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# A CRITICAL ANALYSIS OF OFFENCES AGAINST WOMEN AND CHILDREN UNDER THE INDIAN LEGAL SYSTEM

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## **Abstract**

Offences against women and children constitute one of the most serious violations of human rights in India. Despite the presence of a comprehensive legal framework, crimes such as rape, domestic violence, child abuse, trafficking, and sexual harassment continue to rise. This research paper critically analyzes the statutory provisions, judicial trends, and institutional mechanisms dealing with such offences under the Indian legal system. It evaluates the effectiveness of laws such as the **Bharatiya Nyaya Sanhita, 2023**, **Protection of Women from Domestic Violence Act, 2005**, and **Protection of Children from Sexual Offences Act, 2012 (POCSO)**. The study further explores challenges in implementation, evidentiary issues, victim protection, and societal barriers. The paper concludes with recommendations aimed at strengthening legal enforcement and ensuring justice for vulnerable groups.

In addition, the research highlights persistent issues such as underreporting of crimes, procedural delays, evidentiary complexities, low conviction rates, inadequate victim support systems, and lack of gender-sensitive investigation practices. It also explores the influence of socio-cultural norms, stigma, and economic dependency in discouraging victims from seeking legal remedies. The study adopts a multidisciplinary approach, integrating legal analysis with social realities to assess whether the existing framework functions effectively as a deterrent or remains largely symbolic in nature.

Furthermore, the paper critically assesses institutional mechanisms, including police administration, special courts, and child protection bodies, in addressing these offences. Comparative insights and policy perspectives are also considered to identify best practices and potential areas of reform.

**Keywords:** Women, Children, POCSO, Domestic Violence, BNS 2023, Sexual Offences, Justice System

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<sup>1</sup> Constitution of India, Arts. 14, 15, 21.

## **Introduction**

Offences against women and children represent one of the most serious challenges confronting the Indian legal system in the contemporary era. Despite constitutional guarantees of equality, dignity, and personal liberty under Articles 14, 15, and 21 of the Constitution of India, incidents of violence, exploitation, and abuse against these vulnerable groups continue to rise. Crimes such as rape, domestic violence, sexual harassment, trafficking, and child abuse not only violate individual rights but also undermine the social fabric of the nation<sup>1</sup>.

The Indian legislature has enacted a wide range of laws to address these offences, reflecting the State's commitment to protecting women and children. Statutes such as the Protection of Women from Domestic Violence Act, 2005, the Protection of Children from Sexual Offences Act, 2012 (POCSO), and recent reforms under the Bharatiya Nyaya Sanhita, 2023 (BNS) demonstrate an evolving legal framework aimed at ensuring stricter punishment and victim-centric justice<sup>2</sup>. These laws incorporate progressive features such as gender-sensitive provisions, child-friendly procedures, and enhanced penalties for serious offences.

The judiciary has also played a crucial role in strengthening legal protections through purposive interpretation and landmark judgments. Courts have consistently emphasized the need to uphold the dignity of victims and ensure fair trial procedures<sup>3</sup>. However, despite these advancements, the gap between law and its implementation remains significant. Issues such as delayed justice, inadequate investigation, social stigma, and lack of awareness continue to hinder effective enforcement.

This research paper seeks to critically analyze the legal provisions, judicial responses, and practical challenges associated with offences against women and children in India. It aims to evaluate the effectiveness of the existing legal framework and propose measures for strengthening the criminal justice system to ensure timely and meaningful justice for victims.

## **Objectives of the Study**

- The primary objective of this study is to critically examine the nature and extent of offences against women and children under the Indian legal system. It seeks to analyze the effectiveness of key legislations, including the Bharatiya Nyaya Sanhita, 2023, the Protection of Women from Domestic Violence Act, 2005, and the Protection of Children from Sexual Offences Act, 2012, in addressing such crimes.
- The study further aims to evaluate judicial trends and the role of law enforcement agencies in the implementation of these laws. Another important objective is to identify the challenges and lacunae in the existing legal framework, particularly with regard to evidentiary issues, delays in justice delivery, and victim protection mechanisms. Additionally, the research intends to examine the impact of socio-cultural factors on reporting and prosecution of offences. Finally, the study aims to suggest reforms and policy measures to strengthen the legal system and ensure effective protection and justice for women and children.

## **Research Questions**

1. What is the nature and extent of offences against women and children under the Indian legal system?
2. How effective are the existing legal provisions, particularly the Bharatiya Nyaya Sanhita, 2023, the Protection of Women from Domestic Violence Act, 2005, and the POCSO Act, 2012, in preventing and addressing such offences?

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<sup>2</sup> Protection of Women from Domestic Violence Act, 2005; Protection of Children from Sexual Offences Act, 2012; Bharatiya Nyaya Sanhita, 2023.

