Page 3593 - 3605 **DOI:** *https://doi.org/10.63108/IJLMH.13128*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 5

2026

© 2026 *International Journal of Law Management & Humanities*

Follow this and additional works at: https://www.ijlmh.com/
Under the aegis of VidhiAagaz – Inking Your Brain (https://www.vidhiaagaz.com/)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact **support@vidhiaagaz.com**.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to **submission@ijlmh.com.**

Rape, Consent, Gang Rape and Sexual Harassment under the Bharatiya Nyaya Sanhita, 2023: A Critical Analysis

PADMA SREE V.U.* AND LEKSHMI V.S.**

ABSTRACT

The Bharatiya Nyaya Sanhita, 2023 (BNS), in force since 1 July 2024, re-enacts the Indian law of sexual offences in Chapter V, headed "Of Offences Against Woman and Child." This article examines four linked topics within that chapter: the offence of rape, the statutory meaning of consent, gang rape, and sexual harassment. Using the doctrinal method, it reads Sections 63 to 75 of the Sanhita together with the corresponding provisions of the Indian Penal Code, 1860, decisions of the Supreme Court of India, and reports of expert bodies. The study finds that the BNS keeps the post-2013 definition of consent as an unequivocal, voluntary and act-specific agreement, adds a separate offence for sexual intercourse by deceitful means, and prescribes very heavy punishment for gang rape. It also finds lasting weaknesses: offences that protect only women, an exception that still leaves most marital rape outside the law, minimum sentences that restrict judicial discretion, and enforcement gaps that severity alone cannot close. The article ends with suggestions for gender-neutral drafting, reform of the marital exception, clearer guidance on deceit and consent, and stronger support for survivors.

Keywords: *Bharatiya Nyaya Sanhita, rape, consent, gang rape, sexual harassment, marital exception, gender neutrality, survivor-centred justice*

I. INTRODUCTION

Sexual violence attacks a person's bodily autonomy, dignity and equality at the same time. The Supreme Court has long treated it as more than a crime against an individual, describing rape as a violation of the fundamental right to life and personal liberty under Article 21 of the Constitution.[1] A criminal code that deals with such conduct must therefore do three things well. It must define the offence clearly, it must punish proportionately, and it must be applied in a way that does not injure the survivor a second time.

* Author is a Student at Sri Chandrasekharendra Saraswathi Viswa Mahavidyalaya, Kanchipuram, Tamil Nadu, India.

** Author is a Faculty at Anvikshiki School of Law, Sri Chandrasekharendra Saraswathi Viswa Mahavidyalaya, Kanchipuram, Tamil Nadu, India.

[1] *Bodhisattwa Gautam v. [Name withheld]*, (1996) 1 SCC 490 (India).

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

The Bharatiya Nyaya Sanhita, 2023 (BNS) replaced the Indian Penal Code, 1860 (IPC) with effect from 1 July 2024.[2] The IPC had been amended in response to public pressure on several occasions, most notably in 1983, after the Supreme Court's acquittal of two policemen in a case of custodial rape, *Tukaram v. State of Maharashtra*, and in 2013, after the Delhi gang rape of December 2012.[3] The new Sanhita gathers offences against women and children into Chapter V and places that chapter ahead of the offences affecting the human body, a change of order that signals the priority given to these crimes.[4]

This article asks how far the BNS provisions on rape, consent, gang rape and sexual harassment protect survivors while remaining fair and workable. The method is doctrinal. It reads the text of the relevant sections, compares it with the IPC, and tests it against decided cases, official reports and academic writing. One limitation must be stated at the outset. Because most of the relevant wording was carried over from the IPC, the leading decisions discussed below were delivered under the old Code. They remain the principal guide to interpretation unless courts decide that the new text requires a different approach. The article does not examine the Protection of Children from Sexual Offences Act, 2012 in detail, although it is mentioned where it affects the analysis.

II. Sexual offences under Chapter V of the BNS: a critical analysis

A. The scheme of Chapter V and the relevant provisions

Chapter V does not treat sexual offences as a single block. It sets out a ladder of offences, running from sexual harassment and assault at the lower end to rape, aggravated rape and gang rape at the upper end, with separate provisions for abuse of authority, deceit and voyeurism. Several features are new. Section 69 creates an offence of sexual intercourse by deceitful means, the age below which a wife's consent is irrelevant under the marital exception has been raised in the statutory text from fifteen to eighteen, and the old Section 377 of the IPC has not been re-enacted.[5] Table 1 summarises the principal offences and their punishments.

