Gender justice and women's dignity under India's reformed criminal justice framework

Manu Choudhary[1]*, Prof. (Dr.) Arvind Rathore[2]

[1] Research Scholar, Faculty of Law, Maharishi Arvind University, Jaipur, Rajasthan, India

manuvarshita83@gmail.com

[2] Supervisor, Faculty of Law, Maharishi Arvind University, Jaipur, Rajasthan, India

Abstract: Gender justice requires a criminal justice system that respects women's autonomy while responding effectively to violence, discrimination, and exploitation. India's Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam, enacted in 2023 and brought into operation in 2024, provide an important setting for examining this responsibility. This article uses doctrinal analysis to assess substantive offences, reporting procedures, evidentiary safeguards, and institutional duties through the principles of equality, consent, privacy, and dignity. It situates the reforms within India's historical development and draws comparative lessons from international standards. The analysis identifies opportunities in accessible reporting and recognition of digital evidence, alongside concerns about inherited modesty terminology, marital sexual violence, unequal access, and institutional prejudice. It argues that meaningful reform depends on competent investigation, fair adjudication, survivor support, and measurable accountability. Women's dignity must guide everyday justice practices as consistently as it guides legislative promises.

Keywords: Gender Justice; Women's Dignity; Criminal Law Reform; BNS; BNSS; BSA; Consent; Access to Justice.

1. INTRODUCTION

A woman approaching the criminal justice system often needs several things simultaneously: immediate safety, medical assistance, confidentiality, reliable information, and confidence that her complaint will receive serious attention. Punishment matters, but the process through which punishment is pursued also shapes her experience of justice. An insensitive interview, an unnecessary disclosure, or repeated unexplained adjournments can deepen the harm that brought her to the authorities.

The Bharatiya Nyaya Sanhita, 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and Bharatiya Sakshya Adhiniyam, 2023 (BSA) reorganized India's principal criminal justice framework from 1st July 2024. Their significance for women requires examining both legislative changes and protections carried forward from earlier law. A changed section number does not necessarily indicate a new right.

This article examines whether the reformed framework advances dignity as an enforceable entitlement grounded in autonomy and equal citizenship. Its method is doctrinal and analytical, using legislation, judicial decisions, and international instruments. It evaluates legal design rather than claiming that legislative enactment has already produced demonstrable improvements in women's lives.

2. HISTORICAL BACKGROUND

The history of women's dignity in Indian criminal justice is a history of competing understandings of protection. One understanding treats women as independent persons entitled to bodily integrity and public participation. Another associates protection with family reputation, sexual respectability, and prescribed behaviour. These approaches can produce very different legal outcomes. A system organised around autonomy asks whether a woman freely agreed to an act and whether institutions respected her choices. A system organised around reputation may instead examine whether she behaved as society expected. Understanding this tension helps explain both the achievements and limitations of contemporary criminal law reform today.

The Indian Penal Code, 1860, established offences addressing rape, assaults affecting women, and insulting words or gestures. Its vocabulary included modesty, reflecting a protective model that could coexist with restrictive assumptions about femininity. The Code made certain harms punishable, but criminalisation alone did not ensure that women would be heard without prejudice. Historically, the legal importance attached to resistance, sexual history, and marriage exposed the distance between formal protection and substantive freedom. The colonial legacy therefore involved more than institutional continuity: it also supplied categories through which women's injuries were understood, narrated, and sometimes diminished within the administration of justice.

The Constitution transformed the normative foundation of this inherited system. Equality before law under Article 14, protection against sex discrimination under Article 15, and life and personal liberty under Article 21 created grounds for challenging discriminatory treatment. Article 15(3) permits special provisions for women and children, while Article 39-A connects justice with equal opportunity and legal assistance. Article 51A(e) additionally calls upon citizens to renounce practices derogatory to women's dignity. These provisions support a reading of protection that expands women's agency. They do not justify treating

adult women as incapable of making decisions about work, relationships, movement, or public life.

The Mathura case became a defining reference point in debates about consent and institutional power. In Tuka Ram v. State of Maharashtra, decided in 1978 and reported in 1979, the Supreme Court acquitted the accused policemen. The controversy surrounding the judgment brought attention to the danger of interpreting submission or absence of injuries as evidence of willingness. Its enduring significance lies in the questions it raised about vulnerability inside institutions expected to provide protection. For gender justice, consent cannot be understood without considering the circumstances in which a person is confronted with authority, intimidation, dependence, or limited avenues of escape.

The Criminal Law (Amendment) Act, 1983, strengthened the response to sexual violence through changes concerning custodial offences, confidentiality, and evidentiary treatment. These changes reflected recognition that sexual violence involves unequal power and that ordinary courtroom assumptions may disadvantage complainants. Their broader lesson remains relevant: law must examine the conditions under which evidence is produced and testimony is assessed. Nevertheless, reforming statutory language could not automatically transform the behaviour of police officers, doctors, advocates, or judges. The challenge was to translate protection into institutional routines, including respectful questioning, careful medical examination, responsible recordkeeping, and decisions free from assumptions about female character.