<sup>3</sup> Vishaka v. State of Rajasthan, AIR 1997 SC 3011.

## **Hypothesis**

1. The Indian legal framework is comprehensive but suffers from significant implementation gaps.
2. Judicial interventions have strengthened victim protection, yet inconsistencies persist in application.
3. Socio-cultural factors and systemic inefficiencies continue to hinder effective justice delivery.

## **Research Methodology**

The present study adopts a doctrinal and analytical research methodology, primarily based on secondary sources of data. Relevant information has been collected from statutes such as the Bharatiya Nyaya Sanhita, 2023, the Protection of Women from Domestic Violence Act, 2005, and the Protection of Children from Sexual Offences Act, 2012, along with constitutional provisions and judicial pronouncements. Case laws, law commission reports, government publications, and reports of the National Crime Records Bureau have also been examined to understand the practical dimensions of offences against women and children. The study further relies on books, journal articles, and online legal databases to critically analyze the effectiveness of the existing legal framework. An evaluative and comparative approach has been employed to identify gaps, challenges, and emerging trends in the enforcement of laws, with the objective of suggesting suitable reforms for strengthening the criminal justice system in India.

## **Review of Literature**

The issue of offences against women and children has attracted significant scholarly attention in India, particularly in the context of evolving legal frameworks and increasing crime rates. The existing literature reflects a multidimensional analysis encompassing legal, sociological, and criminological perspectives.

K.D. Gaur, in his seminal work *Textbook on Indian Penal Code*, provides a comprehensive analysis of offences against women, including rape, cruelty, and outraging modesty. He highlights that despite stringent penal provisions, the implementation of laws remains weak due to procedural delays and lack of sensitivity in investigation<sup>4</sup>. Similarly, Ratanlal and Dhirajlal, in *Law of Crimes*, emphasize that criminal law reforms must be complemented with effective enforcement mechanisms to ensure justice for victims<sup>5</sup>.

Scholarly articles published in journals such as the *Journal of Indian Law Institute* have examined the impact of the **Criminal Law (Amendment) Act, 2013**, which was enacted following the Nirbhaya incident. These studies suggest that while the amendment introduced stricter punishments and expanded definitions of sexual offences, it has not significantly reduced crime rates due to persistent systemic challenges<sup>6</sup>.

Flavia Agnes, a noted legal scholar, critically examines the **Protection of Women from Domestic Violence Act, 2005**, arguing that although the Act is progressive in recognizing various forms of abuse, its effectiveness is limited by poor implementation and lack of awareness among women<sup>7</sup>. Her work highlights the gap between legal provisions and ground realities.

In the context of child protection, Aparna Chandra and Mrinal Satish have extensively analyzed the **Protection of Children from Sexual Offences Act, 2012 (POCSO)**. Their research indicates that while the Act ensures child-friendly procedures, issues such as delays in trial, hostile witnesses, and misuse of provisions remain significant concerns<sup>8</sup>.

Recent literature has also focused on the transition from the Indian Penal Code to the **Bharatiya Nyaya Sanhita, 2023 (BNS)**. Scholars argue that the BNS aims to modernize criminal law by incorporating contemporary offences such as digital sexual crimes and enhancing punishments. However, concerns have been raised regarding its practical implementation and potential overlap with existing special laws<sup>9</sup>.

The role of the judiciary has been widely discussed in legal literature. In **Vishaka v. State of Rajasthan**, the Supreme Court laid down guidelines for preventing sexual harassment at the workplace, which were later codified into law. Academic commentary on this case underscores the proactive role of the judiciary in filling legislative gaps<sup>10</sup>. Similarly, the judgment in **Mukesh v. State (NCT of Delhi)** has been analyzed as a landmark decision reinforcing strict punishment for sexual offences and emphasizing victim dignity<sup>11</sup>.

Reports by the National Crime Records Bureau (NCRB) provide empirical insights into crime trends. These reports reveal a steady increase in offences against women and children, highlighting the urgent need for effective law enforcement and preventive measures.<sup>9</sup> Additionally, Law Commission of India reports have recommended reforms such as speedy trials, victim compensation, and improved investigation techniques<sup>12</sup>.

## Legal Framework Governing Offences Against Women and Children

The Indian legal framework governing offences against women and children is comprehensive and multidimensional, encompassing constitutional provisions, substantive criminal law, and special legislations. The Constitution of India guarantees equality, non-discrimination, and protection of life and personal liberty under Articles 14, 15, and 21, thereby forming the foundational basis for safeguarding the rights of women and children<sup>13</sup>.

The enactment of the **Bharatiya Nyaya Sanhita, 2023 (BNS)** marks a significant development in criminal law by replacing the Indian Penal Code, 1860. The BNS incorporates stringent provisions dealing with offences such as rape, sexual harassment, stalking, voyeurism, and trafficking, while also recognizing emerging forms of crime including digital exploitation<sup>14</sup>. It strengthens punishments and emphasizes victim-centric justice, reflecting contemporary societal needs.