[2] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023 (India) [hereinafter BNS]; Indian Penal Code, 1860, No. 45 of 1860 (India) [hereinafter IPC]. The Sanhita was brought into force on 1 July 2024, except § 106(2), by Ministry of Home Affairs Notification S.O. 850(E) (Feb. 23, 2024).

[3] Criminal Law (Amendment) Act, 1983, No. 43 of 1983 (India); Criminal Law (Amendment) Act, 2013, No. 13 of 2013 (India). On the 1983 amendment, see the discussion of *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143 (India), in Part III-A.

[4] BNS ch. V (§§ 63–99) ("Of Offences Against Woman and Child"); BNS ch. VI ("Of Offences Affecting the Human Body").

[5] BNS §§ 63 (Exception 2), 69; IPC §§ 375 (Exception 2), 377.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Offence	BNS	IPC	Punishment (summary)
Rape	§§ 63, 64	§§ 375, 376(1)–(2)	Rigorous imprisonment of 10 years to life, with fine; aggravated forms up to life for the remainder of natural life
Rape of a girl under 16 or 12	§ 65	§§ 376(3), 376AB	Rigorous imprisonment of 20 years to life; death also possible where the victim is under 12
Intercourse by husband during separation	§ 67	§ 376B	Imprisonment of 2 to 7 years, with fine
Intercourse by deceitful means	§ 69	No direct counterpart	Imprisonment up to 10 years, with fine
Gang rape	§ 70	§§ 376D, 376DA, 376DB	Rigorous imprisonment of 20 years to life, with fine; life or death where the victim is under 18
Assault or criminal force to outrage modesty	§ 74	§ 354	Imprisonment of 1 to 5 years, with fine
Sexual harassment	§ 75	§ 354A	Up to 3 years, or fine, or both; up to 1 year, or fine, or both, for sexually coloured remarks

Table 1: Principal sexual offences in Chapter V of the BNS and their IPC counterparts

Several provisions of the BNS must be read together on this subject. Section 63 defines rape and sets out its Explanations and Exceptions, Section 64 prescribes the punishment, Section 65 deals with rape of girls under sixteen and under twelve, and Section 66 with rape causing death or a persistent vegetative state. Section 67 covers intercourse by a husband during separation, Section 68 covers intercourse by a person in authority, and Section 69 covers intercourse by deceitful means.[6] Section 70 provides for gang rape, and Section 71 for enhanced punishment of repeat offenders.[7]

Sections 72 and 73 protect the survivor's privacy by punishing the disclosure of her identity and the printing or publishing of matter relating to court proceedings without the court's permission, each with imprisonment of up to two years and a fine.[8] Section 74 punishes assault or criminal force intended to outrage modesty, Section 75 deals with sexual harassment, and Sections 76 to 78 deal with assault intended to disrobe, voyeurism and stalking.[9] Outside the Sanhita, the Bharatiya Nagarik Suraksha Sanhita, 2023 governs investigation, the recording of statements

[6] BNS §§ 65–69. Section 68 punishes sexual intercourse, not amounting to rape, by a person in a position of authority or in a fiduciary relationship, with imprisonment of five to ten years and a fine.
[7] BNS §§ 70–71.
[8] BNS §§ 72–73.
[9] BNS §§ 74–78.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

and trial procedure, the Protection of Children from Sexual Offences Act, 2012 applies where the victim is a child, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 supplies the administrative remedy discussed below.[10]

B. Rape under Sections 63 and 64

Section 63 defines rape by listing the sexual acts that the law treats as rape and the circumstances in which they become an offence. The acts include penile penetration of the vagina, mouth, urethra or anus to any extent, the insertion of an object or a part of the body other than the penis, manipulation of the body to cause penetration, and the application of the mouth to the specified parts.[11] These acts amount to rape if they take place in any of seven situations: against the woman's will; without her consent; with consent obtained by putting her or a person in whom she is interested in fear of death or hurt; with consent given in the belief that the man is her husband; with consent given when, because of unsoundness of mind, intoxication or a stupefying or unwholesome substance, she cannot understand the nature and consequences of the act; with or without consent when she is under eighteen; or when she is unable to communicate consent.[12]

