



The Law Of Rape Under Bharatiya Nyaya Sanhita, 2023: A Study Of Sections 63–73 With Judicial Perspectives

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Abstract

Rape is one of the most heinous crimes, attacking the dignity, autonomy, and humanity of women. Unlike murder, which extinguishes life, rape scars the victim's body and mind for life. The enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS) has brought significant changes to India's rape laws, codifying provisions under Sections 63 to 73. This paper examines the statutory framework of rape under BNS, analyzing definitions, punishments, special categories such as gang rape and offences against minors, and rules for protecting victim identity. It further contextualizes these provisions with case law, from the Mathura Rape Case to the Nirbhaya case, and recent incidents such as the R.G. Kar Medical College rape and murder case (2024). The study concludes by highlighting challenges in implementation and suggesting reforms for ensuring justice and victim rehabilitation.

Keywords : Rape, Bharatiya Nyaya Sanhita, Criminal Law Amendment, Victim Identity, Gang Rape, Sexual Violence, Judicial Interpretation.

Introduction

Rape is universally recognized as a gross violation of human rights, dignity, and bodily integrity. The Supreme Court of India has repeatedly described rape as an assault not merely on the physical body but also on the soul and honour of the victim. In Indian society, rape is stigmatized, leaving permanent psychological and social scars. This paper undertakes a doctrinal and case-based study of Sections 63–73 of the BNS, 2023, which replaced provisions of the Indian Penal Code, 1860, modernizing and strengthening the law on rape.

Evolution of the Law of Rape in India

Pre-2013: Section 375 IPC narrowly defined rape as penile-vaginal penetration under certain circumstances.

2012 Nirbhaya Case: Triggered national outrage, leading to the Justice Verma Committee Report (2013).

Criminal Law (Amendment) Act, 2013: Expanded definition, recognized multiple forms of penetration, introduced aggravated forms of rape (e.g., custodial rape, gang rape).

Bhartiya Nyaya Sanhita, 2023: Codified these provisions afresh under Sections 63–73, retaining gender-specific character but imposing stricter punishments.

Definition & Scope under BNS (Section 63)

Section 63 provides a comprehensive definition of rape, covering:

1. Penile penetration (vagina, anus, urethra, mouth).
2. Penetration by objects/body parts other than penis.
3. Manipulation causing penetration.
4. Oral contact with genitals/anus.

Conditions: Absence of free consent, intoxication, impersonation, minority (<18 years), or unsoundness of mind.

Exception: Medical procedures are not rape.

Punishments & Special Provisions (Sections 64–71)

Section 64: General punishment (10 years–life imprisonment + fine).

Section 65: Enhanced punishment for rape of minors (<16 & <12 years; may extend to death penalty).

Section 66: If rape causes death or permanent vegetative state → punishment: 20 years– death.

Section 67: Sexual intercourse with wife during separation (2–7 years).

Section 68: Sexual intercourse by persons in authority (5–10 years).

Section 69: Sexual intercourse by deceitful means (up to 10 years).

Section 70: Gang rape (20 years–death; harsher for minors).

Section 71: Repeat offenders (life imprisonment for natural life or death penalty).

Publication Rules & Victim Protection (Sections 72–73)

- Section 72: Prohibits disclosure of rape victim's identity (punishment up to 2 years + fine).
- Section 73: Restricts reporting of rape trial proceedings without court permission; exception for SC/HC judgments.

Case Law Analysis

1. Nirbhaya Case (Mukesh & Ors. v. State of NCT of Delhi, 2017): Confirmed death penalty for gang rape + murder, reinforcing “rarest of rare” principle.
2. Sakshi v. Union of India (2004): Highlighted inadequacies in rape law; influenced later reforms.
3. Mathura Rape Case (Tukaram v. State of Maharashtra, 1979): Triggered debate on custodial rape and consent, leading to statutory changes.
4. R.G. Kar Medical College Rape & Murder (2024): Recent case where civic volunteer Sanjay Roy was convicted for rape and murder of a doctor; exposed institutional lapses in hospitals.

Contemporary Challenges

Underreporting due to stigma and fear of victim-blaming.

Need for gender-neutral laws covering male and transgender victims.

Delay in trials, causing secondary trauma to victims.

Weak implementation of victim compensation and rehabilitation schemes.

Conclusion & Suggestions

The Bharatiya Nyaya Sanhita has consolidated rape laws with stringent punishments, but the real challenge lies in enforcement, victim support, and societal change. Suggestions include:

1. Gender-neutral provisions for inclusivity.
2. Fast-track courts for rape trials.
3. Strengthened victim rehabilitation and compensation mechanisms.
4. Mandatory sensitization training for police, medical staff, and judiciary.
5. Strict accountability for institutions failing to protect women (as in R.G. Kar case).

References

1. Bharatiya Nyaya Sanhita, 2023 – Sections 63–73.
2. Criminal Law (Amendment) Act, 2013.
3. Mukesh & Ors. v. State (NCT of Delhi), (2017) 6 SCC 1.
4. Sakshi v. Union of India, (2004) 5 SCC 518.
5. Tukaram v. State of Maharashtra, AIR 1979 SC 185.
6. R.G. Kar Medical College rape & murder case (2024–25, Calcutta High Court).
7. Justice J.S. Verma Committee Report, 2013.