In addition to the BNS, several special legislations provide focused protection. The **Protection of Women from Domestic Violence Act, 2005** offers civil remedies such as protection orders, residence rights, and monetary relief, thereby addressing domestic abuse in a holistic manner<sup>15</sup>. The **Protection of Children from Sexual Offences Act, 2012 (POCSO)** is a landmark statute that specifically deals with child sexual abuse through gender-neutral provisions, mandatory reporting, and child-friendly procedures during trial<sup>16</sup>.

Other important laws include the **Juvenile Justice (Care and Protection of Children) Act, 2015**, which ensures care, protection, and rehabilitation of children in conflict with law, and the **Immoral Traffic (Prevention) Act, 1956**, aimed at combating human trafficking. Additionally, the **Information Technology Act, 2000** addresses cyber offences such as online exploitation and child pornography<sup>17</sup>.

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<sup>4</sup> K.D. Gaur, *Textbook on Indian Penal Code* (6th edn., Universal Law Publishing, 2016).

<sup>5</sup> Ratanlal & Dhirajlal, *Law of Crimes* (28th edn., LexisNexis, 2019).

<sup>6</sup> Law Commission of India, *Report No. 243 on Section 498A IPC* (2012).

<sup>7</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 2001).

<sup>8</sup> Aparna Chandra & Mrinal Satish, "Child Sexual Abuse and the Law in India," (2016) *Journal of National Law University Delhi*.

## **Bharatiya Nyaya Sanhita, 2023**

The **Bharatiya Nyaya Sanhita, 2023 (BNS)** represents a significant reform in India's criminal law by replacing the colonial-era Indian Penal Code, 1860. It seeks to modernize legal provisions in accordance with contemporary societal realities, particularly with regard to offences against women and children. The BNS introduces clearer definitions, enhanced punishments, and incorporates new forms of offences such as cyber-enabled sexual crimes<sup>18</sup>.

One of the key features of the BNS is the strengthening of provisions relating to sexual offences. It retains and refines offences such as rape, sexual harassment, stalking, and voyeurism while ensuring stricter penalties, including life imprisonment and, in certain cases, capital punishment<sup>19</sup>. The law also places greater emphasis on victim dignity and consent, aligning with judicial interpretations developed over time.

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<sup>9</sup> Bharatiya Nyaya Sanhita, 2023.

<sup>10</sup> Vishaka v. State of Rajasthan, AIR 1997 SC 3011.

<sup>11</sup> Mukesh v. State (NCT of Delhi), (2017) 6 SCC 1, AIR 2017 SC 2161.

<sup>12</sup> Law Commission of India, Report No. 262 on Death Penalty (2015).

<sup>13</sup> Constitution of India, Arts. 14, 15, 21.

<sup>14</sup> Bharatiya Nyaya Sanhita, 2023.

<sup>15</sup> Protection of Women from Domestic Violence Act, 2005.

<sup>16</sup> Protection of Children from Sexual Offences Act, 2012.

<sup>17</sup> Information Technology Act, 2000.

<sup>18</sup> Bharatiya Nyaya Sanhita, 2023.

<sup>19</sup> Ibid.

In addition, the BNS addresses crimes such as trafficking of women and children, recognizing it as a serious organized offence with stringent punishments<sup>20</sup>. The incorporation of provisions dealing with digital and electronic exploitation reflects the evolving nature of crimes in the digital age. This is particularly relevant in cases involving online harassment, child pornography, and cyberstalking.

The Sanhita also seeks to ensure better protection of minors by harmonizing its provisions with special laws like the **Protection of Children from Sexual Offences Act, 2012 (POCSO)**. It emphasizes speedy investigation and trial, thereby aiming to reduce delays in justice delivery<sup>21</sup>.

However, despite these advancements, concerns remain regarding overlapping provisions with special statutes, potential ambiguity in interpretation, and challenges in implementation. Effective enforcement, training of law enforcement agencies, and judicial consistency are essential to achieve the objectives of the BNS.

### **Protection of Women from Domestic Violence Act, 2005**

The **Protection of Women from Domestic Violence Act, 2005 (PWDVA)** is a landmark social welfare legislation enacted to provide effective protection to women who are victims of domestic violence. Unlike traditional criminal laws, the Act adopts a civil law approach, focusing on immediate relief and protection rather than punishment alone. It recognizes domestic violence in a broad sense, including physical, emotional, sexual, verbal, and economic abuse, thereby expanding the scope of legal protection available to women<sup>22</sup>.