Section 64 prescribes rigorous imprisonment of not less than ten years, which may extend to life, together with a fine. A heavier tier applies to aggravated cases, such as rape by a police officer, public servant or person in authority, rape of a pregnant woman or of a woman with a disability, and repeated rape of the same woman. In those cases the sentence may extend to imprisonment for the remainder of the offender's natural life.[13] Section 65 raises the minimum term to twenty years where the victim is a girl under sixteen and permits the death sentence where she is under twelve, and Section 66 prescribes rigorous imprisonment of not less than twenty years, extending to imprisonment for the remainder of natural life, or death, where the offence causes the victim's death or leaves her in a persistent vegetative state.[14]

The definition is wide in the conduct it covers but narrow in the persons it protects. The offender must be a man and the victim a woman. A male or transgender survivor of non-consensual penetration cannot invoke Section 63 even though the harm may be equal. This is the first of the structural concerns taken up in Part II-F.

---

[10] Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023 (India); Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012 (India); Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013 (India).

[11] BNS § 63(a)–(d). The width of this list reflects the 2013 amendment to IPC § 375. *See* Criminal Law (Amendment) Act, 2013, No. 13 of 2013, § 9 (India).

[12] BNS § 63(i)–(vii).

[13] BNS § 64(1)–(2).

[14] BNS §§ 65–66.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

C. Consent

Consent is the pivot on which most rape trials turn. Explanation 2 to Section 63 provides that consent means an unequivocal voluntary agreement by which the woman, through words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act. Its proviso adds that a woman who does not physically resist the act of penetration is not, for that reason alone, to be regarded as consenting.[15] Three features of this definition deserve comment.

First, the agreement must be both unequivocal and voluntary. Fear, pressure or confusion cannot be read as agreement. Second, the consent must relate to the specific act. Earlier intimacy, an existing relationship or consent to one act does not carry forward to a later act. Third, the absence of resistance is not evidence of consent. This third feature corrects the older judicial habit of expecting a victim to fight back and of inferring consent from the lack of injuries, a habit that is examined in the discussion of *Tukaram* below.

The definition is helpful, but it does not solve every evidential problem. Because consent may be shown by gestures and non-verbal communication, a court has to interpret conduct, and interpretations of ambiguous conduct are easily coloured by stereotype. Many survivors freeze or fall silent out of fear, and some delay reporting because the accused is known to them.[16] In prosecutions for aggravated rape under Section 64(2), the Bharatiya Sakshya Adhiniyam, 2023 retains the presumption of absence of consent once intercourse is proved and the woman states in evidence that she did not consent, which helps the prosecution but does not remove the need for a sensitive trial.[17]

Consent also interacts with the general rule that consent given under fear of injury or a misconception of fact is not valid consent.[18] Under the IPC, courts used that rule to decide whether sexual relations that began on a promise of marriage amounted to rape. The BNS now deals with part of this ground through Section 69, which punishes sexual intercourse obtained by deceitful means or by a promise of marriage made with no intention of fulfilling it, where the intercourse does not amount to rape. "Deceitful means" include inducement for, or a false promise of, employment or promotion, and marriage by suppressing identity. The offence carries imprisonment of up to ten years and a fine.[19] The new offence is a welcome

[15] BNS § 63 (Explanation 2). This wording was carried forward from IPC § 375 (Explanation 2), inserted in 2013.
[16] On the reality of delayed reporting and passive reactions, *see State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 (India); *see generally* SUSAN ESTRICH, REAL RAPE (1987).
[17] Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, § 120 (India) (corresponding to Indian Evidence Act, 1872, § 114A).
[18] BNS § 28 (corresponding to IPC § 90).
[19] BNS § 69 & Explanation.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

acknowledgement that deceit is a distinct wrong. However, it also raises a difficulty of classification. Section 69 applies only where the intercourse does not amount to rape, so it is residual, but the Sanhita does not say when a deceit vitiates consent for the purposes of Section 63 and when it falls only within Section 69, and the two sections carry very different penalties.

