etc, should also not be neglected by the Court of law[20]. By establishing such safeguards, codified into the statutory law, the BNSS may be regarded as a more effort to impose judicially-complexed standards upon criminal process.

As a comparative mechanism, the BNSS provisions may be evaluated in contrast to the international standards and foreign jurisdictions. India is also a signatory of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC), which has to create protective legal frameworks against women and children respectively[21]. The necessity of child sensitive investigation and trial procedure has been emphasized by the United Nations Committee on the Rights of Child and this principle can be traced to the requirements of BNSS provisions on recording statements and in-camera hearings.

Similar concerns have impacted on criminal procedures reforms in other countries. In the United Kingdom, particularly under the titles of Youth Justice and Criminal Evidence Act, 1999, it gives preferential treatment to the cases in which a vulnerable witness is involved including using video links, intermediaries, and screens to exempt children and those victims of sexual crimes of confronting them face to face[22]. There are victim assistance programs in the United States, a number of child advocacy centres that reduce forward impact persistent by coordinating investigative and judicial action against minors. South Africa has also had the establishment of sexual offence courts which are specialized and specifically made in defense of women and children by modifying the procedures[23]. These comparison models are the embodiment of universal cognition, the idea that the standard framework of adversarial processes needs to be adjusted to suit vulnerable groups, which BNSS also chooses to take into account in the Indian setting.

Yet, challenges remain. Constitutional mandate is not only legally recreated but a substantive equality too. The provisions of the BNSS comply with Article 14, 15(3) and 21, but its result and its production will always be conditional on the implementation on institutive levels. The availability of trained staffs, infrastructure and a surveillance network is an essential factor to be ensured to ensure that the processes involved in the protection are not written on paper. Further there are no specific specific courts like in other foreign jurisdictions so India is still left to be subject to a general trial court to prospect these highly sensitive provisions and this will raise questions on uniformity and viability.

Hence, the BNSS represents the advancements in ensuring the national criminal process conforms to the domestic judicial needs and the international standards and norms. However, it also mentions the need of structural change, which extends further than codification, such that procedural rights might be so structured that to mean substantive protection of women and children on the ground.

Challenges, Critiques, and Policy Gaps

Via gender-sensitive criminal law procedures it constrains impregnability with a myriad of impediments. Such concerns are neither the product of some text of the statute in itself, but rather the consequence of the broader institutional and socio-legal context with which the statute operates.

One of the biggest challenges is considered to be implementation. Nevertheless, despite the presence of protective capacity, the Indian criminal justice system initially received massive criticism owing to the lack of infrastructural and human resource. According to an example, certain requirements such as having women police officers when arresting people, or recording videos of statements made during arrest, are not easy to obtain in a rural and under-equipped locality or jurisdiction[24]. Unless training and sensitization on the police professional and

judicial officers[25] then these provisions will just be viewed as good on paper other than on the ground.

The other risk is the risk of procedure tokenism. Although BNSS puts security checks between women and children, there is the concern that it is not necessarily a protective gesture but a gesture of a different kind. The example is also the prohibition of nighttime arrest or the provision of in-camera trial: well theoretically, but practically, delay, insensibility and stigma are instead detrimental to the dignity of victims[26].

The other difficulty lies in the overlapping with the special legislations. BNSS arrangements of a child victim and sexual offence are supposed to be viewed within the framework of Planning the Protection of Children of Sexual Offenders Act, 2012, and Juvenile Justice Act, 2015. These overlaps may get confused with primacy of procedures particularly when the standards are dissimilar. The matter has thereby prompted certain contradictory interpretations in addition to unequal application in order to prevent such misinterpretation and abuse harmonizing common and special regulations.

However, this leaves lastly mental health issues of abuse and excess. Those who oppose this argue that we owe special protection, but do better by the protection, by putting countermeasures against false or motivated claims in place. The law must exercise procedural fairness to the accused without prejudice of the vulnerable as a victim[27].

The policy gaps in the BNSS, thus, refer to the continuation of tension between the intention of the legislation and system reality. It was impossible to complete the objectives of a gender justice under BNSS with the lack of sound institutional changes [gender-sensitization, gender-specialty, or monitoring.

Conclusion

The BharatiyaNagarik Suraksha Sanhita, 2023 (BSNS) is an attempt to drive procedural law in India closer to the ethos of fairness, dignity and protection of the vulnerable groups. It imitates the constitution vision of equality and justice provisions given to women and children, making it very similar to the constitution. The section including restrictions on female arrests, child-friendly procedures as to statement taking, in-camera trials where there is sexzenomen and provision of speedy investigations is a big intended step in the direction of the colonial heritage of the Code of Criminal Procedure, 1973.[28]

In the meantime, due to the systemic and structural problems, the transformative capacity of the law is limited. Such provisions are only made efficient by the fact that the trained personnel apply them, enforced by an adequate infrastructure and the court receptive to the needs of the victims. Without them even the mildest forms will remain but formal, rather than in any way substantial[29].

In order to continue with it, there are a couple of steps that appear to be required. First, changes within the institutions will be institutional changes such as introducing gender-sensitive courts, and introduction of additional integration of victim support services. Second, the capacity must be enforced and such an exercise should be established as an obligatory sex sensitivity training to police and judicial officials. Three, they need to agree on special legislations of the country such as the Protection of Children against Sexual Offences Act and Juvenile Justice Act to eradicate procedural divergence. Fourth, the mechanisms in charge to oversee activities, must be reinforced in order to discourage non-observance to the legal safeguard in addition to strengthening it against breakdown by the authorities.[30]

Lastly, the paradigm suggested by BNSS holds out promise of redesigning the criminal justice system into a more receptive system that accommodates women and children. By the success of thattext, the drive neither the will of institutions nor society will not as intended transform the promises in the legislation to the life realized.

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