One of the significant features of the Act is its wide definition of an “aggrieved person” and “domestic relationship,” which includes not only legally married wives but also women in live-in relationships and other familial arrangements<sup>23</sup>. This inclusive approach reflects the evolving nature of family structures in India. The Act provides for various remedies such as protection orders, residence orders, monetary relief, custody orders, and compensation, which can be granted by the Magistrate to ensure the safety and well-being of the victim<sup>24</sup>.

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<sup>20</sup> Ibid.

<sup>21</sup> Protection of Children from Sexual Offences Act, 2012.

<sup>22</sup> Protection of Women from Domestic Violence Act, 2005.

<sup>23</sup> Ibid., s. 2(a), 2(f).

<sup>24</sup> Ibid., ss. 18–22.

Another important aspect of the PWDVA is the appointment of Protection Officers and the involvement of service providers to assist victims in accessing legal aid, medical facilities, and shelter homes. This institutional mechanism aims to make the law more accessible and victim-friendly<sup>25</sup>.

The judiciary has played a vital role in interpreting the provisions of the Act. In **Indra Sarma v. V.K.V. Sarma**, the Supreme Court recognized the rights of women in live-in relationships under the Act, thereby expanding its protective ambit<sup>26</sup>.

Despite its progressive nature, the implementation of the Act faces challenges such as lack of awareness, inadequate infrastructure, and delays in judicial proceedings. Nonetheless, the PWDVA remains a crucial legal instrument in safeguarding women from domestic violence and promoting gender justice in India.

### **Protection of Children from Sexual Offences Act, 2012 (POCSO)**

The **Protection of Children from Sexual Offences Act, 2012 (POCSO)** is a comprehensive and special legislation enacted to address the growing menace of child sexual abuse in India. The Act provides a robust legal framework for the protection of children below the age of eighteen years from offences such as sexual assault, sexual harassment, and pornography. It adopts a child-centric approach, ensuring that the interests and dignity of the child are prioritized throughout the legal process<sup>27</sup>.

One of the most significant features of the POCSO Act is its gender-neutral nature, which recognizes that both boys and girls can be victims of sexual offences<sup>28</sup>. The Act clearly defines various categories of offences, including penetrative sexual assault, aggravated sexual assault, and sexual harassment, along with stringent punishments proportionate to the gravity of the offence<sup>29</sup>. It also introduces the concept of “aggravated” offences where the perpetrator is in a position of trust or authority, such as a teacher or family member.

The Act mandates child-friendly procedures during investigation and trial. It requires that the statement of the child be recorded in a safe environment, preferably by a woman police

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<sup>25</sup> Ibid., ss. 8–10.

<sup>26</sup> *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

<sup>27</sup> Protection of Children from Sexual Offences Act, 2012.

<sup>28</sup> Ibid., s. 2(d).

<sup>29</sup> Ibid., ss. 3–10.

officer, and that the identity of the child be protected<sup>30</sup>. Special courts are established for the speedy trial of cases, and in-camera proceedings are conducted to ensure confidentiality. Additionally, the Act imposes a legal obligation on individuals to report offences, thereby strengthening accountability.

The judiciary has reinforced the objectives of the Act through various decisions. In **Alakh Alok Srivastava v. Union of India**, the Supreme Court issued directions for the establishment of special courts and expeditious disposal of POCSO cases<sup>31</sup>.

Despite its progressive provisions, challenges such as delays in trial, misuse in consensual adolescent relationships, and lack of awareness continue to affect its effectiveness. Nevertheless, the POCSO Act remains a vital legal instrument in safeguarding children from sexual exploitation in India.

Offences against women and children continue to pose a serious challenge to the Indian legal system despite the existence of a comprehensive and evolving legal framework. The enactment of progressive legislations such as the **Bharatiya Nyaya Sanhita, 2023**, the **Protection of Women from Domestic Violence Act, 2005**, and the **Protection of Children from Sexual Offences Act, 2012 (POCSO)** reflects the State's commitment to safeguarding vulnerable groups and ensuring justice. Judicial interventions have further strengthened these protections by expanding the scope of rights and emphasizing victim dignity and fair trial principles.

However, the effectiveness of these legal provisions is often undermined by systemic issues such as delays in investigation and trial, lack of sensitivity among law enforcement agencies, inadequate infrastructure, and social stigma attached to victims. The gap between law and its implementation remains a major concern. In many cases, victims are discouraged from reporting offences due to fear, societal pressure, and lack of awareness, thereby weakening the criminal justice process.

Furthermore, the increasing complexity of crimes, particularly those involving digital platforms and cyber exploitation, necessitates continuous adaptation of legal mechanisms. Strengthening forensic capabilities, improving police training, and ensuring better coordination among institutions are essential to address these challenges effectively.

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<sup>30</sup> Ibid., s. 24.

<sup>31</sup> Alakh Alok Srivastava v. Union of India, (2018) 17 SCC 291.

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