D. Gang rape under Section 70

Section 70(1) applies where a woman is raped by one or more persons who form a group or act in furtherance of a common intention. Each person in the group is deemed to have committed rape, and the punishment is rigorous imprisonment of not less than twenty years, which may extend to life for the remainder of the offender's natural life, together with a fine. The fine must be just and reasonable to meet the victim's medical expenses and rehabilitation and is paid to the victim.[20] Where the victim is under eighteen, Section 70(2) prescribes imprisonment for life, meaning the remainder of natural life, with fine, or death.[21]

Three points stand out. The first is the deeming rule. By treating every member of the group as a rapist, the section removes the need to prove who committed the act of penetration, which is often impossible when several persons are involved. It applies the logic of the common-intention rule in Section 3(5) of the BNS to this specific offence.[22] The second point is the victim-oriented fine, which treats compensation as part of the sentence and not as an afterthought. The third is the severity of the scheme. Under the IPC, the death penalty for gang rape was confined to victims under twelve, whereas Section 70(2) of the BNS extends the same range of punishment to every victim under eighteen.[23]

The severity invites debate. The Justice Verma Committee, which reviewed the law in 2013, declined to recommend the death penalty for rape,[24] and critics argue that heavier penalties may deter reporting where the accused is a relative or acquaintance.[25] Fixed minimum terms of twenty years also leave a trial judge with little room to adjust the sentence to the role of each accused. Supporters respond that collective sexual violence is among the gravest of crimes and that the law must speak with force. Whichever view is preferred, punishment is only one part of the answer. A heavy sentence has little effect if investigation is slow and the trial is long.

---

[20] BNS § 70(1).
[21] BNS § 70(2).
[22] BNS § 3(5) (corresponding to IPC § 34).
[23] *Compare* IPC §§ 376D, 376DA, 376DB, *with* BNS § 70.
[24] COMMITTEE ON AMENDMENTS TO CRIMINAL LAW (JUSTICE J.S. VERMA, CHAIR), REPORT (Jan. 2013).
[25] *India: Reject Ordinance on Death Penalty for Rape*, HUMAN RIGHTS WATCH (Apr. 24, 2018), https://www.hrw.org/news/2018/04/24/india-reject-ordinance-death-penalty-rape (noting that most accused are known to the victim and that an increase in punishment "may, in fact, lead to a decrease in reporting"); Poornima Rajeshwar, *The Union Government of India Introduces the Death Penalty for Child Rape*, OXFORD HUMAN RIGHTS HUB (May 2, 2018), https://ohrh.law.ox.ac.uk/the-union-government-of-india-introduces-the-death-penalty-for-child-rape/.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

E. Sexual harassment under Section 75

Section 75 makes it an offence for a man to commit any of four acts: physical contact and advances involving unwelcome and explicit sexual overtures, a demand or request for sexual favours, showing pornography against the will of a woman, and making sexually coloured remarks. The first three acts are punishable with rigorous imprisonment of up to three years, or fine, or both. Sexually coloured remarks carry a lower maximum of one year, or fine, or both.[26] The offence is easily illustrated. A supervisor who tells a subordinate that her promotion depends on sexual favours commits the second act, whatever the setting.

Section 75 operates alongside the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which creates an administrative remedy through Internal Committees and applies to workplaces.[27] The two regimes are complementary. The workplace statute gives a quicker and less adversarial route to relief, while the criminal provision applies in every setting, including streets, transport and online spaces, and can lead to punishment.

Section 75 has limits. It applies only to acts by "a man," it sits under the Sanhita's heading on criminal force and assault against women, and clause (iii) refers expressly to "a woman," so it offers men and transgender persons who face the same conduct no clear remedy. The requirement that the conduct be "unwelcome" places weight on how a complainant reacted and when she complained, which can lead to the same stereotyping that affects consent cases. The lighter maximum for sexually coloured remarks may also understate the effect of persistent verbal harassment. Finally, the provision protects only if complaints can be made without fear of retaliation, which depends on institutional practice more than on statutory text.

F. Strengths, weaknesses and likely outcome

The strengths of the scheme are real. The definition of rape is wide and covers the full range of forced penetration. The meaning of consent is clear, act-specific and free from any requirement of resistance. The new offence of deceitful sexual intercourse recognises a wrong that the IPC dealt with only indirectly. The compensation element in gang rape shows concern for the survivor, and the structure of Chapter V is more orderly than that of the IPC.

