



COMPARATIVE STUDY OF NEW AND OLD CRIMINAL LAWS WITH THE PERSPECTIVE OF CHILDREN





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**CRY in collaboration with NALSAR
University of Law, Hyderabad**



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Message of Vice-Chancellor of NALSAR



National Law Universities have revolutionised Indian legal education, and NALSAR University of Law, established in 1998, stands as a beacon of excellence in this transformative legal education and research journey. Guided by rule of law as an instrument of social change, NALSAR established the Centre for Child & Youth Justice (CCYJ) to advance the cause of children's rights and protection through impactful research and advocacy.

The Centre aims to ensure that children's voices are heard through law, their vulnerabilities addressed and their rights upheld in alignment with constitutional values and international commitments. At present, the Centre is running a project on "Access to justice for children through system strengthening on child protection issues" in collaboration with Child Right and You (CRY), a prominent NGO working for child rights in India since 1979.

With the coming of new criminal laws, effective from 1 July, 2024, it necessitates a critical examination of their implications in safeguarding rights of children. To this end, I introduce this collaborative study done by the CCYJ, NALSAR and CRY on "New and Old Criminal Laws with the Perspective of Children".

This comparative study is an initiative in bridging the divide between old and new laws through the framework of children rights. The study offers valuable insights to diverse stakeholders including policymakers, practitioners, academicians, and civil society organizations via equipping them to navigate and implement the new criminal laws effectively for the benefit of children.

I congratulate the editorial team of CCYJ and CRY for this study and firmly believe that its outcomes will be instrumental in assisting stakeholders by simplifying their efforts and shaping child-centric approaches within the administration of justice in the best interests of the children.

Prof. Srikrishna Deva Rao,
Vice-Chancellor,
NALSAR University of Law, Hyderabad

Message of CEO of Child Rights and You (CRY)



In 2023, the Indian Parliament passed the three new criminal laws – The Bharatiya Nyaya Sanhita, The Bharatiya Nagarik Suraksha Sanhita and The Bharatiya Sakshya Adhiniyam. These important pieces of legislations brought forth significant reforms with an aim to revisit and redefine the scenario of criminal jurisprudence in India.

The Indian Constitution demonstrates a strong commitment to the safety, well-being and holistic development of a child, incorporating provisions related to children in the Fundamental Rights, Directive Principles of State Policy and Fundamental Duties. And, to understand the jurisprudence system of a country where children constitute one-third of its total population, it is crucial to have a comprehensive understanding of the legal frameworks and provisions for children.

As an organisation dedicated to child rights for more than four decades, CRY works with many stakeholders on the ground, including the communities, caregivers and various agencies of administration and judicial system at multiple levels. Consequently, it has become a call of the hour to engage with the stakeholders working in the child rights domain and familiarise them with these new laws. It is with this aim the study was conceptualized – where a comparative analysis of the old and new criminal laws would be put together through the lens of child rights.

Developing a comparative analysis between the newly effective and the erstwhile criminal laws in the context of laws related to children is critical for many reasons. Both frameworks address crimes against children, but understanding the nuances of these reforms helps evaluate how the updated provisions align with contemporary child rights frameworks and international conventions like the UN Convention on the Rights of the Child (UNCRC). It is also important to note that the IPC, though being a ground-breaking framework for its time, was crafted at a time when there was limited consideration for the evolving needs and vulnerabilities of children. In contrast, the BNS reflects efforts to modernise and localise the legal system, incorporating new societal challenges including child online safety, human trafficking and modern slavery, child abuse within the confines of the family and many more that affect our children today.



This study includes a detailed, section-wise tabular comparison of the three old and new criminal laws. It closely examines 44 sections of the Indian Penal Code, 1860 and the Bharatiya Nyaya Sanhita, 2023; 24 sections of the Code of Criminal Procedure, 1973 (CrPC) and the Bharatiya Nagarik Suraksha Sanhita, 2023; and five sections of the Indian Evidence Act, 1872 and the Bharatiya Sakshya Adhiniyam, 2023. These sections are systematically divided into chapters for clarity and ease of understanding.

Further, the critical exercise to examine each child-related legal instrument block-by-block and collate the changes throws light on the practical implications of these legal reforms. It orients and equips the stakeholders – such as child rights workers on the ground, policymakers, and legal practitioners – to assess whether the new laws offer adequate checks against child abuse and exploitations. Such assessments are extremely critical in safeguarding the rights and dignity of children in India's legal framework.

Aligned with our initiative on system strengthening towards the child protection domain, I am sure this exercise will go a long way to educate myriad stakeholders such as the civil society organisations working with children, frontline social workers and educators, parents and the members of the communities, academia, students and researchers of public policy, media professionals, policymakers and legislators and the legal practitioners.

In the end, I express my sincere thanks to the teams at NALSAR and CRY for their collective support that put together the best of their effort and wisdom to make it happen.

**With hope and goodwill,
Puja Marwaha
CEO, CRY**

Preface

On July 1, 2024, the Union Government notified the new criminal laws: The Bharatiya Nyaya Sanhita, 2023, The Bharatiya Nagarik Suraksha Sanhita, 2023, and The Bharatiya Sakshya Adhiniyam, 2023, which were passed by the Indian Parliament on December 22, 2023. These important legislations bring substantial reforms that will redefine the future of criminal jurisprudence in India. Consequently, it has become imperative to familiarize stakeholders working in child rights within the criminal justice system with these new laws. To fulfill this need, this study was visualised, providing a comparative analysis of the old and new criminal laws through the lens of child rights.

The primary objective of this study is to offer a comprehensive yet accessible guide to the new statutes, comparing them with the old ones in the context of children. The study includes a section-wise tabular comparison of the three old and new criminal laws. It examines 44 sections of the Indian Penal Code, 1860 and the Bharatiya Nyaya Sanhita, 2023 ; 24 sections of the Code of Criminal Procedure, 1973 (CrPC) and the Bharatiya Nagarik Suraksha Sanhita, 2023; and 5 sections of the Indian Evidence Act, 1872 and the Bharatiya Sakshya Adhiniyam, 2023. These sections are systematically divided into chapters and parts for clarity and ease of understanding.

The “Comparative Study of New and Old Criminal Laws from the Perspective of Children” is a collaborative effort between Child Rights and You (CRY) and NALSAR University of Law, Hyderabad. This study aims to distil complex legal principles into practical knowledge, enabling stakeholders to better protect and uphold the rights of children. We hope this resource will serve as both a guide and a foundation for ongoing learning and adaptation under these new legal provisions.

We express our profound gratitude to Professor Srikrishna Deva Rao, Vice-Chancellor of NALSAR University of Law, Hyderabad and Ms. Puja Marwaha, CEO of CRY for their guidance and encouragement to build this book. We also express sincere appreciation to Mr. Subhendu Bhattacharjee, Director of Research and Knowledge Exchange at CRY and Ms. Ragini Pant, Associate General Manager at CRY for their mentorship and support during the entire process.

A special thanks to Adv. Pratyush Mishra for preparing the initial draft and contributing valuable suggestions for its improvement and to Adv. Poorvi Asati for her efforts in identifying relevant legal provisions for this study. We extend earnest thanks to Ms. Deepal Solanki, Consultant at CRY for her diligent coordination throughout this process.

Heartfelt thanks to Editorial team: Chief Editor - Dr. D. Bala Krishna, Faculty & Coordinator at the Centre for Child & Youth Justice (CCYJ), NALSAR University of Law; Editors Aishwarya Sinha and Raja Chandra, Research Assistants at CCYJ for their dedicated efforts in bringing this study to fruition. Lastly, we thank Mr. Chinmay Mishra for preparing the forthcoming Hindi version of this study.



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Abbreviations

BNSS	Bharatiya Nagarik Suraksha Sanhita, 2023
BNS	Bharatiya Nyaya Sanhita, 2023
BSA	Bharatiya Sakshya Adhiniyam, 2023
Constitution	Constitution of India
CrPC	The Code of Criminal Procedure, 1973
IEA	The Indian Evidence Act, 1872
IPC	The Indian Penal Code, 1860
UNICEF	United Nations International Children's Emergency Fund
CRC/UNCRC	United Nations Convention on the Rights of the Child
CPCR	Commissions for Protection of Child Rights Act, 2005
WCD	Ministry of Women and Child Development in the Government of India.
SJPU	Special Juvenile Police Unit
SJPO	Special Juvenile Police Officer
JJB	Juvenile Justice Board
CWC	Child Welfare Committee



Introduction

India's approach to child rights has evolved significantly over the decades, including early efforts to address juvenile justice issues. In the colonial era, children's welfare was limited to scattered laws like the Child Marriage Restraint Act, 1929. Post-independence, constitutional provisions underscored child welfare, but protection mechanisms remained fragmented. Juvenile justice gained focused attention with the coming of the 'Juvenile Justice Act of 1986', providing care, protection, and rehabilitation. India participated in the United Nations (UN) General Assembly Summit in 1990, which issued a declaration focusing on the survival, protection, and development of children. India ratified the Convention on the Rights of the Child (CRC) on December 11, 1992. The CRC is an international treaty that requires countries to take necessary steps to protect children's rights. To further ensure children's rights are safeguarded, the Indian Government adopted the National Charter for Children in 2003. Further, the UN General Assembly's Special Session on Children in 2002 led to an outcome document called "A World Fit for Children," which included goals and actions for member countries.

To implement these policies and align with international standards, India recognized the need to establish a law specifically dedicated to safeguarding children's rights. This led to the enactment of new child-related legislation by Parliament known as "Commissions for Protection of Child Rights Act, 2005", hereinafter called CPCR Act.

The CPCR Act, 2005 significantly strengthened child rights monitoring by establishing the National and State Commissions for Protection of Child Rights. This period also witnessed the overhaul of the 'Juvenile Justice (Care and Protection of Children) Act, 2000', which was revised in 2015. The Juvenile Justice (Care and Protection of Children) Act, 2015 emphasizing child-friendly ecology and a separate juvenile justice system. It allowed minors in the age group of 16-18 to be tried as adults if they commit heinous crimes. Together with other legislative measures, such as the 'Right to Education Act, 2009', and the 'Protection of Children from Sexual Offences (POCSO) Act, 2012', these reforms led to a more structured and holistic framework for child rights in India.

The three new criminal laws enacted by the Indian Parliament in December 2023, effective from July 1, 2024, is significantly impacting stakeholders working in child rights, including law adjudicating and enforcement agencies such as Courts, child welfare police officers, child welfare committee, Juvenile Justice Boards, District Child Protection Officers; child welfare organizations, lawyers, academicians, NGOs and policymakers.

This study has been created to assist these stakeholders in understanding and navigating the implications of these laws in their work. This reformative push parallels broader transformations in India's criminal justice system. A Comparative study between the new criminal laws and the old criminal laws gave an opportunity to revisit the basics of the criminal justice system of India.



The Indian Constitution incorporates provisions related to children not only in the Fundamental Rights but also in the Directive Principles of State Policy and Fundamental Duties, highlighting its commitment to the safety, well-being, and development of children.

With respect to the children and women, there is an exception to the cardinal principle of Right to Equality, which is described under Article 15(3) of Constitution. The same empowers the State to make any special provision for the children and women. This includes provisions for development as well as for protection. The special references laws pertaining to children derive the source of power and authority from Article 15(3) of Constitution. India's modern criminal justice system traces its origins to the Indian Penal Code of 1860, a comprehensive effort by Macaulay aimed at ensuring uniformity and fairness. While India did have a criminal justice system prior to this, it was not consistent and varied based on factors like location, gender, and caste.

This book presents a comparative analysis of new and old criminal laws from a child rights perspective, focusing on the following comparisons: 'Indian Penal Code, 1860 with Bharatiya Nyaya Sanhita, 2023'; 'Code of Criminal Procedure, 1973 with Bharatiya Nagarik Suraksha Sanhita, 2023'; and 'Indian Evidence Act, 1872 with Bharatiya Sakshya Adhiniyam, 2023'. Only provisions specifically mentioning or related to children have been included, leaving out universal provisions applicable to all citizens and landmark judicial decisions.

