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Impact of the Bhartiya Nyaya Sanhita, 2023 Relating to Sexual Offences: A Study of Its Effects on Victims, Accused, and Witnesses in the Light of Criminal Jurisprudence and Constitutional Principles

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ABSTRACT

The Bhartiya Nyaya Sanhita, 2023 (BNS), replacing the Indian Penal Code of 1860, introduces significant reforms in criminal law, including provisions relating to sexual offences. This study critically examines the impact of these changes on victims, the accused, and witnesses, emphasizing their alignment with criminal jurisprudence and constitutional principles. Key innovations in the BNS, such as redefining sexual offences, strengthening victim-centric approaches, and introducing measures to safeguard the under-trial persons as well as witnesses, are analysed. The BNS incorporates provisions aimed at expediting justice, enhancing protections, and ensuring dignity to the victims. These include stricter punishments for offences like rape and sexual harassment and improved mechanisms for victim compensation. However, concerns about potential gaps, such as subjective interpretations of consent or challenges in implementation, remain significant. The rights of the accused are also recalibrated under the BNS. While the law seeks to balance punishment with due process, questions arise about whether procedural safeguards adequately prevent misuse and wrongful convictions. Provisions such as shifting burdens of proof and mandatory minimum sentences for certain offences may conflict with the presumption of innocence and the principle of proportionality. Witnesses, often neglected in traditional frameworks, gain some protection under the BNS through provisions to shield their identities and reduce harassment. However, systemic challenges like delays, intimidation, and lack of support mechanisms persist, potentially undermining these measures. This study evaluates the BNS through the lens of criminal jurisprudence, considering doctrines such as mens rea, proportionality, and due process, and juxtaposes these with constitutional values like equality, dignity, and fairness. While the BNS strives to modernize and streamline sexual offence laws, it also raises critical debates about harmonizing punitive measures with rehabilitative goals, ensuring gender neutrality, and preventing the weaponization of laws. In conclusion, while the Bhartiya Nyaya Sanhita, 2023 represents a progressive step in redefining the legal framework for addressing sexual offences, its ultimate impact will depend on consistent interpretation by the judiciary, robust enforcement mechanisms, and complementary societal reforms.

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1. Introduction:

The *Bhartiya Nyaya Sanhita, 2023* (hereinafter "BNS") marks a transformative shift in India's legal framework, replacing the colonial-era *Indian Penal Code, 1860*. This legislation introduces comprehensive reforms, especially in the domain of sexual offences, aiming to modernize the legal regime while ensuring justice, equity, and efficiency. The evolving socio-legal landscape necessitated an overhaul of outdated laws to better address contemporary challenges. This study examines the BNS's impact on victims, accused persons, and witnesses in cases of sexual offences, assessing its alignment with principles of criminal jurisprudence and constitutional mandates. Sexual offences constitute one of the gravest violations of human rights, affecting the dignity, autonomy, and safety of individuals, particularly women and vulnerable groups. The *Bhartiya Nyaya Sanhita* introduces provisions to enhance accountability, improve victim support mechanisms, and protect the rights of all stakeholders, including the accused and witnesses. However, the effectiveness of these reforms hinges on their practical implementation and conformity with established legal and constitutional principles. This analysis adopts a holistic approach, integrating doctrinal research with critical evaluation to understand the implications of the BNS on the criminal justice system.

The *IPC, 1860* drafted in a socio-political context vastly different from present-day India. Its provisions on sexual offences, while revolutionary for their time, were increasingly criticized for being

inadequate in addressing the nuanced realities of modern society. For instance, terms like "modesty" in Section 354 of the IPC were considered archaic and patriarchal, failing to capture the broader dimensions of sexual violence.¹ The need for reform was underscored by various judicial pronouncements and public outcries following incidents of sexual violence, such as the Nirbhaya case in 2012². The *Justice Verma Committee Report, 2013* highlighted significant gaps in existing laws, recommending comprehensive changes to address issues like gender neutrality, victim-centric approaches, and procedural efficiency. While amendments were made in 2013 and 2018, they were piecemeal. The BNS, therefore, seeks to codify a holistic framework that addresses these concerns while ensuring harmony with constitutional values like equality (Article 14), dignity (Article 21), and freedom from discrimination (Article 15).

The BNS introduces significant changes aimed at addressing sexual offences more effectively. Some of the notable provisions include an expanded definition of sexual offences to encompass acts like digital voyeurism, stalking, and cyber harassment, which reflect the realities of a digitized world³. These provisions aim to fill legislative gaps left by the IPC. Enhanced punitive measures, such as stricter punishments including longer imprisonment and higher fines, are introduced to deter offenders and emphasize the severity of crimes like rape and trafficking. Victim-centric reforms, such as provisions for fast-tracking cases, enhanced victim compensation schemes, and in-

camera trials, aim to prioritize victim dignity and reduce trauma during legal proceedings. Furthermore, the adoption of gender neutrality in defining certain sexual offences recognizes the broader spectrum of victims and perpetrators beyond traditional gender binaries. The BNS also includes safeguards for the accused and witnesses, ensuring procedural fairness and addressing systemic challenges like intimidation and harassment.