The weaknesses are of four kinds. The first is gender specificity. Section 63 protects only women, and Section 75 is framed as an offence by men against women, although the Sanhita's own definition of "gender" applies the pronoun "he" to any person, whether male, female or

[26] BNS § 75(1)–(3) (corresponding to IPC § 354A).
[27] Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14 of 2013 (India).

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

transgender.[28] The Law Commission recommended a gender-neutral offence of sexual assault as long ago as 2000, and in 2023 the Parliamentary Standing Committee on Home Affairs, noting the move towards gender-neutral offences, recommended that Section 377 of the IPC be reintroduced and retained so that non-consensual sexual acts against men, women and transgender persons would remain punishable.[29] The Sanhita did not adopt that advice. Adult male and transgender survivors are left to general provisions on hurt and criminal force, or to the Transgender Persons (Protection of Rights) Act, 2019, which prescribes a maximum of only two years for sexual abuse.[30]

The second weakness is the marital exception. Exception 2 to Section 63 states that sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen, is not rape. Section 67 punishes non-consensual intercourse by a husband only when the wife is living separately, with a term of two to seven years, much lower than the penalty for rape.[31] The Verma Committee recommended removing the exception.[32] The validity of the exception is now before the Supreme Court in a batch of petitions, including appeals from the split verdict of the Delhi High Court in 2022. On 9 September 2026 a three-judge bench directed that the batch be listed for final hearing, and as of October 2026 the matter remained pending.[33] The Union Government has defended the exception, arguing in its counter-affidavit that bringing non-consensual intercourse within marriage under the offence of rape may be excessively harsh and disproportionate, that the question is more social than legal, and that other remedies exist, such as the law on cruelty and the Protection of Women from Domestic Violence Act, 2005.[34] Critics

[28] BNS § 2(10) (definition of "gender").

[29] Law Commission of India, One Hundred and Seventy-Second Report on Review of Rape Laws (Mar. 2000); Department-Related Parliamentary Standing Committee on Home Affairs, Rajya Sabha, 246th Report on the Bharatiya Nyaya Sanhita, 2023 ¶¶ 1.16–1.17, at 9 (Nov. 2023). The Supreme Court had earlier read down IPC § 377 only as far as it criminalised consensual adult conduct. *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

[30] Transgender Persons (Protection of Rights) Act, 2019, No. 40 of 2019, § 18 (India).

[31] BNS § 63 (Exception 2); BNS § 67 (corresponding to IPC § 376B).

[32] Committee on Amendments to Criminal Law, *supra* note 24.

[33] *RIT Foundation v. Union of India*, W.P.(C) 284/2015 (Del. H.C. May 11, 2022) (India) (split verdict), appeals pending before the Supreme Court of India; *SC to Begin Final Hearing on Pleas Concerning Marital Rape*, The Pioneer (Sept. 10, 2026), https://dailypioneer.com/news/sc-to-begin-final-hearing-on-pleas-concerning-marital-rape; Aishwarya Iyer, *"Marriage Cannot Result in Extinction of Individual Autonomy," Supreme Court During Marital Rape Criminalization Hearing*, LawBeat (Sept. 9, 2026), https://lawbeat.in/top-stories/marriage-cannot-result-in-extinction-of-individual-autonomy-supreme-court-during-marital-rape-criminalization-hearing-1630123.

[34] Counter Affidavit of the Union of India in *Hrishikesh Sahoo v. State of Karnataka*, SLP (Crl.) Nos. 4063–4064 of 2022 (India), *as reported in* Debby Jain, *Bringing Offence of 'Rape' Within Marriage 'Excessively Harsh', Other Remedies Exist: Centre Opposes Criminalization of Marital Rape by Supreme Court*, LiveLaw (Oct. 3, 2024), https://www.livelaw.in/top-stories/supreme-court-centre-opposes-challenge-to-marital-rape-exception-says-married-women-already-protected-271527.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

reply that those remedies do not recognise the wrong of non-consensual sex and that the exception conflicts with equality and bodily autonomy.[35]

The third weakness lies in the relationship between Sections 63 and 69, discussed above, and in the use of fixed minimum terms. The fourth and most serious weakness is enforcement. Fear of retaliation, social stigma, slow investigation and insensitive questioning continue to deter reporting and weaken trials. The likely outcome is that the courts will continue to apply the IPC-era understanding of consent and procedure, and that the decision of the Supreme Court on the marital exception will become the most important single development in this area.