It further provides a detailed analysis and comparison of 44 sections from the IPC, 1860 and BNS, 2023; 24 sections from the CrPC, 1973, and BNSS, 2023; and 5 sections from the IEA, 1872, and BSA, 2023. The tabular format reproduces entire sections, highlights changes in bold, and outlines modifications, deletions, or additions related to children for easy reference. This study is a general overview of relevant provisions and changes in statutory language, serving as a ready reference for stakeholders working with child rights.

COMPARATIVE STUDY OF INDIAN PENAL CODE, 1860 (IPC) & BHARATIYA NYAYA SANHITA, 2023 (BNS)

SECTION 2(3) BNS

Hi, we are the children of India. We are covered under Section 2(3) of Bharatiya Nyaya Sanhita, 2023, which states that a child means a person below the age of eighteen years old.





COMPARATIVE STUDY OF INDIAN PENAL CODE, 1860 (IPC) & BHARATIYA NYAYA SANHITA, 2023 (BNS)

This chapter provides a comparative study of the Indian Penal Code, 1860 (IPC), and the Bharatiya Nyaya Sanhita, 2023 (BNS), with a focus on provisions related to children. As the principal penal code of India, the BNS describes various offences and prescribes corresponding punishments. This book examines specific provisions dealing with offences against children and outlines punishments for such acts.

For the convenience of readers, the comparative analysis is structured into seven key parts, each addressing critical aspects of child-related provisions under the IPC and BNS. These include essential definitions, exemptions from criminal liability for children, and protections for those acting in the interest of children. Other sections focus on crimes targeting children, including unborn and newly born children, as well as crimes against the girl child and the unborn girl child. Special emphasis is placed on maintaining the confidentiality of child victims to ensure their dignity and reduce trauma during legal proceedings. This comparison reflects the legal system's evolution in safeguarding children's rights and advocating for a child-sensitive approach.

1. IMPORTANT DEFINITIONS

- **“Child”**

A new provision under BNS describes the “child” as any person below the age of 18 years. The term child was not defined under the IPC.

Section of IPC - N.A.	Section 2(3) of BNS
	“child” means any person below the age of eighteen years;

BNS introduced the definition of “Child”, which provides more clarity in the act and put a closure on the issue of age of “child”, further make the BNS more gender neutral.

- **“Gender”**

As per this definition the word “Gender”, “he” and its derivatives are used to denote male, female and transgender. Definition of transgender is borrowed from Section 2(k) of the Transgender Persons (Protection of Rights) Act, 2019.

Section 8 of IPC	Section 2(10) of BNS
Gender - The pronoun “he” and its derivatives are used of any person, whether male or female.	“Gender” - The pronoun “he” and its derivatives are used of any person, whether male, female or transgender. <i>Explanation</i> - “Transgender” shall have the meaning assigned to it in clause (k) of section 2 of the Transgender Persons (Protection of Rights) Act, 2019;

BNS recognises the existence of third gender which was not there in IPC, which is also helpful for the purpose of “child”, as it gives identity to the “child”, who are neither male nor female.

2. CRIMINAL LIABILITY OF CHILD AND EXEMPTIONS

This part describes provisions which exempts the child under a certain age. It further lays down the legal validity of consent given by the child under a certain age.

• Act of a child under Seven years of age

Under section 82 IPC and section 20 BNS, provides complete exemption to any act committed by the child below the age of seven years, in other words, a child below the age of seven cannot be said to commit any offence.

Section 82 of IPC	Section 20 of BNS
Act of a child under seven years of age- Nothing is an offence which is done by a child under seven years of age.	Act of a child under seven years of age.— Nothing is an offence which is done by a child under seven years of age.

There is no change in this section under BNS. BNS has retained the principle of criminal law under IPC.

• Act of a child under Twelve years of age

Section 83 of IPC and Section 21 of BNS states that the act committed by the child between the age of 7 to 12 years cannot be said to be an offence, if the child who committed that act is not mature enough to understand the nature and consequences of his act, at the time of commission of the act.

Section 83 of IPC	Section 21 of BNS
Act of a child above seven and under twelve years of age of immature understanding.- Nothing is an offence which is done by a child above seven years of age and under twelve years of age, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.	Act of a child above seven and under twelve of immature understanding.— Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

There is no change in this section under BNS, except certain changes in the language of the provision. The word 'under twelve years of age' is replaced by 'under twelve'.

• Consent given by a child under Twelve years of age

Section 90 IPC and Section 28 BNS states about the unwilling or forced or under the fear consent cannot be said to be the valid consent. This is a general principle.

One of the exception of this section is that no consent shall be considered as valid consent if it is given by a person who is under twelve years of age.

Section 90 of IPC	Section 28 of BNS
Consent known to be given under fear or misconception— A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person	Consent known to be given under fear or misconception- A consent is not such a consent as is intended by any section of this Sanhita,— (a) if the consent is given by a person under fear of injury, or



doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

(b) if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

(c) unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

There is a bit change in the language of the section, but no material changes under BNS.

3. ACT DONE IN GOOD FAITH

A person acting on behalf of or for the benefit of child is not liable. This part describes exemptions from certain offences committed by any person, who was supposedly acting for the benefit of the child or on behalf of the child. However, mere pecuniary benefit will not be sufficient to excuse from criminal liability.

• Act done in good faith by any person with the express or implied consent of guardian or lawful custodian of child below the age of twelve years

Section 89 IPC and section 27 BNS, provides immunity to the person from the offence committed against the child below the age of twelve years, who with the express or implied consent of the guardian or lawful custodian of that child do any act in favour of the child below the age of twelve years but that act caused harm to that child. Exceptions under this section as follows-

- If the act is done with the intention to cause death or attempting to cause death of the child.
- The person is well within his knowledge that the act might cause death of the child, but that act might also be exempted if the same was done to prevent the death, grievous hurt, or save the child from any disease.
- If the act is done with the intention to cause hurt or grievous hurt or attempt of the hurt or grievous hurt.
- The Child becomes “Child in conflict with law” due to the abetment of person for the offences which are not exempted under this section.

Section 89 of IPC	Section 27 of BNS
Act done in good faith for benefit of child or insane person, by or by consent of guardian- Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person:	Act done in good faith for benefit of child or person of unsound mind, by, or by consent of guardian- Nothing which is done in good faith for the benefit of a person under twelve years of age, or person of unsound mind, by, or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person:

Provided Provisos —

First—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Provided that this exception shall not extend to—

(a) the intentional causing of death, or to the attempting to cause death;

(b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

(c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

(d) the abetment of any offence, to the committing of which offence it would not extend.

There is a bit change in the language of the section, but no material changes under BNS. The provision is rearranged with insertion of clauses from (a) to (d). The words ‘insane person’ is substituted with the words ‘person of unsound mind’.

4. CRIME AGAINST UNBORN OR NEWLY BORN CHILD

This part explores provisions of the crime committed against the unborn or newly born child, irrespective of the gender of the child.

• Causing Miscarriage

Causing unnecessary miscarriage of the woman, with the bad intention is an offence under section 312 IPC and section 88 BNS, and the offender, including the woman herself, if she is involved in this act can be punished with the imprisonment of maximum three years or with fine or with both.

Causing miscarriage, if woman be “quick with the child” (term “quick with the child” means when the movement of fetus or foetus be felt) can be punished with the imprisonment of maximum seven years and with fine.

Section 312 of IPC	Section 88 of BNS
<p>Causing miscarriage- Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.</p> <p><i>Explanation</i>—A woman who causes herself to miscarry, is within the meaning of this section.</p>	<p>Causing miscarriage- Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.</p> <p><i>Explanation</i>—A woman who causes herself to miscarry, is within the meaning of this section.</p>

There is no change in this section under BNS.

• Causing Miscarriage without the consent of the Woman

Causing miscarriage of the woman, without her consent is a more serious offence and person is liable for life imprisonment or imprisonment for the maximum term of 10 years and shall also be liable for fine.

Section 313 of IPC	Section 89 of BNS
<p>Causing miscarriage without woman's consent- Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</p>	<p>Causing miscarriage without woman's consent- Whoever commits the offence under section 88 without the consent of the woman, whether the woman is quick with child or not, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</p>

There is no change in this section under BNS.

• Death of Woman in causing miscarriage

According to this section if there is death of a woman during the process of miscarriage or by any act which is leading to miscarriage is occurred then the person is liable for imprisonment for the maximum term of ten years and shall also be liable for fine.

If the said act is committed without the consent of the woman, under these circumstances the person may be liable for life imprisonment or maximum ten years imprisonment and fine.

Further knowledge of probability to occur death or not is immaterial for the purpose of offence under this section.

Section 314 of IPC	Section 90 of BNS
<p>Death caused by act done with intent to cause miscarriage- Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;</p> <p>if act done without woman's consent—and if the act is done without the consent of the woman, shall be punished either with 1[imprisonment for life], or with the punishment above mentioned.</p> <p><i>Explanation</i>— It is not essential to this offence that the offender should know that the act is likely to cause death.</p>	<p>Death caused by act done with intent to cause miscarriage- (1) Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</p> <p>(2) Where the act referred to in sub-section is done without the consent of the woman, shall be punishable either with imprisonment for life, or with the punishment specified in said sub-section.</p> <p><i>Explanation</i>—It is not essential to this offence that the offender should know that the act is likely to cause death.</p>

There are no material changes under BNS in this section. The language of the section largely remains unchanged, except organizing into sub-sections.

• Act to prevent the alive birth of child or cause death of new born child

According to section 315 IPC and section 91 BNS, any action of the person to cause the death of a newly born child or action to prevent the alive birth of the child is a punishable offence and the person committing such offence is liable for the maximum imprisonment of ten years or fine or both.

Only exception to this section is that, if the said action was committed to prevent the life of the mother.

Section 315 of IPC	Section 91 of BNS
Act done with intent to prevent child being born alive or to cause it to die after birth- Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.	Act done with intent to prevent child being born alive or to cause it to die after birth- Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

There is no change in this section under BNS.

• Death of quick unborn child

According to section 316 IPC and section 92 BNS, an act which causes death of quick unborn child (means when the movement of the foetus is felt) is amounting to culpable homicide which is punishable offence to the extent of life imprisonment or maximum ten years imprisonment along with fine.

Section 316 of IPC	Section 92 of BNS
Causing death of quick unborn child by act amounting to culpable homicide- Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.	Causing death of quick unborn child by act amounting to culpable homicide- Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

There is no change in this section under BNS.

• Concealment of birth of child by secret disposal of dead body

The action of disposal of the dead body of the child with the intention to conceal the fact regarding the birth of that child is amounting to offence under section 318 IPC and section 94 BNS and its punishment may extend to two years imprisonment or fine or both.

It is essential to mention here that section 318 IPC and section 94 BNS are applicable in all circumstances, whether the child died before, during or after its birth.



Section 318 of IPC	Section 94 of BNS
Concealment of birth by secret disposal of dead body- Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.	Concealment of birth by secret disposal of dead body- Whoever, by secretly burying or otherwise disposing of the dead body of a child whether such child die before or after or during its birth, intentionally conceals or endeavors to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

There is no change in this section under BNS.

5. CRIME AGAINST CHILD

This part explains specific provisions of the crime committed against the child, irrespective of the gender of the child.

• Abetment of Suicide of Child

According to section 305 IPC and section 107 BNS, any person who abets or provokes the child to commit suicide is liable for the death penalty or life imprisonment or imprisonment for the period of 10 years at-least along with the fine.

Section 305 of IPC	Section 107 of BNS
Abetment of suicide of child or insane person— If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.	Abetment of suicide of child or insane person— If any child, any person of unsound mind, any delirious person or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

There is a bit change in the language of the section, but no material changes under Section 107 of BNS. While the punishment prescribed is unaltered, the words 'any idiot' is omitted in Section 107 BNS. The word 'insane person' is replaced with the word 'person of unsound mind' and the words 'person under the eighteen years of age' is replaced with the word 'child'.

• Kidnapping of Child

This section defines the term "Kidnapping" of a child. A person who takes a child from the guardian or the lawful custody of another person is said to have committed Kidnapping.