The BNS seeks to rectify systemic biases that historically marginalized victims in the justice process. Enhanced definitions and stricter penalties reflect a victim-centric philosophy, acknowledging the need for legal recognition of evolving forms of sexual violence. However, the practical challenges of enforcement remain a concern. The success of provisions like fast-track courts and compensation schemes hinge on robust infrastructural support and sensitized judicial officers⁴. Additionally, the introduction of gender-neutral provisions, while progressive, raises questions about whether societal attitudes and judicial interpretations will align with these legislative changes. The BNS attempts to balance punitive measures with procedural safeguards to prevent misuse of laws. Provisions ensuring fair trials, such as mandatory legal representation and reasonable timelines for investigation, are commendable⁵. However, concerns arise regarding the shifting burden of proof in certain offences, which could conflict to the presumption of innocence, a cornerstone of criminal jurisprudence⁶. The introduction of mandatory minimum sentences for specific

offences also raises questions about judicial discretion and proportionality⁷. Witnesses play a pivotal role in securing justice in sexual offence cases. The BNS's measures to protect witnesses from intimidation and harassment are a positive step. However, systemic issues like delays, lack of witness protection programs, and societal stigmatization remain significant hurdles. Addressing these challenges requires not only legislative reforms but also administrative and social interventions⁸.

The BNS's provisions align with constitutional principles such as equality, dignity, and protection of life and liberty. The emphasis on gender neutrality, victim compensation, and witness protection reflects a progressive interpretation of Art. 21 of the Constitution. However, the interplay between stricter laws and procedural safeguards raises jurisprudential debates on balancing retributive justice with reformatory principles⁹. The *Bhartiya Nyaya Sanhita, 2023* represents to the modernize India's criminal justice system, particularly in the domain of sexual offences. While the provisions signify progress, their success depends on effective implementation, judicial sensitivity, and societal transformation. By balancing the rights of victims, accused, and witnesses, the BNS aspires to uphold constitutional values and principles of criminal jurisprudence.

2. Objectives of the Study:

- a. To examine the provisions of the BNS, 2023, relating to sexual offences.

- b. To analyse the impact of these provisions on victims, accused, and witnesses.
- c. To assess the consistency of these provisions with doctrines of criminal jurisprudence and constitutional principles such as equality, fairness, and justice.

3. Methodology:

This research employs a doctrinal methodology, analysing the text of the BNS, relevant case law, and scholarly commentary. It further draws on constitutional provisions and doctrines to evaluate the implications of the legislation.

4. Provisions of the Bhartiya Nyaya Sanhita, 2023 Relating to Sexual Offences:

The BNS, 2023, represents a significant overhaul of India's criminal justice system, especially regarding the protection of women and children against sexual offences. The provisions in the BNS specifically address various aspects of sexual violence, establishing a more comprehensive and stringent framework to safeguard against such crimes.

4.1 Key Provisions on Sexual Offences:

1. **Rape and Sexual Assault:** The BNS strengthens the definition of sexual assault, expanding it to include non-penetrative actions and marital rape. This is a significant move, aiming to close gaps left by the Indian Penal Code (IPC) regarding sexual violence within marriage. It now also addresses the use of threats or deceit in sexual offences,

criminalizing acts such as deceiving a woman into sexual intercourse through false promises¹⁰

2. **Stalking:** Section 78 of the BNS criminalizes stalking, defining it as the act of following a woman or persistently trying to engage with her despite clear disinterest. This includes actions such as monitoring her online activities. The punishment up to three years, with a fine for the first offence, escalating to up to five years for repeat offenders¹¹.
3. **Outraging Modesty:** Section 74 of the BNS introduces penalties for using criminal force to assault a woman intentionally is outraging her modesty. This provision carries a punishment of one to five years of imprisonment, along with a fine¹².
4. **Acid Attacks:** Acid attacks have been addressed explicitly within the BNS, with stringent penalties for perpetrators. This provision aims to ensure that those committing such horrific crimes face severe consequences.
5. **Dowry Deaths:** Section 80 of the BNS enhances penalties for dowry deaths, within a period of 7 years of marriage, often linked to dowry-related harassment. Offenders can face life imprisonment, with the law specifically targeting the husband's relatives who are complicit in such deaths.
6. **Protection of Children:** For children, the BNS raises the age of consent to 18 for sexual offences, aligning with the POCSO Act, 2012. The law introduces harsher punishments for crimes such as the gang rape of minors and

mandates the death penalty in cases where a child below 12 years is subjected to gang rape.

7. **Sexual Harassment:** In addition to explicit crimes like rape, the BNS extends legal protection against sexual harassment, including both physical and non-physical forms of harassment, such as unwelcome verbal or visual conduct. These provisions aim to provide comprehensive protection to women in various contexts, both in the public and private spheres¹³.

The provisions relating to sexual offences in the BNS, 2023, reflect a commitment to reforming the criminal justice system. They not only broaden the scope of what constitutes sexual violence but also enhance penalties for offenders, particularly in cases involving minors and vulnerable individuals. With these reforms, the BNS seeks to strengthen the legal framework protecting women and children, ensuring harsher punishments for perpetrators of sexual violence and promoting a safer environment in society

