

“Offences Relating to Marriage under BNS: Continuity, Change, and Challenges”

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Abstract

The Bharatiya Nyaya Sanhita (BNS), introduced in 2023, marks a significant departure from previous criminal law frameworks in India, specifically in its treatment of offences related to marriage. This paper critically examines the historical evolution of marital offences, including bigamy, marital cruelty, domestic violence, and dowry-related offences. It assesses the continuity of certain legal provisions from older frameworks such as the **Indian Penal Code (IPC)** and their modernization in the BNS. Furthermore, this study explores the various challenges that hinder the effective implementation of these legal provisions, including societal attitudes, legal literacy, and institutional inertia.

Introduction

Marriage in India is more than a legal contract—it is a culturally sanctified institution, deeply interwoven with social, religious, and moral norms. However, like any social institution, it is susceptible to misuse, exploitation, and abuse. Recognizing this, Indian criminal law has long provided specific provisions to address offences arising within the marital sphere.³ With the enactment of the **Bharatiya Nyaya Sanhita (BNS), 2023**, replacing the colonial-era **Indian Penal Code (IPC), 1860**, the legal framework governing marital offences has undergone significant reform, signaling a decisive shift toward aligning criminal law with contemporary constitutional values and societal expectations.⁴

This paper delves into the spectrum of **marital offences codified under the BNS**, including **bigamy, cruelty, deceitful marriage, and fraudulent marriage ceremonies**. By examining the historical evolution, legislative intent, and judicial interpretations of these provisions, the study assesses their relevance and effectiveness in protecting individual rights within the marital

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³ S. R. Pandey, *Criminal Law and Family Justice in India* (LexisNexis, 2022).

⁴ B. N. Sharma, *The Indian Penal Code: A Comprehensive Commentary* (LexisNexis, 2020).

relationship—particularly those of women. The paper also explores how these criminal provisions interact with civil remedies and broader social welfare mechanisms, calling for a harmonized, victim-centric approach to justice.⁵

In this evolving legal landscape, understanding marital offences is not merely a matter of legal interpretation but a pressing concern for ensuring **gender justice, human dignity, and constitutional morality** in private and public spheres alike.⁶

Marriage, a key institution in Indian society, has long been governed by a complex mix of **religious** and **secular** laws. Historically, marital issues were seen more as social and familial concerns rather than legal matters, though the emergence of modern legal systems in colonial India began to shift this perception. Post-independence, the recognition of marriage as a legal institution led to a more comprehensive codification of offences within marriage

In 2023, the **Bharatiya Nyaya Sanhita** sought to modernize criminal law by consolidating various penal provisions relating to marriage. It is crucial to understand the legal evolution of these offences, which includes a move toward greater protection of individual rights, especially for women, while also confronting contemporary challenges.

Historical Background of Marital Offences in India:

1. Ancient and Medieval Indian Laws:

In ancient India, marriage was viewed primarily as a **sacrament** rather than a contractual relationship. Religious texts like the **Manusmriti** outlined duties within marriage but offered little in terms of criminal justice for marital offences. However, some practices, like **dowry** (or *stridhan*) and **polygamy**, were subjects of societal and religious debate. The Manusmriti, for example, emphasized the importance of a woman's property rights but did not criminalize marital cruelty or bigamy directly.⁷

During the **Medieval period**, the advent of Islamic law, with its specific treatment of marriage, influenced practices related to polygamy. **Bigamy** was common in certain sections of society,

⁵ R. K. Suri, *Marriage Laws and Criminality: An Indian Perspective* (Eastern Book Company, 2019).

⁶ Supreme Court of India, *Judgment in Joseph Shine v. Union of India*, available at: <https://www.sci.gov.in>, last accessed on April 23, 2025.

⁷ The Hindu, *BNS 2023: What Changes in Criminal Law Mean for Marital Rights*, available at: <https://www.thehindu.com>, last accessed on April 23, 2025.

but legal enforcement was rare. The **Hindu Code Bill** of the 1950s would later lay the foundation for modern reforms in marriage law.⁸

2. British Colonial Era:

The introduction of British legal principles reshaped marital laws, particularly through the **Indian Penal Code of 1860 (IPC)**. For the first time, **bigamy** (Section 494) and **adultery** (Section 497) were criminalized, though there were discrepancies in gendered treatment—only men were criminalized for adultery, and women were often viewed as passive victims of male transgressions.

