

## **Ready Reckoner: Tougher Laws for Sexual Offences in BNS 2023**

- The Bharatiya Nyay Sanhita (BNS), 2023 has introduced a new chapter on 'Offences against Woman and Child'. By placing this in the early part of the statute (i.e. as Chapter V) signifies the importance given to tackling crime against women and child
- The introduction of the provision of electronic First Information Reports (e-FIRs) will aid in swift reporting of such heinous offences requiring immediate attention.
- All sections of POCSO will be invoked if rape is committed on a minor.
- In consensual rape cases the existing age limit has been raised from 15 years to 18 years.

### **Provisions in New Criminal Laws concerning Sexual Offences**

New provision: **Section 69: Sexual Intercourse by employing Deceitful Means etc.:**

#### **Definition of "Deceitful Means":**

- "Deceitful means" includes inducement, false promise of employment, promotion, or marriage, and marrying by suppressing identity.
- The provision aims to address instances where sexual intercourse occurs based on false promises or inducement.

#### **Penalties:**

- Offenders can face imprisonment for up to ten years. Fines may be imposed as an additional punitive measure.

New provision: **Section 70: Gang Rape:**

#### **Removal of Age-Based Parameters:**

- The law now treats all cases of gang rape with equal severity, irrespective of the victim's age.

- Death sentence was provided under section 376DB of IPC for gang rape of woman under 12 years of age. No death penalty was provided for gang rape of woman aged below 16 years but above 12 years in section 376DA.
- Now, section 70(2) of BNS provides death penalty for gangrape of woman under 18 years of age.
- It rennumbers existing rape provisions and harmonises the treatment of gang rape of minor women with the POCSO.

### **Stringent Punishments:**

- Offenders can face life imprisonment or even the death penalty for gang rape.
- The rationale behind such stringent penalties is emphasizing the gravity of the crime and the need for a strong deterrent.

### **Just and Reasonable Fines:**

- Any fines imposed are directed towards victim rehabilitation and medical expenses.
- Fines are intended to serve a just and reasonable purpose, aligning with victim-centric principles.

### **New provision: Section 82 (vs. IPC Section 494):** Marrying Again During Lifetime of Husband or Wife:

- Marrying again during the spouse's lifetime is considered an offence.
- Exceptions exist for cases where the previous marriage has been declared void or in situations of absence for the space of seven years.

### **Penalties:**

- Offenders may face imprisonment for up to seven years and also fine.
- In case of deliberate concealment of the offence from the person with whom the subsequent marriage is contracted, punishment is imprisonment upto 10 years and fine.
- These penalties are in place to discourage bigamy and uphold the sanctity of marital relationships.

## New provision: Section 95: Hiring, Employing, or Engaging a Child to Commit an Offence:

- The act of hiring, employing, or engaging a child for various criminal activities is covered under this section.
- The provision extends to activities such as sexual exploitation or pornography, emphasizing its broad applicability.

### **Penalties:**

- Imprisonment for not less than three years, extendable to ten years, and fines.
- The severity of punishment is to discourage individuals and groups from involving children in criminal activities.

### **Additional important changes**

Apart from the above new changes in BNS compared to IPC, there are few important changes in the provisions which have made the punishments stringent and made gender neutral.

- Section 64 (1) punishes rape accused with ten years to life imprisonment whereas section 64(2) punishes aggravated forms of rape with ten years to life imprisonment for the remainder of a person's natural life.
- Another significant change is that the age of consent for a married woman under the definition of rape (Section 63 BNS and s. 375 IPC) has been increased from 15 to 18 years. Exception 2 to s. 375 IPC provides that sexual intercourse between a man and his own wife, wife not being under the age of 15, is not rape. Section 63 of the BNS retains the marital rape exception.
- **Section 75 BNS:** This section defines the offense of sexual harassment committed by a man, which includes physical contact with unwelcome and explicit sexual overtures, demanding sexual favors, showing pornography against the woman's will, and making sexually colored remarks. The

punishment for committing such offenses varies, with imprisonment for up to three years, fine, or both.

- **Section 77 BNS:** This section deals with the act of watching, capturing, or disseminating private images of a woman without her consent. The term "private act" is defined, and the punishment for the first conviction includes imprisonment for not less than one year and may extend to three years, along with a fine. Subsequent convictions carry a higher penalty of imprisonment for not less than three years and up to seven years, along with a fine.
- **Section 78 BNS:** This section addresses the offense of stalking committed by a man, involving repeated attempts to foster personal interaction with a woman despite clear disinterest or monitoring her electronic communications. Stalking is punishable with imprisonment for up to three years and a fine for the first conviction, and for subsequent convictions, the imprisonment term may extend to five years, along with a fine. Exceptions are provided if the conduct is for preventing crime, complying with the law, or is deemed reasonable and justified in particular circumstances.
- **Section 79 BNS:** This section pertains to intending to insult the modesty of a woman through words, sounds, gestures, or exhibiting objects with the intention that they be seen or heard by the woman. The punishment for this offense includes simple imprisonment for up to three years and a fine. The section also covers intrusions upon the privacy of a woman.
- The new provision in Section 75(Sexual Harassment), defining the offence of sexual harassment and explained the acts constituting sexual harassment and the corresponding penalties.

- BNS introduced gender-neutral provisions related to assault, use of criminal force, and voyeurism in Sections 76 and 77(voyeurism).
- **Section 96: Changes to Section 366A of IPC:** The BNS replaced the word "minor girl" with "child" in Section 96 to cover both male and female children below 18 years.
- **Section 135: Kidnapping of All Children:** Makes the kidnapping of all children below 18 years an offence. It emphasized the broader protection extended to all children.
- **Section 137: Changes to Section 361 of IPC:** Expands the scope to include the kidnapping of all children below 18 years as an offence.
- While s. 361 criminalizes kidnapping of girls below the age of 18 years along with kidnapping of boys under 16 years, Section 135 BNS proposes to make kidnapping of all children below 18 years of age an offence.
- **Section 141: Gender-Neutral Importation Offence:** This has made the offence of importing individuals from foreign countries gender-neutral it replaced the word "importation of girl" with "importation of girl or boy" to broaden the scope.