Kidnapping is a punishable offence and the person who committed the offence is liable for the imprisonment for maximum seven years and shall also be liable to pay the fine. Lawful guardian under section 137 BNS, include any person lawfully entrusted with the care or custody of such child or other person.

Exception to this section is that if a person who committed the kidnapping considered himself as the illegitimate father of that child or person having the sufficient means to believe that he is entitled for the lawful custody of that child.

Sections 359, 360, 361 and 363 of IPC	Section 137 of BNS
<p>359. Kidnapping— Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship.</p> <p>360. Kidnapping from India— Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India.</p> <p>361. Kidnapping from lawful guardianship- Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.</p> <p><i>Explanation-</i> The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.</p> <p><i>Exception-</i> This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.</p> <p>363. Punishment for kidnapping- Whoever kidnaps any person from 1[India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.</p>	<p>Kidnapping-</p> <p>(1) Kidnapping is of two kinds: kidnapping from India, and kidnapping from lawful guardianship-</p> <p>(a) Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India;</p> <p>(b) Whoever takes or entices any child or any person of unsound mind, out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such guardian, is said to kidnap such child or person from lawful guardianship.</p> <p><i>Explanation-</i> The words “lawful guardian” in this clause include any person lawfully entrusted with the care or custody of such child or other person.</p> <p><i>Explanation-</i> This clause does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.</p> <p>(2) Whoever kidnaps any person from India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.</p>

Section 137(1) of BNS corresponds to Section 359 of IPC. Section 137(1)(a) of BNS corresponds to Section 360 of IPC. There is no change and this provision is retained as it is.

Section 137(1)(b) of BNS corresponds to Section 361 of IPC. The words ‘minor under sixteen years of age if a male, or under eighteen years of age if a female’ as found under Section 361 IPC is replaced with the word ‘child’ under Section 137(1)(b) of BNS. Section 137(2) of BNS corresponds to Section 363 of IPC and there is no change in the language of the provision and it is retained as it is.

Under IPC section 359 defined Kidnapping, Section 360 Kidnapping from India, Section 361 Kidnapping from lawful guardianship and section 363 described punishment for the offence of Kidnaping. Under BNS, all four of these sections are combined together and converted into one section, i.e. section 137 of BNS. Further, under IPC this provision was applicable in case of kidnapping of the male child under the age of 16 and of female child under the age of 18, but in BNS with the introduction of definition of “child” under Section 2(3) of BNS this section is equally applicable for kidnapping of child under the age of 18 years, irrespective of gender. Section 2(3) of BNS defines child as any person below the age of eighteen years.



• Kidnapping or maiming for the purpose of begging

According to Section 139 BNS, kidnapping for the purpose of begging is punishable offence and offender is liable for punishment of rigorous life imprisonment for the term of at least ten years and shall also be liable for the fine.

Causing maiming of a child for the purpose of any kind of employment or begging is punishable offence and offender is liable for life imprisonment or the term of at least twelve years and shall also be liable for the fine. Under section 139 BNS, life imprisonment means imprisonment for the remaining natural life of the offender.

According to Section 139 BNS, a person who employed the child, being not the lawful guardian is also presumed to committed offence under this section, unless contrary is proven.

Section 363A of IPC	Section 139 of BNS
<p>Kidnapping or maiming a minor for purposes of begging-</p> <p>(1) Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</p> <p>(2) Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.</p> <p>(3) Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.</p> <p>(4) In this section—</p> <p>(a) “begging” means—</p> <p>(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortunetelling, performing tricks or selling articles or otherwise;</p> <p>(ii) entering on any private premises for the purpose of soliciting or receiving alms;</p> <p>(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;</p> <p>(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;</p> <p>(b) “minor” means—</p> <p>(i) in the case of a male, a person under sixteen years of age; and</p> <p>(ii) in the case of a female, a person under eighteen years of age.</p>	<p>Kidnapping or maiming a child for purposes of begging-</p> <p>(1) Whoever kidnaps any child or, not being the lawful guardian of such child, obtains the custody of the child, in order that such child may be employed or used for the purposes of begging shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.</p> <p>(2) Whoever maims any child in order that such child may be employed or used for the purposes of begging shall be punishable with imprisonment which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person’s natural life, and with fine.</p> <p>(3) Where any person, not being the lawful guardian of a child employs or uses such child for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of such child in order that such child might be employed or used for the purposes of begging.</p> <p>(4) In this section “begging” means—</p> <p>(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune telling, performing tricks or selling articles or otherwise;</p> <p>(ii) entering on any private premises for the purpose of soliciting or receiving alms;</p> <p>(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;</p> <p>(iv) using such child as an exhibit for the purpose of soliciting or receiving alms.</p>

Section 139 of BNS corresponds to Section 363 A of IPC. There is a significant change in section 139 BNS, pertaining to the punishment for the offence. Punishment under Section 139(1) BNS is enhanced to rigorous imprisonment for 10 years which may extend to imprisonment of life. Punishment under Section 139(2) is enhanced to imprisonment of not less than 20 years which may extend to remainder of that person's natural life. Further, the word 'minor' is replaced with 'child'. With the introduction of definition of the "child", age variation based on gender is also omitted.

• Kidnapping for various other purposes

Kidnapping is itself an offence, but the kidnapping for any specific purpose increases the gravity of crime so as the gravity and quantum of punishment.

Kidnapping for the purpose of murder of child is punished with rigorous imprisonment for maximum 10 years or life imprisonment along with fine.

Kidnapping or detention and giving threat to death or hurt to a child for the purpose of ransom or for doing or abstaining from doing certain acts from a private person or Government institution, Foreign Government or any international Government institution is punished with life imprisonment or death penalty along with fine.

Kidnapping of the child for the purpose of lust or slavery or to cause grievous hurt to the child is punished with imprisonment for maximum 10 years along with fine.

Sections 364, 364A, 365 and 367 of IPC	Section 140 of BNS
<p>364. Kidnapping or abducting in order to murder- Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.</p> <p>364A. Kidnapping for ransom, etc.- Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter- governmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.</p> <p>365. Kidnapping or abducting with intent secretly and wrongfully to confine person- Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.</p> <p>367. Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.—Whoever kidnaps or abducts any</p>	<p>Kidnapping or abducting in order to murder or for ransom, etc.-</p> <p>(1) Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.</p> <p><i>Illustrations.</i></p> <p>(a) A kidnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.</p> <p>(b) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.</p> <p>(2) Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.</p>

person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(3) Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(4) Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 140 (1) of BNS corresponds to Section 364 of IPC. Section 140 (2) of BNS corresponds to Section 364A of IPC. Section 140 (3) of BNS corresponds to Section 365 of IPC and Section 140 (4) of BNS corresponds to Section 367 of IPC. There are no changes under the following provisions and they are retained as it is. Section 364, 364A, 365 and 367 of IPC combined as Section 140 of BNS.

• Kidnapping for the purpose of marriage from child

This Section states that the act of kidnapping of a child for the purpose of marriage or for making sexual relation with that child is an offence, under this section, punishable with the imprisonment for the term of maximum 10 years along with the fine.

Section 366 of IPC	Section 87 of BNS
<p>Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.]</p>	<p>Kidnapping, abducting or inducing woman to compel her marriage, etc.— Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Sanhita or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.</p>

There is no change in this section under BNS.

• Concealment for information of Kidnapping of Child

Concealment for information of kidnapping of the child is also a punishable offence and the person who conceals such information is liable for the same punishment; the punishment which is prescribed for commitment of that particular offence.

Section 368 of IPC	Section 142 of BNS
Wrongfully concealing or keeping in confinement, kidnapped or abducted person -Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.	Wrongfully concealing or keeping in confinement, kidnapped or abducted person - Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

There is no change in this section under BNS.

• Abandonment of child under 12 years of age by parents or caretaker

Parents or lawful guardians or persons taking care of the child under 12 years of age, if abandons or leaves the child can be punished with the imprisonment of term of maximum seven years or liable for fine or both.

In the case of such abandonment, if the death of the child occurs then the responsible person shall be liable for culpable homicide or murder on the basis of the facts of the matter.

Section 317 of IPC	Section 93 of BNS
Exposure and abandonment of child under twelve years, by parent or person having care of it -Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. <i>Explanation</i> —This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.	Exposure and abandonment of child under twelve years of age, by parent or person having care of it - Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. <i>Explanation</i> —This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

There is no change in this section under BNS.

• Hiring, employing or engaging a child to commit an offence

This section is in two folds. First hiring or employing or engaging a child for the purpose of committing any crime is punishable with imprisonment for at-least three years and the imprisonment may extend to 10 years along with fine.

Second part states that if the offence is committed by that child due to such hiring etc., so the person who hired or employed or engaged that child is liable for the punishment of that offence which was committed by the child. This section prescribes

punishment for mere hiring of the child and a different punishment when the actual offence is committed by such child.

This section is also applicable on the hiring, employing or engaging the child for the purpose of sexual exploitation or pornography.

Section of IPC - N.A.	Section 95 of BNS
	<p>Hiring, employing or engaging a child to commit an offence- Whoever hires, employs or engages any child to commit an offence shall be punished with imprisonment of either description which shall not be less than three years but which may extend to ten years, and with fine; and if the offence be committed shall also be punished with the punishment provided for that offence as if the offence has been committed by such person himself.</p> <p><i>Explanation-</i> Hiring, employing, engaging or using a child for sexual exploitation or pornography is covered within the meaning of this section.</p>

This is a new section introduced in BNS.

• Procurement of child

Section 366-A IPC and section 96 BNS, states that if the person sends a child to some place and knows that the child may be sexually exploited there or there is a possibility of sexual exploitation of child, then it shall be punished with the imprisonment which may extend to ten years along with fine.

Section 366A of IPC	Section 96 of BNS
<p>Procurement of minor girl- Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.</p>	<p>Procurement of Child- Whoever, by any means whatsoever, induces any child to go from any place or to do any act with intent that such child may be, or knowing that it is likely that such child will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.</p>

There is significant change in this section as the word “minor girl” mentioned in IPC is replaced by the term “child”, meaning thereby now this section has become gender neutral and is applicable for every child irrespective of their gender.

• Importation of child (girl or boy) from foreign country

This section states that if the person imports any girl under the age of 21 years and boy under the age of 18 years from any foreign country for the purpose of sexual exploitation of that girl or boy or even the person knows that there is a possibility of sexual exploitation of that girl or boy, shall be punished with the imprisonment for maximum ten years along with fine.

Section 366B of IPC	Section 141 of BNS
Importation of girl from foreign country -Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.	Importation of girl or boy from foreign country - Whoever imports into India from any country outside India any girl under the age of twenty-one years or any boy under the age of eighteen years with intent that girl or boy may be, or knowing it to be likely that girl or boy will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

In IPC, this section was applicable for the girl child only, but in BNS it is applicable on both girl and boy child. Further, in IPC the import from Jammu and Kashmir was also considered as import foreign country, which is not in BNS.

• Kidnapping of child for purpose of stealing something

Kidnapping of a child under the age of 10 years to steal some movable property from his parents, guardian, caretaker etc. is a punishable offence and the punishment may extend to imprisonment for maximum seven years along with fine.

Section 369 of IPC	Section 97 of BNS
Kidnapping or abducting child under ten years with intent to steal from its person - Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.	Kidnapping or abducting child under ten years with intent to steal from its person - Whoever kidnaps or abducts any child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

There is no change in this section under BNS.

• Trafficking of child

“Trafficking” of any person is punishable offence, but if there is trafficking of a child then the punishment for the offence is severe.

The term “Trafficking” means recruitment, transportation, transfer of any person against his own free will.

“Trafficking” of a child is an offence amounting to punishment of rigorous imprisonment of at- least 10 years which may extend to life imprisonment along with fine. In case there is trafficking of more than one child then the punishment shall be rigorous imprisonment of at-least 10 years which may extend to life imprisonment along with fine.

Section 370 of IPC	Section 143 of BNS
Trafficking of person - (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by— <i>First</i> —using threats, or <i>Secondly</i> —using force, or any other form of coercion, or	Trafficking of person - (1) Whoever, for the purpose of exploitation recruits, transports, harbours, transfers, or receives a person or persons, by— (a) using threats; or (b) using force, or any other form of coercion; or (c) by abduction; or

Thirdly—by abduction, or

Fourthly—by practising fraud, or deception, or

Fifthly—by abuse of power, or

Sixthly—by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(d) by practising fraud, or deception; or

(e) by abuse of power; or

(f) by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1—The expression "exploitation" shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, beggary or forced removal of organs.