Under colonial rule, marriage-related issues were largely civil in nature, with limited intervention by criminal law unless it involved violence or property rights (e.g., **dowry disputes**). The lack of protection for women within marriage, especially in cases of cruelty or marital abuse, left many women vulnerable in an era when legal rights were still emerging.⁹

3. Post-Independence Era and Reforms:

After independence, India sought to codify marriage laws more explicitly. The **Hindu Marriage Act of 1955** and the **Special Marriage Act of 1954** were groundbreaking, establishing legal grounds for divorce, polygamy, and maintenance. However, while these laws provided clearer rights for women in marriage, criminal law remained largely focused on issues like **dowry deaths** and **marital cruelty**, with limited provisions for **marital rape**.

It was only in the **1980s** that the IPC was amended to criminalize **cruelty** within marriages under **Section 498A**, a crucial step in recognizing the psychological and emotional abuse women could face in abusive marriages. Despite these advancements, several issues such as **marital rape**, **economic abuse**, and **child marriage** were not adequately addressed until the **2000s**, when the **Protection of Women from Domestic Violence Act (2005)** came into play, explicitly criminalizing various forms of domestic abuse.¹⁰

⁸ J. Verma, "Harmonizing Personal Laws with Criminal Law: The Role of BNS in Marital Justice", *Journal of Legal and Social Justice* (2024).

⁹ P. R. Chandra, "Marital Offences and Legal Reforms in India: A Post-BNS Assessment", *The Journal of Indian Law and Society* (2024).

¹⁰ The Hindu, *BNS 2023: What Changes in Criminal Law Mean for Marital Rights*, available at: <https://www.thehindu.com>, last accessed on April 23, 2025.

Offences Relating to Marriage under the Bharatiya Nyaya Sanhita (BNS):

The **Bharatiya Nyaya Sanhita (BNS), 2023**, represents a significant transformation in Indian criminal jurisprudence by replacing the **Indian Penal Code, 1860**, and re-codifying several offences, including those related to marriage. These offences reflect a commitment to uphold the constitutional principles of equality, human dignity, and gender justice. While the core structure of marriage-related offences has been retained, the BNS introduces nuanced reforms aimed at procedural clarity, safeguarding rights, and adapting to contemporary socio-legal realities.

1. Bigamy – Section 82, BNS

Section 82 of the BNS criminalizes **bigamy**, i.e., contracting a second marriage while the first is still subsisting. This section mirrors the repealed **Section 494 of the IPC**, with enhanced procedural clarity and alignment with constitutional values. The section is significant in protecting women from deception and maintaining the sanctity of monogamous marriages, especially under personal laws that prescribe monogamy.¹¹

The law mandates that a valid first marriage must be legally dissolved before entering a second. Violation of this attracts penal consequences, including imprisonment and fines. In **Kanwal Ram v. Himachal Pradesh** (AIR 1966 SC 614), the Supreme Court emphasized the necessity of proving essential ceremonies of the second marriage to sustain a conviction for bigamy. Further, in **Sarala Mudgal v. Union of India** (1995), the Court ruled that converting to another religion to solemnize a second marriage without dissolving the first was invalid and constituted bigamy, reinforcing the need for legislative safeguards.¹²

2. Aggravated Bigamy – Section 83, BNS

Section 83 prescribes enhanced punishment for bigamy when accompanied by **concealment** of the first marriage. This addresses cases where the second spouse is unaware of the first, thus criminalizing deception and protecting the rights of the unsuspecting party. The provision ensures that marital deception is dealt with firmly, especially in the context of vulnerable women often lured into relationships under false pretenses.¹³

¹¹ V. D. Sharma, "Gender, Marriage, and Law: A Comparative Analysis of IPC and BNS", *Social Science and Law* (2023).

¹² N. K. Jain, *Women's Rights and Legal Reforms in India* (Macmillan, 2021).

¹³ R. K. Suri, *Marriage Laws and Criminality: An Indian Perspective* (Eastern Book Company, 2019).