III. Leading case law on rape, consent and sexual harassment

A. *Tukaram v. State of Maharashtra*

This is the well-known custodial rape case decided by the Supreme Court in 1978. A young tribal girl alleged that, inside a police station, a constable raped her and a head constable then fondled her and tried to rape her but was too intoxicated to do so. The Sessions Court acquitted both men; the High Court convicted the constable of rape and the head constable of outraging her modesty. The Supreme Court allowed their appeal and acquitted them, reasoning that the absence of marks of injury indicated that the intercourse was "a peaceful affair," that her account of raising an alarm was, as it found, false, and that she had not been shown to have submitted out of fear of death or hurt.[36] The decision caused widespread protest and led to the Criminal Law (Amendment) Act, 1983, which introduced custodial rape as a separate offence and changed the rules on proof and trial. It is the clearest example of why the present rule that lack of resistance is not consent matters.

B. *State of Punjab v. Gurmit Singh*

A schoolgirl alleged abduction and rape, and the trial court had acquitted the accused on the basis of minor inconsistencies and delay. The Supreme Court set the acquittal aside. It held that a conviction may rest on the testimony of the victim alone if it inspires confidence, that she should not be treated like an accomplice whose evidence needs corroboration, and that courts must show sensitivity to the reasons for delay in reporting, such as the honour of the family.[37] The Court also held that trials of rape cases must be held in camera, as Section 327(2) of the

[35] *See RIT Foundation*, *supra* note 33, ¶¶ 83–85 (Shakdher, J.) (submissions of the amicus curiae that the provisions on cruelty and domestic violence do not reach forced sex within marriage); *id.* ¶ 222 (opinion of Shakdher, J., holding that the exception fails Articles 14, 15, 19(1)(a) and 21 of the Constitution).
[36] *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143 (India).
[37] *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 (India).

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Code of Criminal Procedure, 1973 required. The case supports a trial approach that matches the survivor-centred spirit of the consent definition.

C. *Mukesh v. State (NCT of Delhi)*

The case arose from the gang rape of a young woman in a moving bus in Delhi in December 2012, an event that led to the 2013 amendments. The Supreme Court confirmed the death sentences of the four convicts, treating the extreme brutality of the attack as placing it among the rarest of rare cases.[38] The decision shows how courts apply the heaviest penalty to collective sexual violence and illustrates the policy debate on capital punishment discussed in Part II-D.

D. *Pramod Suryabhan Pawar v. State of Maharashtra*

The complainant said that sexual relations had begun on a false promise of marriage. The Supreme Court quashed the proceedings and drew a careful line. Consent is vitiated by a misconception of fact only where the promise was false from the beginning, made with no intention of keeping it, and bore a direct nexus to the decision to engage in the sexual act. A mere breach of a promise made in good faith does not make the intercourse rape.[39] The test remains useful in applying Section 69 of the BNS and in separating it from Section 63.

E. *Independent Thought v. Union of India*

The petition challenged Exception 2 to Section 375 of the IPC, which at that time allowed a man to have intercourse with his wife aged between fifteen and eighteen without committing rape. The Supreme Court read down the exception so that intercourse with a wife below eighteen is rape, holding that the older rule conflicted with child-protection laws and with the rights of the girl child.[40] The Court expressly left open the position of adult wives. The BNS has now raised the age in the exception to eighteen, which follows this decision, but the question of adult wives is exactly what is before the Court today.

F. *Sakshi v. Union of India*

The petitioner asked the Court to widen the definition of rape in the IPC so as to cover all forms of penetration. The Supreme Court declined, holding that changing the statutory definition was a matter for Parliament, but it issued directions for the trial of child sexual abuse and rape cases, such as screens between the victim and the accused, cross-examination questions put through the presiding officer in writing, and breaks during testimony.[41] The case is important for two

[38] *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 (India).
[39] *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608 (India).
[40] *Independent Thought v. Union of India*, (2017) 10 SCC 800 (India).
[41] *Sakshi v. Union of India*, (2004) 5 SCC 518 (India).