Explanation 2—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a child, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one child, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of a child on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

There is no significant change in this section under BNS, just the term "minor" being replaced from term "child".

• Exploitation of trafficked child

“Trafficking” is an offence as mentioned earlier; the engaging of a trafficked child for the purpose of sexual exploitation is another offence, which may be committed by the person who trafficked the child or may be by some other person. This is a punishable offence with the imprisonment of five years at least or may extend for the period of ten years along with fine.

Section 370A of IPC	Section 144 of BNS
<p>Exploitation of a trafficked person-</p> <p>(1) Whoever, knowingly or having reason to believe that a minor has been trafficked, engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to seven years, and shall also be liable to fine.</p> <p>(2) Whoever, knowingly by or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to five years, and shall also be liable to fine.</p>	<p>Exploitation of a trafficked person -</p> <p>(1) Whoever, knowingly or having reason to believe that a child has been trafficked, engages such child for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.</p> <p>(2) Whoever, knowingly or having reason to believe that a person has been trafficked, engages such person for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.</p>

Section 144 BNS corresponds to Section 370 A of IPC. The word ‘minor’ is replaced with child under BNS. The maximum punishment under Section 144(1) of BNS may extend to ten years which was seven years under Section 370 A (1) of IPC. Further, maximum punishment under Section 144(2) may extend to seven years which was five years under Section 370 A (2) of IPC.

• Selling Child for the purpose of prostitution

Selling child for the purpose of prostitution is an offence punishable with the imprisonment which may extend to ten years of imprisonment along with the fine.

There is a presumption under this section that until contrary is proven, the person who sells the girl child is presumed to sell her for the purpose of sexual exploitation.

Section 372 of IPC	Section 98 of BNS
<p>Selling minor for purposes of prostitution, etc.- Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</p>	<p>Selling child for purposes of prostitution, etc- Whoever sells, lets to hire, or otherwise disposes of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</p>

Explanation I—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II—For the purposes of this section “illicit intercourse” means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

Explanation 1—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation 2—For the purposes of this section “illicit intercourse” means sexual intercourse between persons not united by marriage or by any union or tie which, though not amounting to a marriage, is recognised by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

Section 98 of BNS corresponds to Section 372 of IPC. There is no material change to the provision under BNS and the words ‘minor’ and ‘any person under the age of eighteen years’ are replaced with the word ‘child’. Further the phrase ‘such person’ has been replaced with ‘such child’.

• Buying Child for the purpose of prostitution

Buying child for the purpose of prostitution is an offence punishable with the imprisonment of at least seven years, which may extend to fourteen years of imprisonment along with the fine.

There is a presumption under this section that until contrary is proven, the person who buys the girl child is presumed to buy her for the purpose of sexual exploitation.

Section 373 of IPC	Section 99 of BNS
<p>Buying minor for purposes of prostitution, etc.- Whoever buys, hires or otherwise obtains possession of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</p> <p><i>Explanation I</i>—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.</p> <p><i>Explanation II</i>—“Illicit intercourse” has the same meaning as in section 372.</p>	<p>Buying child for purposes of prostitution, etc.-Whoever buys, hires or otherwise obtains possession of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to fourteen years, and shall also be liable to fine.</p> <p><i>Explanation 1</i>—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.</p> <p><i>Explanation 2</i>—“Illicit intercourse” has the same meaning as in section 98.</p>

Punishment under BNS is being increased, from maximum term of ten years to maximum term of fourteen years, further, there is also rider for minimum punishment under BNS. The words 'minor' and 'person under the age of eighteen years' are replaced with the word 'child' under BNS.

• Sexual intercourse with Child by person of certain authority

If the sexual intercourse is committed by any person in authority including, the superintendent or manager working in the children's institution shall be liable for punishment of rigorous imprisonment of at least five years which may extend to ten years along with the fine.

Section 376C of IPC	Section 68 of BNS
<p>Sexual intercourse by a person in authority- Whoever, being—</p> <p>(a) in a position of authority or in a fiduciary relationship; or</p> <p>(b) a public servant; or</p> <p>(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or</p> <p>(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.</p> <p><i>Explanation 1</i>—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375.</p> <p><i>Explanation 2</i>—For the purposes of this section, Explanation 1 to section 375 shall also be applicable.</p> <p><i>Explanation 3</i>—“Superintendent”, in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.</p> <p><i>Explanation 4</i>—The expressions “hospital” and “women's or children's institution” shall respectively have the same meaning as in Explanation to sub-section (2) of section 376.</p>	<p>Sexual intercourse by a person in authority- Whoever, being—</p> <p>(a) in a position of authority or in a fiduciary relationship; or</p> <p>(b) a public servant; or</p> <p>(c) superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force, or a women's or children's institution; or</p> <p>(d) on the management of a hospital or being on the staff of a hospital, abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.</p> <p><i>Explanation 1</i>—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 63.</p> <p><i>Explanation 2</i>—For the purposes of this section, Explanation 1 to section 63 shall also be applicable.</p> <p><i>Explanation 3</i>—“Superintendent”, in relation to a jail, remand home or other place of custody or a women's or children's institution, includes a person holding any other office in such jail, remand home, place or institution by virtue of which such person can exercise any authority or control over its inmates.</p> <p><i>Explanation 4</i>—The expressions “hospital” and “women's or children's institution” shall respectively have the same meanings as in clauses (b) and (d) of the Explanation to sub-section (2) of section 64.</p>

There is no change in this section under BNS.

• Culpable homicide not amounting to murder of Child

Homicide means killing a human being by another human being, homicide not amounting to murder is considered as Culpable homicide. Under this section killing a child under the mother's womb is culpable homicide, if any part of that child is developed under the womb, whether the child is breathing or not under the womb or fully developed or not.

Punishment for culpable homicide not amounting to murder is defined under Section 105 of BNS as minimum five years of imprisonment or maximum ten years along with fine and may extend to life imprisonment along with fine.

Act done with the intention to cause death or such bodily injury which cause death, then the imprisonment for the term of ten years maximum along with fine.

Sections 299 and 304 of IPC	Sections 100 and 105 of BNS
<p>299. Culpable homicide- Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.</p> <p><i>Explanation 1</i>—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.</p> <p><i>Explanation 2</i>—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.</p> <p><i>Explanation 3-</i> The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.</p> <p>304. Punishment for culpable homicide not amounting to murder- Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.</p>	<p>100. Culpable homicide- Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.</p> <p><i>Explanation 1</i>—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.</p> <p><i>Explanation 2</i>—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.</p> <p><i>Explanation 3-</i> The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.</p> <p>105. Punishment for culpable homicide not amounting to murder- Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which shall not be less than five years but which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years and with fine, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.</p>

Section 100 of BNS corresponds to Section 299 of IPC and there is no change under this provision. Section 105 of BNS corresponds to Section 304 of IPC. The following changes made under Section 105 of BNS are as follows:

The punishment for culpable homicide not amounting to murder, if act by which the death is caused is done with the intention of causing death, is imprisonment for life, or imprisonment for not less than five years but which may extend to ten years and fine. Under this provision minimum punishment of five years of imprisonment is mandatory. The words ‘imprisonment for life, or imprisonment of either description for a term which may extend to ten years’ under IPC is replaced with ‘imprisonment for life, or imprisonment of either description for a term which shall not be less than five years but which may extend to ten years’ under BNS.

Punishment for culpable homicide not amounting to murder if act be done with the intention to cause death etc, is imprisonment for ten years and with fine. The words ‘either description for a term which may extend to ten years, or with fine, or with both’ under IPC is replaced with ‘either description for a term which may extend to ten years and with fine’.

- **Sale, etc., of obscene objects to child**

Sale, hire, distribution, exhibition etc. of any obscene object to a child or attempt to do so, is an offence punishable with imprisonment upto three years on first conviction and upto seven years on subsequent convictions including fine.

Section 293 of IPC	Section 295 of BNS
Sale, etc., of obscene objects to young person- Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.	Sale, etc., of obscene objects to child- Whoever sells, lets to hire, distributes, exhibits or circulates to any child any such obscene object as is referred to in section 294, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.

The words ‘any person under the age of twenty years’ and ‘young person’ are replaced with the word ‘child’.

6. CRIME AGAINST GIRL CHILD

This part describes specific provisions of the crime committed against the Girl child. “Rape” with woman is define under section 63 of BNS, but there are some special provisions in relation with girl child, which we are discussing here.

- **Rape and the special provision in relation with Girl Child and Punishment**

As per section 63 (d) (iv) intercourse of any kind with the girl child, under the age of 18 years is amounting to “rape”, irrespective of consent of that girl child, meaning thereby any kind of intercourse with the girl under the age of 18 years is rape.

The sexual act or sexual intercourse with the “wife” under the age of 18 years is also the “rape” under this section.



Section 375 of IPC

Rape- A man is said to commit “rape” if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First—Against her will.

Secondly—Without her consent.

Thirdly—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly—With or without her consent, when she is under eighteen years of age. *Seventhly*.—When she is unable to communicate consent.

Explanation 1—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:
Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be

Section 63 of BNS

Rape- A man is said to commit “rape” if he—

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

(i) against her will;

(ii) without her consent;

(iii) with her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt;

(iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;

(v) with her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent;

(vi) with or without her consent, when she is under eighteen years of age;

(vii) when she is unable to communicate consent.

Explanation 1—For the purposes of this section, “vagina” shall also include labia majora.

***Explanation 2*— Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:**

regarded as consenting to the sexual activity.

Exception 1—A medical procedure or intervention shall not constitute rape.

Exception 2—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1—A medical procedure or intervention shall not constitute rape.

Exception 2—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.

There is a significant change under this section. Under IPC the sexual intercourse with the wife under the age of 15 years was offence, but under BNS sexual intercourse with the wife under 18 years is rape.

• Punishment for rape with girl child

Person who commits rape with girl child is punished with the imprisonment for a term of ten years at least and it can be extended to life imprisonment along with the fine.

If rape is committed by the any person managing or working in the children's institution on a girl child, shall be liable for punishment of imprisonment of at least ten years which may extend to life imprisonment along with fine. Here the meaning of life imprisonment is imprisonment till the completion of natural life of person.

Section 376(1)(2) of IPC	Section 64 of BNS
<p>Punishment for rape-</p> <p>(1) Whoever, except in the cases provided for in sub-section (2) commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.</p> <p>(3) Whoever-</p> <p>(a) being a police officer, commits rape—</p> <p>(i) within the limits of the police station to which such police officer is appointed; or</p> <p>(ii) in the premises of any station house; or</p> <p>(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or</p> <p>(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or</p> <p>(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or</p> <p>(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any</p>	<p>Punishment for rape-</p> <p>(1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.</p> <p>(3) Whoever-</p> <p>(a) being a police officer, commits rape,—</p> <p>(i) within the limits of the police station to which such police officer is appointed; or</p> <p>(ii) in the premises of any station house; or</p> <p>(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or</p> <p>(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or</p> <p>(c) being a member of the armed forces deployed in an area by the Central Government or a State Government commits rape in such area; or</p> <p>(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or</p>

law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or
(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
(f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
(g) commits rape during communal or sectarian violence; or
(h) commits rape on a woman knowing her to be pregnant; or
(j) commits rape, on a woman incapable of giving consent; or
(k) being in a position of control or dominance over a woman, commits rape on such woman; or
(l) commits rape on a woman suffering from mental or physical disability; or
(m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
(n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation—For the purposes of this sub-section,—

- (a) “armed forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;
- (b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
- (c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861 (5 of 1861);
- (d) “women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

- (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
- (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
- (g) commits rape during communal or sectarian violence; or
- (h) commits rape on a woman knowing her to be pregnant; or
- (i) commits rape, on a woman incapable of giving consent; or
- (j) being in a position of control or dominance over a woman, commits rape on such woman; or
- (k) commits rape on a woman suffering from mental or physical disability; or
- (l) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (m) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation—For the purposes of this sub-section,—

- (a) “armed forces” means the naval, army and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;
- (b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
- (c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861;
- (d) “women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

There is no change in this section under BNS.