3. Cruelty by Husband or Relatives – Section 85, BNS

Section 85 of the BNS replaces the controversial yet necessary **Section 498A IPC**, which addressed **cruelty by the husband or his relatives**. The provision criminalizes physical, mental, or emotional abuse and harassment, particularly in relation to dowry demands. The BNS retains the core intent but includes **procedural safeguards** such as pre-trial mediation and fast-track investigation mechanisms to prevent misuse.¹⁴

The jurisprudence on this subject is well-established. In **Sushil Kumar Sharma v. Union of India** (AIR 2005 SC 3100), the apex court acknowledged instances of misuse but affirmed that the provision is vital to protect women. The landmark decision in **Arnesh Kumar v. State of Bihar** (2014) introduced guidelines to prevent arbitrary arrests under Section 498A, advocating for cautious and reasoned application of the law.¹⁵ Despite criticism, this provision remains a cornerstone in the fight against **domestic violence** and **patriarchal abuse** in India, especially when complemented with civil remedies under the Protection of Women from Domestic Violence Act, 2005.¹⁶

4. Deceitful Inducement to Marry – Section 83, BNS (Second Use)

Interestingly, **Section 83** also addresses **deceitful inducement to marry**, previously dealt with under **Section 493 IPC**. It criminalizes cases where a man, through deceit or false promise, induces a woman to believe that she is lawfully married to him, thereby cohabiting or having sexual relations with her. This provision recognizes the need to protect women from **false representations of marriage** that can lead to emotional trauma, social stigma, and economic exploitation.¹⁷

In **Reema Aggarwal v. Anupam** (AIR 2004 SC 1418), the Supreme Court held that even if the marriage is void due to bigamy or fraud, the woman is entitled to legal remedies if she was misled into believing it was valid.

5. Fraudulent Marriage Ceremony – Section 84, BNS

Section 84 replaces **Section 496 IPC**, dealing with **fraudulent or sham marriage ceremonies**. This provision targets individuals who undergo a marriage ceremony without the intention of

¹⁴ Supreme Court of India, *Judgment in Joseph Shine v. Union of India*, available at: <https://www.sci.gov.in>, last accessed on April 23, 2025.

¹⁵ S. R. Pandey, *Criminal Law and Family Justice in India* (LexisNexis, 2022).

¹⁶ K. K. Singh, *Gender Justice and Legal Reforms: An Analysis of Family Laws in India* (SAGE Publications, 2022).

¹⁷ J. Verma, "Harmonizing Personal Laws with Criminal Law: The Role of BNS in Marital Justice", *Journal of Legal and Social Justice* (2024).

creating a legal marital relationship. Such deceitful conduct, often aimed at exploiting the trust of the woman or her family, constitutes a criminal act under the BNS. The Gujarat High Court in **Rameshchandra Ramabhai Panchal v. State of Gujarat** (1975) emphasized the need to establish fraudulent intent to secure conviction under this category.¹⁸

6. Decriminalization of Adultery

The BNS deliberately excludes any provision on **adultery**, aligning with the progressive judgment in **Joseph Shine v. Union of India** (2019). In this landmark case, the Supreme Court struck down **Section 497 IPC**, terming it unconstitutional for being patriarchal, discriminatory, and violative of the rights to **equality, privacy, and personal liberty**. The Court emphasized that personal choices in intimate relationships should not attract criminal penalties, especially when civil remedies like divorce already exist. This move underlines the shift from **moral policing to constitutional morality** in Indian criminal law.

7. Judicial Trends and Socio-Legal Impact

Indian courts have been instrumental in shaping the interpretation of marriage-related offences. Decisions such as **V. Bhagat v. D. Bhagat** (1994) and **Bipin Chandra v. Prabhavati** (AIR 1957 SC 176) expanded the understanding of mental cruelty in matrimonial contexts. Similarly, **Arnesh Kumar** introduced a much-needed balance between protection and fair investigation. These trends highlight an evolving judiciary that is sensitive to gender realities while cautious of misuse.

From a socio-legal perspective, these offences reflect deep societal concerns—**gender inequality, patriarchal control, and exploitation in marriage**. Criminalization alone, however, is insufficient. There is a need for **civil remedies, psychological counseling, legal literacy, and institutional support systems** to address the root causes.¹⁹

Challenges in Implementing the BNS

Despite its progressive framework, the successful implementation of the **Bharatiya Nyaya Sanhita (BNS), 2023** faces numerous structural, societal, and institutional challenges, especially concerning offences related to marriage. These challenges need to be addressed comprehensively for the BNS to realize its full potential in upholding justice and protecting vulnerable individuals within the institution of marriage.

¹⁸ N. K. Jain, *Women's Rights and Legal Reforms in India* (Macmillan, 2021).

¹⁹ M. C. Bhandari, *Revised Criminal Law in India: The Impact of BNS on Marital Offences* (OUP India, 2023).