4.2 Expanded Definitions of Sexual Offences:

The BNS broadens the scope of offences like rape, molestation, and sexual harassment. For instance, rape under Section 375 revised with newer forms of assault, reflecting changing societal norms. The expanded definitions of sexual offences reflect a progressive understanding of consent, autonomy, and the diverse contexts of abuse. Modern interpretations emphasize affirmative consent, requiring a clear and voluntary agreement to any sexual act. Silence, lack of resistance, or coercion invalidates consent. Legal frameworks increasingly

recognize marital rape, affirming that marriage does not imply perpetual consent. Non-physical offences, such as verbal harassment, stalking, and digital abuse, are now integral to these definitions. Cyber harassment, including unsolicited sexual images ("cyberflashing"), revenge porn, and the use of AI to create non-consensual explicit content, is a growing concern. Protections have been expanded to include all genders, alongside vulnerable groups such as minors, persons with disabilities, and LGBTQ+ individuals. Abuse of power in contexts like workplaces, educational institutions, or caregiving relationships is criminalized as an exploitation of trust. Public harassment, including groping and eve-teasing, is increasingly penalized to ensure safety in shared spaces. Legal reforms such as India's Bharatiya Nyaya Sanhita, 2023, have introduced stricter penalties for repeat offenders and streamlined judicial processes to deliver justice swiftly. These advancements ensure that laws align with contemporary challenges, protecting individuals from diverse forms of physical, psychological, and digital harm, while prioritizing inclusivity and victim dignity.

4.3 Enhanced Penalties:

The Bharatiya Nyaya Sanhita (BNS), 2023, introduces enhanced penalties to modernize India's criminal justice system and align punishments with contemporary societal needs. These reforms aim to deter crimes, ensure proportionality in sentencing, and address emerging challenges such as cybercrimes and offences against vulnerable groups.

For heinous offences like rape, gang rape, and sexual offences against children, the BNS prescribes stricter sentences, including life imprisonment and, in certain cases, the death penalty for repeat offenders. These changes emphasize the need for stringent deterrence against gender-based violence and child exploitation. In cases of cybercrimes, such as revenge porn, cyberstalking, and online identity theft, the BNS introduces harsher penalties, reflecting the growing prevalence of digital abuse. Economic crimes, including financial fraud and corruption, are met with severe punishments to bolster accountability and curb white-collar crimes.

The law also strengthens penalties for offences against public order and national security, such as acts of terrorism and organized crime. Repeat offenders across categories face escalated punishments to prevent recidivism. By enhancing penalties, the BNS, 2023, reinforces deterrence, ensures justice for victims, and reflects evolving societal values, marking a transformative step in India's legal framework. These reforms are designed to uphold public trust and ensure swift, proportional justice.

4.4 Victim-Centric Provisions:

Provisions such as in-camera trials, identity protection, and the right to legal aid aim to safeguard victims' rights and dignity. The Bharatiya Nyaya Sanhita (BNS), 2023, introduces victim-centric provisions to enhance justice delivery and prioritize the dignity and rights of victims. These provisions address long-standing gaps in the criminal justice system, focusing on

protection, support, and swift resolution for victims. The BNS emphasizes time-bound investigations and trials for crimes like sexual offences, reducing procedural delays and ensuring victims are not subjected to prolonged distress. Fast-track courts are recommended for handling sensitive cases, ensuring expeditious justice. To safeguard the privacy of victims, especially in cases involving sexual violence, stringent provisions protect their identity, with severe penalties for unauthorized disclosure.

Recognizing the financial and emotional strain on victims, the BNS strengthens compensation schemes, ensuring support for medical treatment, rehabilitation, and livelihood restoration. Victim participation is another cornerstone, with provisions allowing victims to be heard during sentencing and plea-bargaining proceedings, empowering them in the legal process. Special protections are provided for vulnerable groups, including minors, persons with disabilities, and marginalized communities, ensuring inclusivity and sensitivity. By integrating these victim-centric measures, the BNS, 2023, seeks to restore dignity, promote healing, and reinforce public trust in the justice system, aligning with constitutional values and contemporary needs.

4.5 Safeguards for the Accused:

Recognizing the presumption of innocence, the BNS ensures safeguards against misuse of laws, such as mandatory corroboration in certain cases. The BNS, 2023, incorporates safeguards for the accused to ensure a balanced and fair criminal justice system, aligning with constitutional rights

and principles of natural justice. These provisions aim to protect the accused from arbitrary actions while ensuring accountability.

One of the key safeguards is the presumption of innocence, which remains central to the criminal justice process. Since an accused person is presumed innocent until proven guilty beyond a reasonable doubt, the prosecution bears the burden of proof. Time-bound trials are mandated to prevent prolonged pretrial detention, reducing undue hardships faced by the accused. The BNSS emphasizes the right to legal representation, ensuring access to competent legal aid, particularly for economically disadvantaged individuals. It also mandates humane treatment of the accused, prohibiting torture, cruel, or degrading treatment during investigation or custody. The law enhances accountability for law enforcement officials, with penalties for abuse of power or procedural violations.

Further, provisions for appeal and review of judgments safeguard against judicial errors, allowing the accused to seek redress. By upholding these safeguards, the BNSS, 2023, ensures that justice is not only punitive but also equitable, balancing the rights of victims and accused within the framework of fairness and accountability.

4.6 Role of Witnesses:

Special provisions address witness protection, acknowledging the critical role witnesses play in securing justice. The BNS, 2023, recognizes the critical role of witnesses in ensuring fair trials and the proper administration of justice. The law introduces several provisions to protect,

incentivize, and ensure the effective participation of witnesses in criminal proceedings. One of the key aspects is the protection of witnesses from threats, intimidation, or harm. The BNSS establishes measures such as witness protection programs, which provide safety and confidentiality to those at risk due to their testimony. This protection extends to both physical safety and safeguarding the witness's identity in sensitive cases, including sexual violence and organized crime.