• Punishment for rape with girl child under 12 or 16 years of age-

Person who commits rape with a girl child under 16 years of age is punished with the imprisonment for a term of twenty years at least and it can be extended to life imprisonment along with fine. Here, imprisonment for life means imprisonment till the completion of natural life of the person.

Person who commits rape with girl child under 12 years of age is punished with the imprisonment for a term of twenty years at least which can be extended to life imprisonment or with death penalty, along with fine. Here imprisonment for life means imprisonment till the completion of natural life of the person.

Fine under this section means adequate amount required for the treatment as well as rehabilitation of the girl child.

Section 376(1)(2) of IPC	Section 64 of BNS
<p>Rape-</p> <p>(3) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:</p> <p>Provided further that any fine imposed under this sub-section shall be paid to the victim.</p> <p>376AB. Punishment for rape on woman under twelve years of age- Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:</p> <p>Provided further that any fine imposed under this section shall be paid to the victim.</p>	<p>Punishment for rape in certain cases-</p> <p>(1) Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:</p> <p>Provided further that any fine imposed under this sub-section shall be paid to the victim.</p> <p>(2) Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:</p> <p>Provided further that any fine imposed under this sub-section shall be paid to the victim.</p>

There is no change in this section under BNS.

• Gang Rape

Section 376D of IPC defined Gang Rape and equivalent Section of BNS is Section 70(1). Punishment for Gang rape is at least twenty years of imprisonment which may extend to life imprisonment, till the completion of natural life of a person along with fine.

Gang Rape with Girl Child under the 18 years of age is consider a severe crime hence, punishment for the same is life imprisonment, till the completion of natural life of person along with the fine or may also be liable for the death penalty along with fine.

Sections 376D, 376DA and 376DB of IPC	Section 70 of BNS
<p>376DA- Punishment for gang rape on woman under sixteen years of age- Where a woman under sixteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine.</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:</p> <p>Provided further that any fine imposed under this section shall be paid to the victim.</p> <p>376DB- Punishment for gang rape on woman under twelve years of age-</p> <p>Where a woman under twelve years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death.</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim.</p> <p>Provided further that any fine imposed under this section shall be paid to the victim.</p>	<p>Gang Rape-</p> <p>(1) Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and with fine:</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:</p> <p>Provided further that any fine imposed under this sub-section shall be paid to the victim.</p> <p>(2) Where a woman under eighteen years of age is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death:</p> <p>Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:</p> <p>Provided further that any fine imposed under this sub-section shall be paid to the victim.</p>

There is a significant change under this provision in BNS. Earlier under IPC, the punishment for rape on a girl child below the age of 16 years and below the age of 12 years were different. But within the BNS, rape of a girl child below the age of 18 years is considered as a heinous offence and the punishment can be extended to death penalty also.

7. IDENTITY OF THE CHILD VICTIMS MUST NOT BE DISCLOSED

This part deals with the provisions of IPC and BNS which states that the identity of the child victim must not be disclosed in the public domain.

• Disclosure of identity of Child Victim

Disclosure of identity of the child victim of rape or other sexual offences by print or by publication without the prior consent of the next kin of child or publication is done with the written order of investigation officer of the case or SHO of police station to help in the investigation. This offence is punishable with the imprisonment for the period of two years along with fine.

Printing or publication of matters pending before the court relating to rape or sexual offences, without permission of the court is also offence punishable with the imprisonment for the term of two years along with fine. Publication of the judgments of Supreme Court and High Courts are not offence under this section.



Section 293A of IPC	Sections 72 and 73 of BNS
<p>228A. Disclosure of identity of the victim of certain offences, etc.-</p> <p>(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.</p> <p>(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—</p> <p>(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or</p> <p>(b) by, or with the authorisation in writing of, the victim; or</p> <p>(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:</p> <p>Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.</p> <p><i>Explanation</i>-For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.</p> <p>(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.</p> <p><i>Explanation</i>- The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.</p>	<p>72. Disclosure of identity of victim of certain offences, etc.-</p> <p>(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 64 or section 65 or section 66 or section 67 or section 68 or section 69 or section 70 or section 71 is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.</p> <p>(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—</p> <p>(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or</p> <p>(b) by, or with the authorisation in writing of, the victim; or</p> <p>(c) where the victim is dead or a child or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:</p> <p>Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.</p> <p><i>Explanation</i>- For the purposes of this sub- section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central Government or the State Government.</p> <p>73. Printing or publishing any matter relating to Court proceedings without permission-</p> <p>Whoever prints or publishes any matter in relation to any proceeding before a Court with respect to an offence referred to in section 72 without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.</p> <p><i>Explanation</i>—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.</p>

There is no material change in these sections under BNS. Only change is that under IPC section 228A dealt with all these offences and under BNS it is bifurcated under Section 72 and 73 of BNS. The word ‘minor’ is replaced with the word ‘child’ under section 72 of BNS.

COMPARATIVE STUDY OF CODE OF CRIMINAL PROCEDURE, 1973 (CrPC) & BHARATIYA NAGRIK SURAKSHA SANHITA, 2023 (BNSS)

Section 183 (6)(a) first Proviso of Bharatiya Nagarik Suraksha Sanhita, 2023



COMPARATIVE STUDY OF CODE OF CRIMINAL PROCEDURE, 1973 (CrPC) & BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 (BNSS)

This chapter presents a comparative study of the Code of Criminal Procedure, 1973 (CrPC), and the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS), focusing on their provisions regarding children, both as victims and children in conflict with the law. The BNSS introduces comprehensive procedural reforms for police and court interactions in cases involving children as ensuring justice for children is not only a legal mandate but also an expression of the “rule of law”, a cornerstone of democratic governance. The changes in BNSS emphasise child centric approaches in the criminal justice system.

This comparative analysis is organised into eight key parts. These sections cover diverse aspects, including jurisdiction, investigative procedures, trial court procedures and special directives for handling child related cases. The study further examines the responsibilities and authority of police and courts, specific provisions for maintenance and compensation, and safeguards in bail hearings involving children. Through this structured comparison, this chapter aims to highlight significant procedural shifts and their implications for child protection and welfare in the country. Study as follows-

1. JURISDICTION, INVESTIGATION, INQUIRY & TRIAL PROCEDURE

Generally, the territorial jurisdiction decides with the place of commission of offence, but in case of certain offences the place of commission of offence can be more than one. Here kidnapping is the best example of the same.

- **Place of Trial for Kidnapping of Child**

Offence of kidnapping can be tried by the Court having local jurisdiction, from where the child was kidnapped or where the child was illegally transported or where the child was illegally detained.

Section 181(2) of CrPC	Section 201(2) of BNSS
Place of trial in case of certain offences- (2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.	Place of trial in case of certain offences- (2) Any offence of kidnapping or abduction of a person may be inquired into or tried by a Court within whose local jurisdiction the person was kidnapped or abducted or was conveyed or concealed or detained.

There is no change in section 201(2) under the BNSS.

- **Jurisdiction in the case of Juveniles**

Section 27 of CrPC described jurisdiction in certain cases of juvenile in conflict with law.

Section 181(2) of CrPC	Section 201(2) of BNSS
Jurisdiction in the case of juveniles- Any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial	-Deleted-

Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

This provision was deleted from BNSS as the Juvenile Justice Act, 2015 and POCSO Act, 2012 have the special provision and procedure for the same.

2. PROCEDURE REQUIRED TO BE FOLLOWED BY POLICE

BNSS describes the mandatory procedure that must be followed by the Police while dealing with the crimes committed against the child. It is essential to mention here that the provisions of Juvenile Justice(Care and Protection of Children) Act,2015 and the Protection of Children from Sexual Offences (POCSO) Act,2012 shall prevail over BNSS in case of any conflict or alteration.

• Procedure of arrest of person who committed sexual offence against child

Generally during the time of arrest, handcuffs of accused is not permitted, except under the exceptional circumstances. As per the newly added subsection 3 of Section 43 BNSS, a person who committed acid attack, sexual violence against child, rape, human trafficking etc. can be hand-cuffed during the time of arrest and even during his production before the court.

Section 46 of CrPC	Section 43 of BNSS
<p>Arrest how made-</p> <p>(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action:</p> <p>Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.</p> <p>(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.</p> <p>(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.</p> <p>(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission</p>	<p>Arrest how made-</p> <p>(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action:</p> <p>Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.</p> <p>(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.</p> <p>(3) The police officer may, keeping in view the nature and gravity of the offence, use handcuff while making the arrest of a person or while producing such person before the court who is a habitual or repeat offender, or who escaped from custody, or who has committed offence of organised crime, terrorist act, drug related crime, or illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of</p>



of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

coins and currency-notes, human trafficking, sexual offence against children, or offence against the State.

(4) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

(5) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

Under the provision of procedure for arrest, section 43(3) in BNSS has been added, there was no such provision under CrPC. In section 43(3), a specific provision has been made to provide for the use of handcuff while effecting the arrest and production before the Court of an arrested person who has either escaped from the custody earlier or is a habitual or repeat offender in heinous offences like organized crime, terrorist act, drug related crime, illegal possession of arms and ammunition, murder, rape, sexual offences against children, acid attack, counterfeiting of coins and currency notices, human trafficking offences against the State.

• Information of offences and registration of FIR

As per the BNSS, police officer is duty bound to take the information of any offence irrespective of his territorial jurisdiction. Further, the information can also be given through electronic communication and the police officers are bound to record the same.

Information regarding the sexual offences against woman or girl child must be recorded by the woman police officer or any other woman officer competent to record the same. If the victim is physically or mentally unable to give the information at the police station, then it is the duty of the police to record the same at the residence of the victim or at any other convenient and suitable place, if required the help of an interpreter or special educator can be taken for recording of such information.

Section 154 of CrPC	Section 173 of BNSS
<p>Information in cognizable cases-</p> <p>(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:</p> <p>Provided that if the information is given by the woman against whom an offence under section 326A, section 326B,</p>	<p>Information in cognizable cases-</p> <p>(1) Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally or by electronic communication to an officer in charge of a police station, and if given—</p> <p>(i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it;</p> <p>(ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving</p>

section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

(a) in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be video graphed;

(c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf:

Provided that if the information is given by the woman against whom an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

(a) in the event that the person against whom an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

(b) the recording of such information shall be videographed;

(c) the police officer shall get the statement of the person recorded by a Magistrate under clause (a) of sub-section (6) of section 183 as soon as possible.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant or the victim.

(3) Without prejudice to the provisions contained in section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence,—

(i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or

(ii) proceed with investigation when there exists a prima facie case.

(4) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate.

Significant changes under this section are with respect to providing the information to electronic communication and videography of the information and informant under BNSS. Further, the information of the offence can be given at any police station irrespective of territorial jurisdiction. The provision of zero FIRs has been made in Section 173 of BNSS, which can be registered at any Police Station where information about commission of a cognizable offence is received irrespective of the territorial jurisdiction, where incident has taken place.

Section 173 now also provides for registration of FIR electronically, which shall be taken on record only after it is signed by the person giving it within three days. Section 173 (3) BNSS, lays down for preliminary enquiry of cases, which punishable with three years or more but less than seven years. Such preliminary inquiry is to be conducted with the prior permission of an officer not below the rank of Deputy Superintendent of Police and it shall be carried out within a period of 14 days where there exists a prima facie case.

Section 173 BNSS, also specifies that information in relation to a cognizable offence can be given to police irrespective of the area where the offence has been committed, either orally or through electronic communication. The BNSS has introduced the right of the victim to get free of cost copy of the FIR in section 173(2).

• Recording of Statement during the time of investigation- Victim centric procedure

In case of offence of rape with woman or with the girl child, the recording of the statement of the victim should be conducted at her home or some other place as per the convenience of the victim, the statement should be recorded by woman police officer in presence of victim's parents, guardian, near relative or social worker.