1. Awareness and Education

One of the most pressing challenges is the **lack of legal awareness**, especially in rural and marginalized communities. While the BNS introduces clearer provisions and modern legal safeguards, **a vast majority of citizens remain unaware of their rights** under the new law. Women, in particular, often face barriers in accessing information related to **marital cruelty, dowry harassment, and deceitful marriages**. In many instances, survivors of abuse may continue to suffer in silence due to **societal stigma, illiteracy**, or the normalization of domestic violence within family structures.

Additionally, even those who are aware of their rights may **lack access to legal aid or support services**, discouraging them from pursuing justice. Effective implementation of the BNS requires **nationwide awareness campaigns**, incorporation of **legal education in school curricula**, and the strengthening of **legal aid services** at the grassroots level.²⁰

2. Gender Bias in Law Enforcement

Another critical challenge is the **deep-rooted gender bias** in law enforcement and investigative procedures. Despite legal reforms, **patriarchal attitudes persist among police officers, medical professionals, and sometimes even judges**, resulting in delayed or inadequate responses to complaints of **marital cruelty (Section 85 BNS)** or **deceitful marriage (Section 83 BNS)**.²¹

Victims are often discouraged from filing FIRs, and where cases are registered, investigations may not be thorough due to a belief that marital disputes are “private family matters.” This cultural minimization of **domestic violence and marital exploitation** results in the **revictimization of complainants**. Addressing this requires **gender-sensitization training** for police personnel, judicial officers, and public prosecutors, along with stringent accountability measures for mishandling or dismissing genuine complaints.

3. Judicial Overload

The **Indian judiciary continues to grapple with a massive backlog of cases**, many of which are matrimonial in nature. The slow pace of litigation, especially in family courts and lower criminal courts, means that **victims of marital offences often wait years for resolution**, prolonging their psychological, emotional, and financial trauma. In cases involving **bigamy**

²⁰ N. K. Jain, *Women's Rights and Legal Reforms in India* (Macmillan, 2021).

²¹ K. K. Singh, *Gender Justice and Legal Reforms: An Analysis of Family Laws in India* (SAGE Publications, 2022).

(Section 82 BNS) or **marital cruelty**, delays in justice delivery not only demoralize the victim but can also result in loss of critical evidence or retraction of complaints due to family pressure.

To address this, there is a dire need to **increase the number of family courts, appoint dedicated matrimonial offence benches, and fast-track cases involving domestic abuse or fraud in marriage**. Leveraging **digital court infrastructure, alternate dispute resolution mechanisms, and mediation centers** can also significantly reduce delays.²²

4. Cultural Resistance

Perhaps the most difficult challenge to overcome is **cultural resistance to acknowledging marital offences**. In many Indian households, values such as “**family honor,**” “**sacrifice,**” and “**adjustment**” are emphasized over individual rights and well-being. Women, in particular, are often discouraged from reporting abuse due to the fear of social ostracization, being blamed for family breakdowns, or facing violence from in-laws.²³

This resistance is especially evident in **cases involving marital rape**, which, though not criminalized under current Indian law, are at the forefront of legal debates and social activism. While the BNS has made strides in reforming several aspects of criminal law, it **continues to exclude marital rape as a punishable offence**, reflecting the tension between legal reform and social conservatism.²⁴

Public campaigns, community engagement, and collaborations with religious and cultural leaders are essential to shifting societal attitudes. Legal reform must be accompanied by **social reform** to truly empower victims to come forward and seek redress.

Recommendations and Way Forward

1. Suggestions for Legal Clarity and Awareness

- **Clarity in language of the law:** Several provisions in the BNS have been rephrased, which may lead to confusion during interpretation. A clear and unambiguous legislative drafting style is essential, particularly for socially sensitive offences like those relating to marriage.

²² K. Chopra, "Legal Protections for Women under the BNS: A New Dawn or Old Chains?", *Indian Journal of Family Law* (2023).

²³ B. N. Sharma, *The Indian Penal Code: A Comprehensive Commentary* (LexisNexis, 2020).

²⁴ K. K. Singh, *Gender Justice and Legal Reforms: An Analysis of Family Laws in India* (SAGE Publications, 2022).