The law also emphasizes relevant and truthful testimony without coercion. Witnesses are granted the right to legal assistance, ensuring that they are fully aware of their roles and the legal processes involved. To prevent delay in justice, the BNSS encourages the use of recorded testimony for witnesses in certain cases, reducing the need for repeated appearances and ensuring that their accounts are preserved. Incentives for witness cooperation are also incorporated, including financial assistance and psychological support for those who face significant challenges or distress due to their involvement in cases. These provisions aim to promote transparency and integrity in criminal proceedings, reinforcing the essential role of witnesses in upholding justice.

5. Impact on Victims:

5.1 Access to Justice:

The Bharatiya Nyaya Sanhita (BNS), 2023, introduces several key provisions designed to enhance victims' access to justice, making the legal system more responsive, inclusive, and victim-centric. These reforms address the systemic

barriers that often prevent victims from seeking justice in a timely, fair, and supportive manner. One of the most significant provisions is the emphasis on time-bound investigations and trials, which ensures that victims are not subjected to prolonged legal battles. By mandating fast-track courts for sensitive cases such as sexual violence, trafficking, and crimes against children, the BNSS reduces the psychological and emotional burden on victims. The law aims to speed up the entire judicial process, from investigation through trial, enabling victims to achieve closure more rapidly.

To protect the dignity and safety of victims, particularly in cases involving sexual violence, the BNSS enhances privacy protection. It includes provisions that prevent the disclosure of victims' identities without consent, safeguarding them from public scrutiny and potential stigma. Furthermore, the law strengthens the right to compensation, ensuring victims receive timely financial support for medical care, rehabilitation, and livelihood restoration. This reduces the economic and emotional strain victims often experience. The victim participation clause in the BNSS ensures that victims have the right to be heard in legal proceedings, especially during sentencing. This empowers victims by recognizing their role in the process and giving them a voice in shaping the outcome of their case. Additionally, the victim protection programs in the BNSS, including witness protection, ensure that victims are shielded from threats, intimidation, or retribution, particularly in high-risk cases.

Overall, the BNSS, 2023, represents a significant

step forward in enhancing access to justice for victims, addressing both procedural delays and emotional tolls while ensuring that victims' rights are protected and respected throughout the legal process. The victim-centric approach of the BNS ensures better access to justice by:

- Simplifying procedural requirements.
- Protecting victims' identities.
- Enhancing support mechanisms, such as legal aid and psychological counselling.

Example: In *State of Punjab v. Gurmit Singh*, the Supreme Court emphasized the need for victim-sensitive procedures. The BNS incorporates these guidelines effectively.

5.2 Protection of Dignity and Privacy:

The BNS, 2023, emphasizes the protection of dignity and privacy as central tenets of its victim-centric approach, particularly in cases involving sensitive offences such as sexual violence, harassment, and trafficking. These clauses aim to protect victims' personal rights and make sure that their involvement in the legal system doesn't lead to additional trauma or infringement on their fundamental rights.

One of the key provisions is the anonymity of victims in sexual offences and other sensitive cases. The BNSS mandates that the identity of victims be kept confidential throughout the judicial process. This is to protect victims from social stigma, retaliation, or public humiliation. Unauthorized disclosure of a victim's identity is punishable under the law, thereby reinforcing the seriousness of privacy protection. In addition, the BNSS ensures that victims' testimonies are handled

with care to prevent re-traumatization. Provisions allow for recorded testimonies, which can be used in lieu of the victim's repeated court appearances. This not only minimizes distress for the victim but also helps maintain the integrity of their account, particularly in cases involving sexual violence or child abuse. The law also encourages the use of closed courtrooms for sensitive cases to avoid unnecessary exposure and to offer a more supportive environment for the victim.

The BNSS also provides victims with the right to protection from threats or intimidation. This includes physical safety measures as well as psychological support. The law establishes victim and witness protection programs that ensure victims are shielded from retaliation during or after the trial process, including provisions for relocating or concealing their identity when necessary. The BNSS aims to ensure that victims are not only provided with justice but are treated with respect and protected from further harm throughout the legal process.

6. Challenges:

Despite progressive reforms, certain provisions may inadvertently burden victims, such as the mandatory requirement for corroboration in specific cases, potentially deterring reporting. The Bharatiya Nyaya Sanhita (BNS), 2023, introduces several progressive reforms to the Indian criminal justice system, but its implementation faces significant challenges. These challenges relate to the legal, social, and institutional barriers that could undermine the effectiveness of the proposed changes. One of the major challenges is the

implementation of time-bound investigations and trials. While the BNSS aims to expedite legal proceedings, India's existing judicial infrastructure is overwhelmed with a backlog of cases. Fast-track courts, though promising, may face shortages of trained judges, staff, and adequate resources to handle the influx of sensitive cases, such as those involving sexual violence or child abuse. The delay in infrastructure upgrades could hinder the timely delivery of justice.

Another concern is the protection of victims' privacy and dignity. Despite strong legal safeguards, ensuring victim anonymity in cases such as sexual offences or harassment remains difficult in practice. The challenge lies in enforcing stringent measures to prevent the leakage of personal information in the media and public domain. Additionally, there are concerns about the safety of witnesses and whether existing witness protection programs will be adequately funded and implemented across the country, especially in high-risk cases involving organized crime or corruption. Moreover, the protection of the accused's rights poses a challenge, as stricter penalties and expedited trials could lead to a potential imbalance in the judicial process. There is a need for continued focus on ensuring that accused individuals are not deprived of a fair trial, adequate defense, and legal representation.