Section 157 of CrPC	Section 176 of BNSS
<p>Procedure for investigation-</p> <p>(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such</p>	<p>Procedure for investigation-</p> <p>(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 175 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate</p>

rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that—

- (a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
- (b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that—

- (a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;
- (b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case:

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality and such statement may also be recorded through any audio-video electronic means including mobile phone.

(2) In each of the cases mentioned in clauses (a) and (b) of the first proviso to sub-section (1), the officer in charge of the police station shall state in his report the reasons for not fully complying with the requirements of that sub-section by him, and, **forward the daily diary report fortnightly to the Magistrate** and in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by rules made by the State Government.

(3) On receipt of every information relating to the commission of an offence which is made punishable for seven years or more, the officer in charge of a police station shall, from such date, as may be notified within a period of five years by the State Government in this regard, cause the forensic expert to visit the crime scene to collect forensic evidence in the offence and also cause videography of the process on mobile phone or any other electronic device:

Provided that where forensic facility is not available in respect of any such offence, the State Government shall, until the facility in respect of that matter is developed or made in the State, notify the utilisation of such facility of any other State.



Section 176 BNSS corresponds to Section 157 CrPC. In order to provide more protection to the victims, and enforce transparency in the investigation, section 176(1) BNSS, provides that in relation to an offence of rape, the statement of the victim shall be recorded through audio-video means. Proviso for the sub section (1) provides that the statement of the victim may also be recorded through audio video electronic means including mobile phone.

Further sub section (2) of Section 176 also mandates that the officer of the police station has to forward the daily diary report fortnightly to the Magistrate stating reasons for his failure to comply with requirements.

For bringing credibility to investigation, forensic experts have been mandated to visit the crime scene to collect forensic evidence for offences punishable for 7 years or more in section 176 (3). The States shall, as early as possible but not later than 5 years, make forensic evidence collection in such cases compulsory. Also, where a forensic facility is not available for the time being, it has been provided that the State Government may notify the use of such facility is another State. This provision will strengthen evidence collection, and bring accountability to investigation, the lack of which today results in low conviction rate.

• Examination of girl child victim by Police

In case of offence of rape with woman or with the girl child the recording of the statement of the victim should be by woman police officer or any other woman officer authorised to do so.

Section 161 of CrPC	Section 180 of BNSS
<p>Examination of witnesses by police-</p> <p>(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.</p> <p>(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.</p> <p>(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.</p> <p>Provided that statement made under this sub-section may also be recorded by audio-video electronic means:</p> <p>Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been</p>	<p>Examination of witnesses by police-</p> <p>(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.</p> <p>(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.</p> <p>(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records:</p> <p>Provided that statement made under this sub-section may also be recorded by audio-video electronic means:</p> <p>Provided further that the statement of a woman against whom an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, shall</p>



committed or attempted shall be recorded, by a woman police officer or any woman officer.

be recorded, by a woman police officer or any woman officer.

There is no change in this section under BNSS.

• Completion of investigation and Submission of Final Report

In the cases related with the sexual offences against the girl child and the woman, it is mandatory to conclude the investigation within the period of 2 months from the date of receiving information of the offence by the police station.

Under BNSS, it is also mandatory to complete the investigation in relation with the offences committed under Protection of Children from Sexual Offences Act, 2012 within a period of two months from the date of receiving information of the offence by the police station.

The final report or chargesheet forwarded to the Magistrate required the specific statement whether the medical examination report of the victim of sexual violence is attached with the final report or not.

Sections 173(1), (1A), (2) of CrPC	Sections 193(1), (2), (3) of BNSS
<p>Report of police officer on completion of investigation-</p> <p>(1) Every investigation under this Chapter shall be completed without unnecessary delay.</p> <p>(1A) The investigation in relation to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of Indian Penal Code (45 of 1860) shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.</p> <p>(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—</p> <p>(a) the names of the parties;</p> <p>(b) the nature of the information;</p> <p>(c) the names of the persons who appear to be acquainted with the circumstances of the case;</p> <p>(d) whether any offence appears to have been committed and, if so, by whom;</p> <p>(e) whether the accused has been arrested;</p> <p>(f) whether he has been released on his bond and, if so, whether with or without sureties;</p> <p>(g) whether he has been forwarded in custody under section 170.</p> <p>(h) whether the report of medical examination of the woman has been attached where investigation relates to an</p>	<p>Report of police officer on completion of investigation-</p> <p>(1) Every investigation under this Chapter shall be completed without unnecessary delay.</p> <p>(2) The investigation in relation to an offence under sections 64, 65, 66, 67, 68, 70, 71 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.</p> <p>(3) (i) As soon as the investigation is completed, the officer in charge of the police station shall forward, including through electronic communication to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form as the State Government may, by rules provide, stating—</p> <p>(a) the names of the parties;</p> <p>(b) the nature of the information;</p> <p>(c) the names of the persons who appear to be acquainted with the circumstances of the case;</p> <p>(d) whether any offence appears to have been committed and, if so, by whom;</p> <p>(e) whether the accused has been arrested;</p> <p>(f) whether the accused has been released on his bond or bail bond;</p>

offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.

(g) whether the accused has been forwarded in custody under section 190;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 64, 65, 66, 67, 68, 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023;

(ii) the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim;

(iii) the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

There is significant change under BNSS as now it is mandatory to complete the investigation of the offences registered under POCSO Act also within a period of 2 months under Section 193(2) of BNSS. Section 193(3)(i) has made forwarding of the police report by the officer in charge of the police station to the Magistrate including through electronic means. To focus more on the victim, Section 193(3)(ii) BNSS, ensures that the police must update the informant or victim on the investigation's progress every 90 days, and this can be done electronically.

3. PROCEDURE REQUIRED TO BE FOLLOWED BY TRIAL COURT

BNSS described the mandatory procedure must be followed by the Trial Court while dealing with the cases in which crime committed against the child. It is essential to mention here that the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 and Protection of Children from Sexual Offences (POCSO) Act, 2012 shall prevail over BNSS in case of any conflict or alteration.

• Examination of Girl Child victim before the Court

Under section 164 CrPC, a statement or confession is recorded before the court. A special provision pertains to sexual offenses committed against women and girl children, emphasizing the Magistrate's duty to record the victim's statement as soon as the offense is brought to the Court's attention. When recording the statement, assistance from an interpreter or educator may be sought if the victim has any physical or mental disabilities. In such cases, videographing the statement is also required to ensure accuracy and support. As far as possible the statement must be recorded by the female Magistrate and in absence of female Magistrate, by male Magistrate, but in presence of any female.

Section 164(5a) of CrPC	Section 183(6) of BNSS
<p>Recording of confessions and statements-</p> <p>(5) Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:</p> <p>(5A) (a) In cases punishable under section 354, section 354A,</p>	<p>Recording of confessions and statements-</p> <p>(6) Any Magistrate of the District in which the information about commission of any offence has been registered, may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards but before the commencement of the inquiry or trial:</p>

section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be video graphed.

(a) In cases punishable under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023, the Magistrate shall record the statement of the person against whom such offence has been committed in the manner specified in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that such statement shall, as far as practicable, be recorded by a woman Magistrate and in her absence by a male Magistrate in the presence of a woman:

Provided further that in cases relating to the offences punishable with imprisonment for ten years or more or with imprisonment for life or with death, the Magistrate shall record the statement of the witness brought before him by the police officer:

Provided also that if the person making the statement is temporarily or permanently, mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided also that if the person making the statement is temporarily or permanently, mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be recorded through audio-video electronic means preferably by mobile phone;

Under Section 183(6)(a) of BNSS, for the protection of victims of rape, it is essential that the statement shall be recorded by the female Magistrate and in absence of female Magistrate by male Magistrate, but in presence of a woman. This particular provision was not under the CrPC.

• Detention of Girl Child

Magistrate has power to send the person under detention in case the investigation not completed within a period of 24 hours. But in case of a girl child under the 18 years of age is detained then the detention should be in the recognised remand home or recognised social institution only, the detention cannot be in police station or any other place which is not safe for the girl child.

Section 167(2)(c) Explanation II Proviso of CrPC

Procedure when investigation cannot be completed in twenty-four hours-

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or

Section 187(5) Explanation II Proviso of BNSS

Procedure when investigation cannot be completed in twenty-four hours-

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or

information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Explanation II- If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

Explanation II- If any question arises whether an accused person was produced before the Magistrate as required under sub-section (4), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the audio-video electronic means, as the case may be:

Provided that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution:

There is no change in this section under BNSS in relation with the child, though in general few changes have been made.

- **Evidence of Child who is victim of sexual offence cannot be taken in presence of accused**

To secure the ends of the justice, BNSS provides that all the evidence produced during the trial must be taken in presence of the accused.

Exception to this provision is that the evidence of girl child who is victim of Rape or any other Sexual Offences must not be taken in front of the accused.

Section 273 of CrPC	Section 308 of BNSS
<p>Evidence to be taken in presence of accused-</p> <p>Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader:</p> <p>Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.</p> <p><i>Explanation-</i> In this section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.</p>	<p>Evidence to be taken in presence of accused-</p> <p>Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his advocate including through audio-video electronic means at the designated place to be notified by the State Government:</p> <p>Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the Court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross- examination of the accused.</p> <p><i>Explanation-</i> In this section, "accused" includes a person in relation to whom any proceeding under Chapter IX has been commenced under this Sanhita.</p>

There is a change in this provision. The expression "in the presence of his pleader" has been replaced by words "in the presence of his advocate including through audio-video electronic means at the designated place to be notified by the State Government".

• Completion of Trial in case of Sexual offences

General provision is that in every trial before the court, the proceeding must continue on day-to-day basis. In case of sexual offences against woman and girl child, trial must be concluded within period of 2 months from the date of filing of chargesheet.

Section 309(1) of CrPC	Section 346(1) of BNSS
<p>Power to postpone or adjourn proceedings-</p> <p>(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:</p> <p>Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA or section DB of the Indian Penal Code (45 of 1860), the inquiry or trial shall] be completed within a period of two months from the date of filing of the charge sheet.</p>	<p>Power to postpone or adjourn proceedings-</p> <p>(1) In every inquiry or trial the proceedings shall be continued from day-to-day basis until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:</p> <p>Provided that when the inquiry or trial relates to an offence under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 the inquiry or trial shall be completed within a period of two months from the date of filing of the chargesheet.</p>

There is no change in this section under BNSS.

• **In camera proceedings in the matters related with Child**

General provision is that the court should be open for all the proceeding that should be conducted in open court only, though the presiding officer of the court having the power to close the proceeding of any case for general public, looking into the sensitivity of the matter.

But in the cases of sexual offences against woman and child as well as matter originates from the POCSO Act, the proceedings must be conducted **in camera** only, the presiding officer have the power to allow any person to participate in that proceeding looking into the requirement of the matter. **In camera** proceeding as far as possible must be conducted in presence of before the female judge.

Section 327 of CrPC	Section 366 of BNSS
<p>Court to be open-</p> <p>(1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:</p> <p>Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.</p> <p>(2) Notwithstanding anything contained in sub- section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB section 376E of the Indian Penal Code (45 of 1860) shall be conducted in camera:</p> <p>Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court:</p> <p>Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.</p>	<p>Court to be open-</p> <p>(1) The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court, to which the public generally may have access, so far as the same can conveniently contain them:</p> <p>Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.</p> <p>(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 shall be conducted in camera:</p> <p>Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court:</p> <p>Provided further that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate.</p>

There is a significant change under BNSS as offences registered under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 shall also be conducted proceedings **In camera**.



4. POWER OF TRIAL COURT IN CASE OF MAINTENANCE, COMPENSATION AND MEDICAL TREATMENT

BNSS also have the special provisions in relation with maintenance, compensation and medical treatment and justice without proper rehabilitation is not worthy.

• Maintenance of Child

Under section 144 BNSS, father is duty bound to maintain his children. Father is bound to maintain his child till the age of 18 years and also bound to maintain his child above the age of 18 years if that child is suffering from some physical and mental inability and unable to maintain himself.

Father is also liable to maintain the married female child, if her husband is not able to maintain her.

Under section 125 CrPC and section 144 BNSS, the court can pass the order for monthly maintenance or even for the interim maintenance and expenses for litigation.