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

reasons. It shows the judicial reluctance to rewrite the gender-specific and act-specific wording of the offences, which is relevant to the demand for gender neutrality, and it shows that trial procedure can be improved without legislative change.

G. *Vishaka v. State of Rajasthan*

The petition was filed after the gang rape of a social worker in Rajasthan who had been working against child marriage. In the absence of any law on workplace harassment, the Supreme Court drew on Articles 14, 15, 19(1)(g) and 21 of the Constitution and on international conventions to lay down binding guidelines for employers.[42] These guidelines operated until Parliament enacted the 2013 Act, and they remain the origin of the present administrative framework.

H. *Apparel Export Promotion Council v. A.K. Chopra*

A superior officer tried to molest a woman subordinate who had been assigned to work with him. The Supreme Court set aside the High Court's order of reinstatement and upheld his removal from service, holding that sexual harassment covers unwelcome sexually determined behaviour, whether direct or by implication, and that an actual physical contact is not required.[43] The decision supports a broad reading of the conduct listed in Section 75 and rejects the idea that the accused's position or the absence of completed contact reduces the seriousness of the offence.

IV. SUGGESTIONS

The following suggestions are offered for consideration. They follow from the gaps identified above.

First, Parliament should consider a gender-neutral offence of sexual assault, with penalties graded by the seriousness of the act. This would follow the approach recommended by the Law Commission in 2000 and would close the gap now faced by male and transgender survivors. The offence of rape against women could remain, but it should not be the only route to justice.

Second, the marital exception should be removed or, at a minimum, narrowed so that non-consensual sexual acts within marriage are treated as rape whatever the age of the wife. The reasoning in *Independent Thought* and the recommendation of the Verma Committee both point in this direction. Until the Supreme Court rules, trial courts and prosecutors would benefit from clear instructions on how to proceed.

[42] *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 (India).
[43] *Apparel Export Promotion Council v. A.K. Chopra*, (1999) 1 SCC 759 (India).

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Third, the relationship between Sections 63 and 69 should be clarified by an explanation or illustrations. The tests laid down in *Pramod Suryabhan Pawar*, namely falsity of the promise from the start and a direct nexus to the decision to engage in the sexual act, could be written into the statute so that the distinction between a broken promise and deceit is clear to investigators and trial courts.

Fourth, the mandatory minimum sentences and the extension of capital punishment to all victims of gang rape under eighteen should be reviewed with the help of empirical data on conviction, reporting and sentencing. A system of reasoned sentencing guidelines would allow courts to distinguish between the roles of different accused persons in a group offence.

Fifth, survivor support should be strengthened in practice. This includes trained and gender-sensitive investigators, legal aid from the first complaint, witness protection, prompt payment of the compensation provided in Section 70, one-stop support centres, and strict enforcement of the bar on disclosing a survivor's identity under Section 72.

Sixth, the coordination between Section 75 and the 2013 workplace statute should be improved. Internal Committees must actually be constituted, employees must be informed of their rights, and complainants must be protected against retaliation. Section 75 should also be examined for gender neutrality, and the lower penalty for sexually coloured remarks should be reconsidered. A periodic review of the working of Chapter V by an expert body, using data from courts and police, would show whether these reforms are needed.

V. Conclusion

The Bharatiya Nyaya Sanhita, 2023 provides a detailed framework for dealing with rape, gang rape and sexual harassment. Its definition of consent, which is unequivocal, voluntary, specific to the act and free of any demand for resistance, is a significant protection. Sections 64, 70 and 75 prescribe punishments that range from fines and short terms to life imprisonment and death, and the new offence of sexual intercourse by deceitful means recognises a wrong that earlier law handled only indirectly.

At the same time, the analysis shows that the framework is incomplete. The protection of the main offences is limited to women, the marital exception continues to exclude a large group of survivors, the line between rape and deceitful intercourse is unclear, and severe punishment cannot replace a fair, timely and sensitive process of investigation and trial. Reform of the statute, a decision on the marital exception, and sustained investment in survivor support need to move together. A criminal law that protects dignity must be written equally for all survivors

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

and enforced in a way that gives them confidence to come forward, while preserving the right of the accused to a fair trial.

*****

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]