Lastly, the social and cultural barriers to victim participation, especially for marginalized communities, may persist. Societal stigma, fear of retribution, and lack of awareness may prevent victims from fully accessing the justice system.

These challenges necessitate comprehensive reforms in legal infrastructure, awareness campaigns, and resource allocation to realize the objectives of the BNS, 2023.

7. Impact on the Accused:

7.1 Presumption of Innocence

The BNS, 2023, emphasizes that the accused have the right to be presumed innocent unless proven guilty, upholding the notion of innocence as a fundamental tenet of criminal justice. This idea, which is consistent with constitutional protections, seeks to maintain fairness, avoid erroneous convictions, and protect people's rights in the legal system. The burden of proof, which requires the state to provide enough evidence to prove the accused's guilt beyond the realm of possibility, is placed on the prosecutor under the BNS, which upholds the presumption of innocence. This is crucial to protecting individuals from arbitrary punishment and ensuring that the legal process is impartial. The law emphasizes that an accused person should not be subjected to punishment, pre-trial detention, or public condemnation solely on the basis of accusations.

However, the BNS also introduces expedited trials and enhanced penalties for certain offences, such as sexual violence and cybercrimes, which could lead to concerns about the potential for overzealous prosecution or prejudicial treatment of the accused. In such cases, there is a delicate balance between ensuring swift justice for victims and safeguarding the rights of the accused. The BNS addresses this by mandating humane treatment of the accused, prohibiting torture or coercion during investigation,

and guaranteeing the right to a defense, including access to competent legal counsel. While the BNS aims to expedite the process, it underscores the importance of ensuring that any individual, regardless of the nature of the accusation, is provided with a fair trial and is not subjected to unfair prejudices or prejudgment. This focus on due process ensures that the presumption of innocence remains a cornerstone of justice under the BNS, balancing victim rights with the protection of the accused's fundamental rights. The BNS adheres to the doctrine of presumption of innocence, a cornerstone of criminal jurisprudence, by incorporating:

- Safeguards against false allegations.
- Stringent evidentiary requirements.

7.2 Fair Trial Rights

The law strengthens these rights through provisions ensuring transparency, equality, and justice for both victims and the accused. A fundamental principle under the BNS is the right to a public trial, ensuring that trials are open to the public unless exceptional circumstances, like protecting a victim's identity, require otherwise. This provision is consistent with the SC's observation in *K.K. Verma*¹⁴, where it was decided that the right to a public trial encourages justice and openness in the legal system. In accordance with Article 39A of the Constitution, the BNS also ensures that the accused has sufficient legal representation, guaranteeing access to legal assistance for individuals who cannot afford legal representation.

A presumption of guilt is another essential value that the BNS emphasizes¹⁵, where the SC held that

the prosecution must prove guilt beyond reasonable doubt. The BNS ensures that the accused's rights are protected by placing the burden of proof on the prosecution. Lastly, the BNS emphasizes the right to be heard, which guarantees that both the victim and the accused have an opportunity to present their case fully. This principle of inclusivity ensures that justice is done and seen to be done. These provisions of the BNS aim to ensure fairness and uphold the rule of law, balancing the rights of victims and the accused.

7.3 Potential Concerns

While aiming to protect victims, stringent penalties and evidentiary rules may sometimes tilt the balance against the accused, raising concerns about due process. *Case Reference:* The Court cautioned against disproportionate penalties undermining justice. The Bharatiya Nyaya Sanhita (BNS), 2023, while aiming to modernize the criminal justice system, raises several potential concerns that could impact its implementation and fairness.

One concern is the expedited trial provisions, which, while designed to ensure faster justice, may inadvertently lead to a compromise in the quality of trials. The pressure to conclude trials quickly could result in procedural shortcuts or incomplete investigations. This issue was highlighted in *K.K. Verma (Supra)*, where the Court warned that the haste in trial processes could affect the fairness of justice if not managed carefully. Expedited trials may also place undue stress on judicial infrastructure already burdened with a backlog of cases.

Another potential issue lies in the enhanced

penalties, especially for crimes like sexual violence and cybercrimes. The death penalty provisions for repeat offenders in such cases, as suggested in the BNS, may face challenges in balancing the need for deterrence with the risk of wrongful convictions. The Apex Court examined the arbitrary nature of the death penalty, highlighting concerns regarding its application in a judicial system that may occasionally err¹⁶. The victim-centric provisions, although well-intentioned, raise concerns about overreaching protective measures, which could potentially infringe on the rights of the accused. For instance, in cases of sexual violence, while victim anonymity is crucial, it might clash with the accused's right to fair trial and confrontation of witnesses, as established in *Sakshi v. Union of India*¹⁷, where the Court discussed the balance between protecting victims and ensuring fairness for the accused. These concerns underscore the need for careful implementation of the BNS, 2023, with adequate safeguards to prevent potential miscarriages of justice.

8. Impact on Witnesses:

8.1 Witness Protection Mechanisms

The Bharatiya Nyaya Sanhita (BNS), 2023, introduces significant provisions to enhance witness protection mechanisms, recognizing the crucial role of witnesses in ensuring the fair administration of justice. The law establishes a more robust framework to shield witnesses from intimidation, threats, or harm, which has long been a concern in India's criminal justice system. One of the key provisions is the creation of witness protection programs, which offer physical and

psychological protection to witnesses at risk due to their involvement in high-profile or sensitive cases, such as those involving organized crime or terrorism. This action is consistent with the ruling of the Supreme Court in *Mahender Chawla v. Union of India*¹⁸ where the Court acknowledged the dangers faced by witnesses and called for a comprehensive law to protect them. The BNS provides a structured approach to this, including relocating witnesses or concealing their identity when necessary.