Section 125 of CrPC	Section 144 of BNSS
<p>Order for maintenance of wives, children and parents-</p> <p>(1) If any person having sufficient means neglects or refuses to maintain—</p> <p>(a) his wife, unable to maintain herself, or</p> <p>(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or</p> <p>(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or</p> <p>(d) his father or mother, unable to maintain himself or herself,</p> <p>A magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:</p> <p>Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub- section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such</p>	<p>Order for maintenance of wives, children and parents-</p> <p>(1) If any person having sufficient means neglects or refuses to maintain—</p> <p>(a) his wife, unable to maintain herself; or</p> <p>(b) his legitimate or illegitimate child, whether married or not, unable to maintain itself; or</p> <p>(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself; or</p> <p>(d) his father or mother, unable to maintain himself or herself,</p> <p>A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:</p> <p>Provided that the Magistrate may order the father of a female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such female child, if married, is not possessed of sufficient means:</p>

proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation—For the purposes of this Chapter,—

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month’s allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife’s refusal to live with him.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation—For the purposes of this Chapter, “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month’s allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(7) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent.

Explanation- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(5) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(6) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

There is no significant change in section 144 under BNSS, only the term "minor" and its explanation being omitted.

• Compensation in the cases of sexual offence with Child

BNSS makes it mandatory for every State Government to make the scheme to provide compensation for the victims of offence, this includes the offences in relation with the sexual violence against the women and children.

Further, section 396 BNSS also clarifies that the compensation paid by the State Government under this scheme shall be in addition to the fine imposed by the Court in case of Rape or Gang Rape.

Section 357B of CrPC	Section 396(7) of BNSS
<p>Compensation to be in addition to fine under section 326A or section 376D of Indian Penal Code-</p> <p>The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A, section 376AB, section 376D, section 376DA and section 376DB of the Indian Penal Code (45 of 1860).</p>	<p>Victim compensation scheme-</p> <p>(1) Every State Government in co- ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.</p> <p>(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).</p> <p>(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 395 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.</p>

	<p>(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of ompensation.</p> <p>(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensa- tion by completing the enquiry within two months.</p> <p>(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.</p> <p>(7) The compensation payable by the State Government under this section shall be in addition to the payment of fine to the victim under section 65, section 70 and sub-section (1) of section 124 of the Bharatiya Nyaya Sanhita, 2023.</p>
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BNSS makes it mandatory for all the State Governments to make appropriate scheme for the compensation of victims. There is no substantial change under this section in BNSS.

• Treatment of Victim

It is mandatory for each and every hospital whether public or private to provide the first aid and immediate appropriate treatment to the victims of sexual violence, including those under POCSO Act without any cost and inform the police about the incident as soon as possible.

Section 357C of CrPC	Section 397 of BNSS
<p>Treatment of victims-</p> <p>All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the police of such incident.</p>	<p>Treatment of victims-</p> <p>All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 64, section 65, section 66, section 67, section 68, section 70, section 71 or sub-section (1) of section 124 of the Bharatiya Nyaya Sanhita, 2023 or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012, and shall immediately inform the police of such incident.</p>

There is a significant change under BNSS as the offences registered under sections 4, 6, 8 or 10 of the POCSO Act, 2012 are also included in this section to provide immediate healthcare facility to the victim.

- **Special reason to not send child in conflict with law for rehabilitation or treatment etc. must be recorded**

To send a child in conflict with law for the treatment, rehabilitation and training is mandatory as per the law, but the act provides power to the Court to refuse to do the same, by recording the valid reason for the same.

Section 361 of CrPC	Section 402 of BNSS
<p>Special reasons to be recorded in certain cases-</p> <p>Where in any case the Court could have dealt with-</p> <p>(a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958); or</p> <p>(b) a youthful offender under the Children Act, 1960 (60 of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.</p>	<p>Special reasons to be recorded in certain cases-</p> <p>Where in any case the Court could have dealt with-</p> <p>(a) an accused person under section 401 or under the provisions of the Probation of Offenders Act, 1958; or</p> <p>(b) a youthful offender under the Juvenile Justice (Care and Protection of Children) Act, 2015 or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.</p>

Section 402 of BNSS corresponds to Section 361 of CrPC. The words “Children Act, 1960 (60 of 1960) under section 361 of CrPC” have been replaced by the words “under Juvenile Justice (Care and Protection of Children) Act, 2015” under section 402 of BNSS.

5. OTHER PROVISIONS FOR TRIAL COURT

- **Offences against Marriage**

Section 198 of CrPC and Section 219 of BNSS, created a bar that the offence against marriages like cohabitation by man with a married woman with the delusion that he is her husband, fraudulent marriage ceremony, detention of woman with the criminal intention to marry her etc. Here, only the victim can lodge the complaint and court can entertain the matter only when the victim has lodged the complaint.

Exception to this general provision is that the complaint can be lodged by any other person, if the offence is made against the child, with the permission of the Court.

It is essential to mention here that the sexual intercourse with the wife who is under 18 years of age also amounts to “Rape”, but as per sub-section 6 of this section complaint pertaining to that incident is required to be lodged within a period of 1 year from the date of commission of offence. After that no complaint/case can be registered.

Section 198(1) and (6) of CrPC	Section 402 of BNSS
<p>Prosecution for offences against marriage-</p> <p>(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:</p>	<p>Prosecution for offences against marriage-</p> <p>1) No Court shall take cognizance of an offence punishable under sections 81 to 84 (both inclusive) of the Bharatiya Nyaya Sanhita, 2023 except upon a complaint made by some person aggrieved by the offence:</p>

Provided that—

(a) where such **person is under the age of eighteen years**, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(6) No Court shall take cognizance of an offence under section 376 of the Indian Penal Code (45 of 1860), where such offence consists of sexual intercourse by a man with his own wife, the wife being under [eighteen years of age], if more than one year has elapsed from the date of the commission of the offence.

Provided that—

(a) where such **person is a child**, or is of unsound mind or is having intellectual disability requiring higher support needs, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(6) No Court shall take cognizance of an offence under section 64 of the Bharatiya Nyaya Sanhita, 2023, where such offence consists of sexual intercourse by a man with his own wife, the wife being under eighteen years of age, if more than one year has elapsed from the date of the commission of the offence.

There is change in the language of this section under BNSS. The words ‘person is under the age of eighteen years’ under Section 198 of CrPC are replaced by the words ‘person is a child’ under Section 219 of BNSS. The words ‘is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint’ is replaced by ‘of unsound mind or is having intellectual disability requiring higher support needs, or is from sickness or infirmity unable to make a complaint’ under BNSS.

• Defamation

For the purpose of taking cognizance in the matter of Defamation, only the aggrieved person must lodge the complaint.

Exception to this section is that a complaint can be lodged by any other person on behalf of the child with the permission of the Court.

Section 199 of CrPC	Section 222 of BNSS
<p>Prosecution for defamation</p> <p>(1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:</p> <p>Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.</p>	<p>Prosecution for defamation-</p> <p>(1) No Court shall take cognizance of an offence punishable under section 356 of the Bharatiya Nyaya Sanhita, 2023 except upon a complaint made by some person aggrieved by the offence:</p> <p>Provided that where such person is a child, or is of unsound mind or is having intellectual disability or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.</p>

There is no change in this section under BNSS.

• Plea Bargaining

The entire chapter of “Plea Bargaining” i.e. chapter 23 of BNSS, which starts from Section 289 to ends at Section 300 is not applicable in the cases of Child.

Section 265L of CrPC	Section 300 of BNSS
Non-application of the Chapter- Nothing in this Chapter shall apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).	Non-application of the Chapter- Nothing in this Chapter shall apply to any juvenile or child as defined in section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

There is no significant change in this section under BNSS.

• Power to compel restoration of abducted Girl Child

District Magistrate, Sub-divisional Magistrate or Magistrate of First class is empowered to compel the recovery of abducted girl child and give her custody to parents or lawful guardian by using the required force.

Section 265L of CrPC	Section 300 of BNSS
Power to compel restoration of abducted females- Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years for any unlawful purpose, a District Magistrate, Sub- divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.	Power to compel restoration of abducted females- Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child for any unlawful purpose, a District Magistrate, Sub- divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

There is no significant change in this section under BNSS; only the term “under the age of eighteen years” was deleted with the introduction of definition of child under section 2(3) of BNS.

6. DUTIES AND POWERS OF HIGH COURT

• Time limit for disposal of appeal preferred by State Government before the High Court

In case the State Government preferred an appeal before the High court against the order of the Trial Court on the question of sentencing meaning there by quantum of punishment and compensation awarded or both, the appeal in relation with the offences related with the sexual violence against woman and girl child must be decided within a period of 6 months.

Section 377(1) and (4) of CrPC	Section 418(1) and (4) of BNSS
<p>Appeal by the State Government against sentence-</p> <p>(1) Save as otherwise provided in sub- section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—</p> <p>(a) to the Court of Session, if the sentence is passed by the Magistrate; and</p> <p>(b) to the High Court, if the sentence is passed by any other Court.</p> <p>(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860), the appeal shall be disposed of within a period of six months from the date of filing of such appeal.</p>	<p>Appeal by the State Government against sentence-</p> <p>(1) Save as otherwise provided in sub- section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—</p> <p>(a) to the Court of Session, if the sentence is passed by the Magistrate; and</p> <p>(b) to the High Court, if the sentence is passed by any other Court.</p> <p>(4) When an appeal has been filed against a sentence passed under section 64, section 65, section 66, section 67, section 68, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023, the appeal shall be disposed of within a period of six months from the date of filing of such appeal.</p>

There is no change in this section under BNSS.

• **Change of Death Sentence to life imprisonment for the pregnant woman**

This section states that no death penalty can be executed against a woman who is pregnant and the High Court must change the death penalty into life imprisonment where the accused woman is pregnant.

Section 416 of CrPC	Section 456 of BNSS
<p>Postponement of capital sentence on pregnant woman-</p> <p>If a woman sentenced to death is found to be pregnant, the High Court shall commute the sentence to imprisonment for life.</p>	<p>Commutation of sentence of death on pregnant woman-</p> <p>If a woman sentenced to death is found to be pregnant, the High Court shall commute the sentence to imprisonment for life.</p>

In the heading of this Section the word “postponement” is being replaced by the word “commutation” under BNSS.

7. LAW OF BAIL- PROVISION OF LAW AND ITS PROCEDURE

• **Notice to public prosecutor and victim is necessary before the hearing of bail of accused**

Acts mandates that in the case of rape or gang rape notice of application of the bail must be served to the public prosecutor within a period of 15 days from the filing of bail application. Further, the presence of informant of the offence of rape or gang rape or any other authorised person is necessary for the hearing of the bail application. The practical implementation of this section is that the notice to victim or any other person who informed about the offence is necessary and opportunity of hearing must be granted before granting bail to the accused.



Section 439 of CrPC	Section 483 of BNSS
<p>Special powers of High Court or Court of Session regarding bail-</p> <p>(1) A High Court or Court of Session may direct,—</p> <p>(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;</p> <p>(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:</p> <p>Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.</p> <p>Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section</p> <p>(3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.</p> <p>(1A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section DB of the Indian Penal Code (45 of 1860).</p> <p>(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.</p>	<p>Special powers of High Court or Court of Session regarding bail-</p> <p>(1) A High Court or Court of Session may direct,—</p> <p>(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 480, may impose any condition which it considers necessary for the purposes mentioned in that sub- section;</p> <p>(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:</p> <p>Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice:</p> <p>Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under section 65 or sub- section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.</p> <p>(2) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under section 65 or sub-section (2) of section 70 of the Bharatiya Nyaya Sanhita, 2023.</p> <p>(3) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.</p>

There is no change in this section under BNSS.



8. NO SPECIAL PERMISSION FOR PROSECUTION IS REQUIRED IN CASE OF SEXUAL OFFENCES

• Prosecution of Judges and Public servants in case of sexual offences

Any sitting or retired judge or magistrate or the public servant cannot be tried without the sanction of the appropriate authority under the Lokpal and Lokayukta Act, 2013, if there is allegation with respect to and during the performance of official duty.