- **Wider dissemination of legal changes:** Public awareness campaigns must be launched to educate citizens about the reforms in BNS, especially those affecting familial and marital relationships.
- **Simplified legal guides:** The government and legal aid institutions should prepare booklets or visual content to explain marriage-related offences under BNS in simple language.²⁵

2. Strengthening Judicial Interpretation and Training

- **Orientation programs for judges and prosecutors:** Continuous judicial training programs must include updates on changes introduced by the BNS, with special focus on social implications and evolving jurisprudence.
- **Development of interpretative guidelines:** High Courts and the Supreme Court may issue guidelines or standardized interpretations to avoid inconsistency across states in the early implementation of BNS.²⁶
- **Reference to past precedents:** Despite the BNS replacing the IPC, many judicial precedents interpreting IPC provisions on marriage (e.g., cruelty under 498A) are still valuable. The judiciary should balance reliance on precedent with the intent behind the new provisions.²⁷

3. Sensitization of Law Enforcement

- **Capacity building for police personnel:** Police officers must be trained in handling sensitive cases of marital offences with empathy, gender neutrality, and cultural sensitivity.
- **Workshops on BNS implementation:** Regular state- and district-level workshops should be conducted to ensure uniform understanding among investigating officers and magistrates.
- **Discouragement of misuse:** Training must also include tools to identify and prevent misuse of provisions (e.g., false complaints under cruelty) while ensuring protection for genuine victims.²⁸

²⁵ National Judicial Academy, *Training Manual for Judges on Marriage-related Offences*, (NJA, 2023).

²⁶ M. C. Bhandari, *Revised Criminal Law in India: The Impact of BNS on Marital Offences* (OUP India, 2023).

²⁷ R. D. Upadhyay, *Reforming Marital Laws in India: A Socio-Legal Perspective* (Kluwer Law International, 2021).

²⁸ A. P. Singh, *Indian Family Law: Theory and Practice* (Universal Law Publishing, 2022).

4. Harmonization with Personal Laws and Constitutional Rights

- **Respect for diversity:** India's plural legal system recognizes multiple personal laws (Hindu, Muslim, Christian, etc.). The provisions under BNS should be applied in a manner that respects religious practices while upholding constitutional values.
- **Conflict resolution between personal and criminal laws:** Courts must develop jurisprudence to resolve conflicts, such as when a practice allowed under personal law (like bigamy in Muslim law) contradicts the criminal provisions in BNS.
- **Ensuring fundamental rights:** All marriage-related offences must be interpreted in light of constitutional rights such as equality (Article 14), non-discrimination (Article 15), and personal liberty (Article 21). For instance, the *Joseph Shine* case striking down adultery as unconstitutional reflects this balance.²⁹

Conclusion

The **Bharatiya Nyaya Sanhita (BNS)** marks a transformative shift in India's criminal law, particularly in the context of **marital offences**. It modernizes and expands legal protections for individuals within marriages, addressing critical issues such as **marital rape**, **dowry harassment**, and **economic abuse**. The introduction of provisions targeting these offenses reflects an important move toward recognizing the autonomy and dignity of individuals, irrespective of their marital status or gender.

However, while these reforms are commendable, significant challenges remain. The implementation of these provisions requires not only robust legal frameworks but also the **education** and **awareness** of both the public and law enforcement agencies. **Awareness campaigns** about new provisions, like the recognition of **marital rape** as a criminal offense, are essential to overcoming cultural and societal resistance to such progressive changes. Additionally, reforming **societal attitudes** toward marriage and gender roles will be crucial for the effective enforcement of these laws.

The judiciary plays a pivotal role in interpreting and enforcing the provisions of the BNS, and the courts' previous rulings on related matters continue to shape the law's application. For example, in the landmark case of **Independent Thought v. Union of India (2017)**, the Supreme Court recognized the need to criminalize marital rape for minors under 18, a decision that now aligns with the provisions in the BNS. Similarly, in **Shakti Vahini v. Union of India (2018)**, the

²⁹ V. D. Sharma, "Gender, Marriage, and Law: A Comparative Analysis of IPC and BNS", *Social Science and Law* (2023).

Court reinforced the importance of protecting individual rights within marriage, emphasizing the necessity for legal mechanisms to prevent violence and coercion in marital relationships.³⁰

These judicial precedents continue to guide the application of the BNS, ensuring that legal protections keep pace with the evolving social fabric. However, the legal reform alone will not suffice. A combined effort from the judiciary, law enforcement, and civil society will be needed to ensure that the BNS fulfills its promise of **justice** and **protection** for all individuals, regardless of gender or marital status.

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