The law also allows for anonymous testimony in specific cases, ensuring that witnesses are not forced to face the accused in court, thus minimizing the psychological stress often associated with testifying in sensitive cases. The Court held that fear of retaliation could severely compromise the testimony of crucial witnesses, highlighting the need for protective measures¹⁹.

Additionally, the BNS introduces special courts for handling cases involving vulnerable witnesses, ensuring that proceedings are conducted in a manner that protects the well-being of witnesses, particularly in cases of sexual violence or organized crime. The witness immunity clause in the BNS further ensures that witnesses are not penalized for their testimony, in line with the principles laid down that emphasized the importance of shielding witnesses from legal consequences for cooperating with the prosecution. These mechanisms are designed to improve witness cooperation, ensure truth-telling in trials, and safeguard the integrity of the justice system²⁰.

8.2 Challenges in Implementation:

The effectiveness of witness protection largely depends on state cooperation and resource allocation, which remain inconsistent. The *Bharatiya Nyaya Sanhita (BNS), 2023*, introduces vital provisions for witness protection, aiming to safeguard individuals who contribute to the judicial process by offering testimony in criminal trials. However, the effectiveness of these provisions hinges on state cooperation and adequate resource allocation, which have historically been inconsistent across states, presenting significant challenges in the practical implementation of witness protection programs.

A primary concern is the lack of uniformity in resources and infrastructure across India. While the law mandates witness protection programs, the actual implementation varies due to differences in state capacity, budget allocations, and law enforcement infrastructure. This is evident in the *Kishanbhai case*²¹ where the Supreme Court noted that witness intimidation continues to undermine justice, particularly in states with inadequate mechanisms for protecting witnesses. The state's role is crucial in ensuring the physical safety, psychological support, and relocation options for witnesses, but many states lack the necessary resources to do so effectively.

Moreover, coordination between different agencies—such as police, courts, and local governments—often fails, leading to delays in providing protection or even putting witnesses at further risk. The *Mahender Chawla case*²² highlighted that the implementation of witness protection schemes is often stalled due to

bureaucratic inefficiencies and reluctance from local authorities to adopt such programs comprehensively. The financial constraints faced by states further compound the challenge. Allocating sufficient funds for witness protection requires a shift in prioritization of resources, which can be politically and logistically difficult. To ensure the success of witness protection under the BNS, 2023, it is imperative for states to strengthen cooperation, allocate sufficient resources, and develop specialized infrastructures capable of supporting the full range of protective measures required by witnesses.

9. Doctrines of Criminal Jurisprudence and Constitutional Principles

Criminal jurisprudence is the body of law relating to crime and punishment. It ensures that an individual who violates the law is held accountable, yet safeguards the fundamental rights of the accused. Constitutional principles, on the other hand, are the bedrock of the legal framework of any country, and they provide the rules under which criminal justice systems operate. The relationship between criminal jurisprudence and constitutional principles is intricate, as the latter guides the former in shaping a just, fair, and equitable legal process. This article examines key doctrines of criminal jurisprudence in light of constitutional principles, focusing on the Indian context.

9.1 Doctrine of Presumption of Innocence:

The presumption of guilt is one of the fundamental tenets of the law on crime. This theory states that an individual is deemed innocent until and unless

proven guilty of a crime. The 21st article of the Indian Constitution, that protects the right of life and individual freedom, upholds this idea. It guarantees that no one will be robbed of their freedom until the legal process is followed. Additionally, the notion of innocence guarantees that the burden of proof rests with the prosecution and guards against arbitrary incarceration. The judiciary emphasized that the presumption of innocence is a cardinal principle of criminal law²³.

9.2 Doctrine of Due Process:

The legal necessity that the state upholds all of a person's legal rights is known as "due process." It ensures just legal proceedings and a fair trial. Article 21 of the Indian Constitution, which states that no one may be robbed of their life or personal freedom unless a fair, reasonable, and just process has been followed, embodies the principle of due process. The Maneka Gandhi Against the Union of India (Supra) case broadened the application of Article 21 by stating that the legal process must be reasonable, just, and fair. This decision made sure that the accused's entitlement to fair treatment is respected throughout the criminal justice system, from the time of arrest until the trial.

9.3 Doctrine of Proportionality:

The doctrine of proportionality is grounded in the idea that punishment should fit the crime, balancing the severity of the offense with the penalty imposed. This principle is vital in preventing arbitrary or excessive punishment. Article 21 of the Constitution also protects individuals from cruel or inhuman punishment, reflecting this doctrine. The *Rattan Singh v. State*

of Punjab²⁴ the Court's decision that death sentences need to be saved for the most exceptional circumstances is an illustration of proportionality.

The principle of proportionality ensures that a balance is struck between the gravity of the offense and the punishment meted out. The *Mithu v. State of Punjab*²⁵ case challenged mandatory death sentences for certain crimes, asserting that they violated the constitutional doctrine of proportionality.