Exception to this section is for the public servant, if the public servant allegedly committed the sexual offence against the woman or girl child, so no sanction for the prosecution is required from any authority.

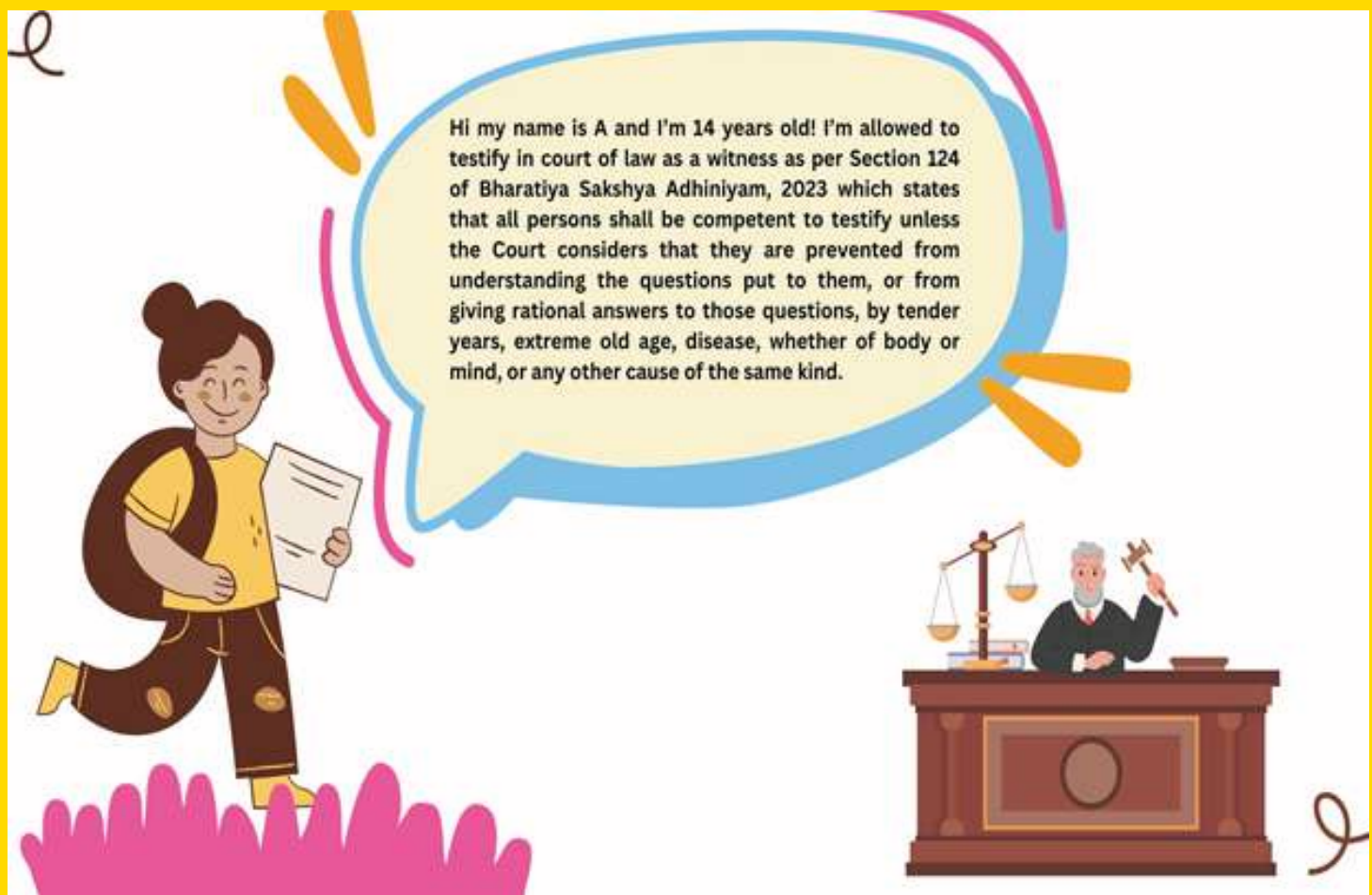
Section 197(1) explanation of CrPC	Section 218(1) proviso of BNSS
<p>Prosecution of Judges and public servants-</p> <p>(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—</p> <p>(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;</p> <p>(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:</p> <p>Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.</p> <p>Explanation- For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).</p>	<p>Prosecution of Judges and public servants-</p> <p>(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013—</p> <p>(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;</p> <p>(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:</p> <p>Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted:</p> <p>Provided further that such Government shall take a decision within a period of one hundred and twenty days from the date of the receipt of the request for sanction and in case it fails to do so, the sanction shall be deemed to have been accorded by such Government:</p> <p>Provided also that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 64, section 65, section 66, section</p>



	68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79, section 143, section 199 or section 200 of the Bharatiya Nyaya Sanhita, 2023.
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There is no change in this section under BNSS with respect to the child.

COMPARATIVE STUDY OF INDIAN EVIDENCE ACT, 1872 (IEA) & BHARATIYA SAKSHYA ADHINIYAM, 2023 (BSA)





COMPARATIVE STUDY OF INDIAN EVIDENCE ACT, 1872 (IEA) & BHARATIYA SAKSHYA ADHINIYAM, 2023 (BSA)

The Indian Evidence Act, 1872 (IEA) has served as a cornerstone for evidentiary principles in legal proceedings, emphasizing that cases must be proved with credible and admissible evidence. This strict adherence to evidentiary rules places the burden of proof on the prosecution to establish guilt beyond a reasonable doubt. However, recognizing the need for sensitivity in cases involving children, special provisions have been introduced to protect child victims. These include drawing legal presumptions in favour of children and restricting cross-examinations that may cause trauma or violate their dignity.

The Bharatiya Sakshya Adhiniyam, 2023 (BSA) builds upon these principles, reforming the approach to evidence with a focus on safeguarding vulnerable witnesses, particularly children. This chapter delves into a comparative analysis of the IEA and BSA by focusing on three critical areas: evidence related to character and character assassination of children, legal presumptions favoring child victims and the process of child testimony before the court. Study as follows:

1. EVIDENCE OF CHARACTER AND CHARACTER ASSASSINATION

- Evidence of character or previous sexual experience is not relevant in certain cases**

The IEA as well as BSA categorically states that in the offences related to the sexual violence against woman including girl child, character as well as previous sexual experience of the victim is irrelevant for the purpose of consent in the matter.

Section 53A of IEA	Section 48 of BSA
<p>Evidence of character or previous sexual experience not relevant in certain cases-</p> <p>In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.</p>	<p>Evidence of character or previous sexual experience not relevant in certain cases-</p> <p>In a prosecution for an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77 or section 78 of the Bharatiya Nyaya Sanhita, 2023 or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person's previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.</p>

There is no change in this section under BSA.

- Character assassination of Girl Child is impermissible**

Section 146 of IEA is in continuation of section 48 of BSA. This section provides that the questions in relation with the character of witness can be asked in the Court, but in the matter related with the sexual violence against woman, including girl child where the question of consent is an issue, any question which is immoral and may affect the character of the victim, question related with previous sexual experience and the quality of consent, cannot be asked in the Court.

Section 146 of IEA	Section 149 of BSA
<p>Questions lawful in cross-examination-</p> <p>When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—</p> <p>(1) to test his veracity,</p> <p>(2) to discover who he is and what is his position in life, or</p> <p>(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:</p> <p>Provided that in a prosecution for an offence under section 376, section 376A, section 376AB section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross- examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.</p>	<p>Questions lawful in cross examination-</p> <p>When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—</p> <p>(a) to test his veracity; or</p> <p>(b) to discover who he is and what is his position in life; or</p> <p>(c) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture:</p> <p>Provided that in a prosecution for an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70 or section 71 of the Bharatiya Nyaya Sanhita, 2023 or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent.</p>

There is no change in this section under BSA.

2. LEGAL PRESUMPTIONS IN FAVOUR OF CHILD

• Presumption of legitimacy of Birth of Child

The Indian Evidence Act draws presumption that the child born during the period of marriage or born within 280 days of dissolution of the marriage is the legitimate child of that man, whom the woman was married. Unless it is proved that the partners in the marriage had no access to each other.

Section 146 of IEA	Section 149 of BSA
<p>Birth during marriage, conclusive proof of legitimacy-</p> <p>The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.</p>	<p>Birth during marriage, conclusive proof of legitimacy-</p> <p>The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate child of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.</p>

Section 116 of BSA corresponds to Section 112 of IEA. The section remains largely unchanged, except for the words 'legitimate son' being replaced by 'legitimate child' under the BSA.

• Presumption of absence of Consent in the Rape

In the matter in relation with the rape of a child, the issue of consent is irrelevant as per the Bharatiya Nyaya Sanhita, 2023. Further, as per this provision of the BSA if the girl child or woman states before the court that there was no “consent”, so the presumption shall be the absence of consent.

Section 114A of IEA	Section 120 of BSA
<p>Presumption as to absence of consent in certain prosecution for rape-</p> <p>In a prosecution for rape under clause (a), clause (b), clause (c), clause (d), clause (e), clause (f), clause (g), clause (h), clause (i), clause (j), clause (k), clause (l), clause (m) or clause (n) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.</p> <p><i>Explanation</i>—In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of section 375 of the Indian Penal Code (45 of 1860).</p>	<p>Presumption as to absence of consent in certain prosecution for rape-</p> <p>In a prosecution for rape under sub-section (2) of section 64 of the Bharatiya Nyaya Sanhita, 2023, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.</p> <p><i>Explanation</i>—In this section, “sexual intercourse” shall mean any of the acts mentioned in section 63 of the Bharatiya Nyaya Sanhita, 2023.</p>

There is no change in this section under BSA.

3. TESTIFICATION OF CHILD BEFORE COURT

• Testification before Court by Child

Under the IEA there is no minimum age limit prescribed for testification of the child but if the court consider that the child is unable to understand the question or not giving logical answers to the questions, then the Court may disallow the testification of child.

Section 118 of IEA	Section 124 of BSA
<p>Who may Testify-</p> <p>All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.</p> <p><i>Explanation-</i> A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.</p>	<p>Who may Testify-</p> <p>All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.</p> <p><i>Explanation-</i> A person of unsound mind is not incompetent to testify, unless he is prevented by his unsoundness of mind from understanding the questions put to him and giving rational answers to them.</p>

Section 124 of BSA corresponds to Section 118 of IEA. The sections remains largely unchanged, except for the words ‘lunatic’ and ‘lunacy’ in section 118 of IEA being replaced by the words ‘person of unsound mind’ and ‘unsoundness of mind’ under Section 124 of BSA.



Conclusion

The comparative study of the BNS, BNSS and BSA with their respective counterparts in the IPC, CrPC and IEA reveals significant advancements in the protection of children within the criminal justice system. With the introduction of definitions, particularly of “child” and “gender,” marks a crucial step towards a more gender-neutral and inclusive legal framework. The modifications in the penal provisions and procedural codes highlight a more child-centred approach, with increased penalties for offenses against children, the implementation of child-friendly procedures and a strong emphasis on prioritizing child welfare throughout the legal process.

The BNS enhanced penalties and the offence related to the employment of children underlining a strengthened stance against child exploitation. On the procedural front under BNSS, with the introduction of child-friendly procedures, such as the electronic registration of FIRs and special provisions for the examination of child witnesses, marks a significant leap towards a more compassionate and efficient legal system. However, despite these advancements, there remains a gap in addressing the psychological and mental health impacts on children, their rehabilitation and reintegration in the context of both ‘children in need of care and protection’ as well as ‘children in conflict with law’.

In conclusion, while significant developments have been made towards a more robust and child-centric criminal justice system, there remains considerable scope for further research and development, including; bridging implementation gaps in juvenile justice procedures; expanding mental health support for child victims and offenders; analyzing the intersectionality of gender, mental health, and child protection laws and assessing the impact of these reforms on the ground, particularly in rural, under-resourced, and marginalized areas. These areas require further study to ensure that the legal framework not only addresses the immediate needs of children but also works for their long-term holistic growth and development in their best interests.



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