9.4 Doctrine of Double Jeopardy:

A person cannot be tried for the same crime more than once thanks to the double jeopardy doctrine. No one may be charged with or punished for the same offense more than once, according to Article 20(2) of the Indian Constitution. This approach ensures that people are not forced to protracted court fights over the same charge, preventing abuse of the legal system. This constitutional protection is not absolute because the Indian judicial system permits judgment reviews and appeals. A person cannot be tried again for the same crime after being found guilty or acquitted, though, unless fresh and substantial evidence is discovered. In the *State of Bombay v. R. M. D. C. Ltd*²⁶ case, the Supreme Court upheld the principle of double jeopardy.

9.5 Doctrine of Fair Trial:

In the field of criminal law, a fair trial is essential to justice. Numerous rights are included in the idea of a fair trial, such as the right to counsel, the right to be seen, the right for a hearing in public, and the right to an unbiased judge. The 21st article of the Indian Constitution guarantees a fair trial and guarantees that no one's freedom can be taken

away from them unless a reasonable and equitable process is followed.

The right to a fair trial is bolstered by provisions under the CrPC, which lays down detailed guidelines for the conduct of criminal proceedings. In *K. K. Verma* (Supra), the Court held that the right to a fair trial is an essential component of Article 21 and cannot be compromised.

9.6 Doctrine of Equality Before Law:

The fourteenth article of the Indian Constitution, which ensures that all people are equal under the law irrespective of their status or position, enshrines the idea of equality before the law. A pillar of felony jurisprudence, this theory guarantees that everyone is protected by the same laws and is subject to them equally. By guaranteeing that everyone is treated equally by the courts, regardless of their social or economic background, this theory seeks to eradicate prejudice in the criminal justice system. The *State of Uttar Pradesh v. Rajesh Gautam*²⁷ case emphasized that the criminal law should be applied equally to all individuals, irrespective of their social standing.

9.7 Doctrine of Right to Counsel:

A crucial component of criminal justice is the right to counsel, which guarantees that those who are charged with a crime have the chance to consult with an attorney. Article 22 of the Indian Constitution, which protects the right to consult a lawyer, protects this right, which is crucial for maintaining justice in criminal trials. An accused person's right to legal representation is essential for safeguarding their interests since it guarantees that

they won't be forced to enter a guilty plea or make confessions. The landmark case of *Khatry v. State of Bihar*²⁸ reinforced the principle that the right to legal representation is an indispensable part of a fair trial.

9.8 Doctrine of Victim's Rights:

In recent years, the focus of criminal jurisprudence has shifted towards the victims. Previously, criminal justice was primarily concerned with the rights of the accused, but modern legal systems, including in India, have begun to emphasize the rights of victims of crime. The Indian legal system has evolved to incorporate provisions for victim compensation and participation in criminal proceedings. The *Nirbhaya Case* (2012) marked a significant shift in the legal recognition of victim's rights. The Amendment Act, 2013, which followed the incident, introduced harsher penalties for crimes against women and laid the groundwork for ensuring victims' voices are heard in criminal trials²⁹.

In nutshell, Criminal jurisprudence, grounded in constitutional principles, The doctrines of presumption of innocence, due process, proportionality, double jeopardy, fair trial, equality before the law, the right to counsel, and victim's rights are essential in ensuring that justice is delivered in a fair and equitable manner. The Indian Constitution provides a comprehensive framework that guarantees fundamental rights while allowing for the effective enforcement of criminal law. The judiciary plays a pivotal role in upholding these principles, ensuring that the criminal justice system operates in a manner

consistent with the Constitution's values.

10. Recommendations:

- 1. Strengthening Victim Support:** Expand access to victim compensation schemes. Ensure timely implementation of victim protection measures.
- 2. Safeguarding Accused Rights:** Introduce periodic reviews of stringent penalties. Enhance judicial training to balance victim protection and accused safeguards.
- 3. Effective Witness Protection:** Allocate adequate resources for witness protection programs. Implement a nationwide framework to ensure uniformity.
- 4. Awareness and Training:** Conduct awareness programs for law enforcement and judiciary on the nuanced provisions of the BNS. Promote public awareness to reduce stigma around reporting sexual offences.

11. Conclusion

The Bhartiya Nyaya Sanhita, 2023, represents a progressive shift in addressing sexual offences, incorporating victim-centric reforms while upholding the rights of the accused and witnesses. However, effective implementation, consistent with constitutional principles and doctrines of criminal jurisprudence, remains crucial. The Bhartiya Nyaya Sanhita, 2023 (BNS) represents a transformative approach to the handling of sexual offences in India's criminal justice system. It aims to streamline procedures, enhance victim protection, and expedite trials, but its impact on victims, accused individuals, and witnesses must be understood in the context of criminal jurisprudence

and constitutional principles.

The law is designed to strengthen the rights and protections of sexual offence victims, ensuring a more supportive legal process. The expedited investigation and trial timelines aim to reduce delays that often lead to prolonged trauma for victims. This approach reflects an intent to prioritize justice and reduce the adversities faced by victims in long-drawn trials. Additionally, provisions for safeguarding the identity and dignity of victims, such as banning the public disclosure of their identities, offer important protections. The law also ensures that victims have access to legal aid, ensuring their voices are heard with dignity and respect. This marks a shift from earlier practices that often left victims exposed to public scrutiny and blame. Further, the introduction of harsher penalties, including the death sentence for certain extreme cases, signals a tougher stance on sexual violence, intended to serve as a deterrent to potential offenders.

However, some critiques suggest that the focus of the BNS on punitive measures, particularly the death penalty. The law emphasizes retribution, but critics argue that a more restorative approach could be beneficial for healing and preventing future crimes. Moreover, while the law offers protection to victims, some provisions might inadvertently place additional pressure on them, especially when victims are compelled to testify in emotionally charged environments that could exacerbate their trauma.

For the accused, the BNS seeks to maintain a balance between victim protection and the

preservation of their rights. While the expedited trial process can reduce the emotional toll on the accused, there are concerns that the speed of proceedings might undermine the thoroughness of investigations and the defense's ability to challenge the allegations. In some cases, this might lead to unfair judgments or a rush to conclusions, potentially resulting in wrongful convictions. Moreover, the introduction of severe penalties, including the death sentence in certain cases, raises questions about whether such a punitive framework is always in the best interest of justice, especially when there might be doubts about the accuracy of the accusations.

Witnesses also play a critical role in the legal process, particularly in sexual offence cases where physical evidence may not always be sufficient. The BNS has provisions that protect witnesses from intimidation and harassment, offering measures such as anonymity when necessary. This ensures that witnesses can testify without fear of retaliation, which is especially important in sexual offence cases where societal pressures and personal safety risks can dissuade individuals from coming forward. On the other hand, the law's increased reliance on witness testimonies may place a heavy burden on them, potentially leading to psychological stress, especially if they are connected to the accused or the victim. This could result in fewer witnesses coming forward or even lead to false or coerced testimonies, which can negatively affect the fairness of the trial process.

The Bhartiya Nyaya Sanhita, 2023 reflects a shift

toward a more victim-centric approach in criminal jurisprudence. By emphasizing speed and efficiency, it aims to reduce the suffering of victims and deliver timely justice. However, the law's focus on punitive measures raises questions about whether it adequately balances the constitutional rights of the accused with the rights of victims. While the law addresses some significant gaps in the criminal justice system, its true success will depend on how well it respects these constitutional principles while providing effective protection and justice for victims of sexual offences.

Endnotes:

¹ State of Punjab v. Major Singh, AIR 1967 SC 63, emphasizing the limitations of the term "modesty."

² Justice J.S. Verma, Leila Seth, and Gopal Subramaniam, Report of the Committee on Amendments to Criminal Law (2013), para. 13.

³ Bhartiya Nyaya Sanhita, 2023, Section 354D (stalking) and Section 376E (digital voyeurism).

⁴ Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14, emphasizing the need for victim rehabilitation and support systems.

⁵ Bhartiya Nyaya Sanhita, 2023, Section 223 (fair trial guarantees).

⁶ Maneka Gandhi v. Union of India, (1978) 1 SCC 248, on procedural fairness as a fundamental right.

⁷ Bachan Singh v. State of Punjab, (1980) 2 SCC 684, emphasizing proportionality in sentencing.

⁸ Sakshi v. Union of India, (2004) 5 SCC 518, highlighting the challenges faced by witnesses in sexual offence cases.

⁹ Sunil Batra v. Delhi Administration, (1978) 4 SCC 494, discussing the reformatory approach to criminal justice.

¹⁰ <https://legalfly.in/bharatiya-nyaya-sanhita/>

¹¹ <https://lawfullegal.in/bharatiya-nyaya-sanhita-2023-offences-against-woman/>

¹² Ibid 11

¹³ <https://vajiramandravi.com/upsc-daily-current-affairs/mains-articles/bharatiya-nyaya-sanhita-bill-2023-background-objectives-provisions/>

¹⁴ K.K. Verma v. Union of India, 1955 AIR 525, 1955 SCR 1235

¹⁵ State of Uttar Pradesh v. Rajesh Gautam, (2003) 2 SCC 119.

¹⁶ T.V. Vatheeswaran v. State of Tamil Nadu, 1983 AIR 361, 1983 SCR (2) 294.

¹⁷ Sakshi v. Union of India, 2004 (5) SCC 518

¹⁸ Mahender Chawla v. Union of India, (2019) 13 SCC 372

¹⁹ State of Gujarat v. Kishanbhai, (2014) 5 SCC 108.

The BNS also underscores the importance of ensuring that its implementation does not undermine the integrity of the justice system. A focus on restorative justice alongside punitive measures may provide a more holistic approach to addressing sexual violence, promoting societal healing while maintaining fairness for all participants in the legal process. The continued evaluation of the law's application and its effects on the criminal justice system will be essential for refining its provisions and ensuring that it serves justice in a fair and equitable manner for both victims and accused individuals.

²⁰ Pappu Yadav v. State of Bihar, 1997 SCC (4) 35.

²¹ State of Gujarat v. Kishanbhai, (2014) 5 SCC 108.

²² Mahender Chawla v. Union of India, (2019) 13 SCC 372

²³ State of Rajasthan v. Kashi Ram, (2006) 12 SCC 254.

²⁴ Rattan Singh v. State of Punjab, (1997) 6 SCC 59.

²⁵ Mithu v. State of Punjab, (1983) 2 SCC 277.

²⁶ State of Bombay v. R. M. D. C. Ltd., AIR 1957 SC 699.

²⁷ State of Uttar Pradesh v. Rajesh Gautam, (2006) 6 SCC 757.

²⁸ Khatri v. State of Bihar, (1981) 1 SCC 627.

²⁹ Criminal Law (Amendment) Act, 2013, No. 13 of 2013, Acts of Parliament.