In *Vishaka v. State of Rajasthan* (1997), the Supreme Court connected sexual harassment with constitutional equality and the right to work with dignity. Drawing upon international standards, it established workplace safeguards pending legislation. This development broadened the field of gender justice beyond prosecution after serious physical violence. It recognised that intimidation and unwanted sexual conduct can undermine economic participation and equal opportunity. The importance of Vishaka also lies in its institutional perspective: employers and authorities have preventive responsibilities. Women's dignity therefore requires attention to the environments in which they study, earn, travel, and interact, alongside remedies after wrongdoing has occurred.

Subsequent legislation developed complementary approaches. The Protection of Women from Domestic Violence Act, 2005, recognised forms of abuse extending beyond physical assault

and provided protective remedies within domestic relationships. The Information Technology Act, 2000, as subsequently amended, supplied provisions relevant to privacy violations and sexual content online. The Protection of Children from Sexual Offences Act, 2012, established a specialised framework for children. Together, these enactments demonstrate that women's safety cannot be addressed through a single offence or institution. Criminal accountability must interact with protection, housing, employment security, healthcare, and procedures adapted to the needs of people facing different vulnerabilities today.

The December 2012 Delhi gang rape intensified demands for reform. The Criminal Law (Amendment) Act, 2013, expanded sexual offence provisions, including specific treatment of sexual harassment, voyeurism, stalking, and acid attacks. The workplace sexual harassment statute enacted that year also gave legislative form to preventive and complaints mechanisms. These developments made it harder to dismiss repeated intimidation or unwanted sexual conduct as harmless social behaviour. Yet the period also exposed a recurring policy dilemma: public attention readily focuses on sentencing severity, while everyday barriers to reporting, investigation, and rehabilitation receive less sustained scrutiny, funding, and institutional ownership across the country.

Judicial decisions further challenged practices that reproduced humiliation within justice processes. In *Lillu v. State of Haryana* (2013), the Supreme Court rejected the two-finger test and associated reasoning as violations of privacy, integrity, and dignity. In *Aparna Bhat v. State of Madhya Pradesh* (2021), it addressed gender stereotypes and inappropriate bail conditions in sexual offence proceedings. These decisions show that dignity is implicated in medical procedures, judicial language, and courtroom expectations. A woman should not have to perform an approved version of victimhood to obtain protection. Institutional fairness requires evaluating evidence without converting personal prejudice into assumptions of legal relevance.

The three criminal enactments of 2023 emerged from this longer trajectory. Their operation from July 2024 brought inherited protections, selected substantive changes, and procedural modernisation into a reorganised framework. Historically informed assessment must therefore resist presenting all safeguards as entirely new. It must also avoid assuming that continuity makes reform insignificant. The central question is whether the reorganised system improves the practical conditions under which women exercise rights. History suggests that durable

progress occurs when legislation, constitutional interpretation, public mobilisation, and institutional accountability reinforce one another. Without that alignment, strong legal promises can remain distant from women's everyday lived experiences.

3. DIGNITY, AUTONOMY AND EQUAL CITIZENSHIP

Dignity should be understood as an entitlement belonging equally to every woman. It cannot depend upon marital status, occupation, clothing, caste, disability, or sexual history. Within criminal justice, this entails recognising a complainant as a participant with rights and choices, while ensuring that allegations are adjudicated fairly.

The continued use of modesty terminology deserves scrutiny. Courts and investigators should interpret such provisions consistently with constitutional equality, without making protection conditional upon perceived chastity or obedience. Legal analysis should focus on prohibited conduct and statutory ingredients. An adult woman's decision to maintain a relationship, use social media, or travel independently cannot itself justify intrusion or violence.

Equally, dignity requires acknowledging diversity. A rural worker, an urban professional, and a woman requiring communication assistance may encounter different barriers. Substantive equality demands practical accommodation rather than an assumption that identical procedures provide everyone with an equal opportunity to seek justice.

Protection must also remain compatible with freedom. Universities, workplaces, and families sometimes respond to threats by restricting women's movement or excluding them from opportunities. An approach grounded in dignity instead asks institutions to address the source of danger and enable informed choices. For example, a student reporting harassment should receive support to continue her education without being pressured to withdraw. This principle gives criminal justice a constructive purpose: enabling participation in ordinary life. Safety policies should consequently be evaluated by whether they enlarge women's options and preserve their agency.

4. SUBSTANTIVE PROTECTION AND UNRESOLVED QUESTIONS UNDER THE BNS,2023

Sections 74–79 address assault affecting modesty, sexual harassment, disrobing, voyeurism, stalking, and insulting modesty. Sections 80 and 85–86 concern dowry death and cruelty. These provisions largely continue earlier protections (Bharatiya Nyaya Sanhita, 2023).

Section 69 separately criminalises sexual intercourse, not amounting to rape, obtained through specified deceit or a marriage promise made without intent to fulfil it. Its punishment extends to ten years and fine. Investigators must distinguish initial dishonest intention from a relationship that subsequently fails. Otherwise, enforcement risks substituting moral judgment for proof.

Section 63 retains an exception concerning sexual acts by a man with his wife aged eighteen or above; Section 67 separately addresses non-consensual intercourse during separation. This statutory distinction raises a fundamental equality question: why should marriage diminish recognition of sexual autonomy? Reform should address this inconsistency while specifying evidentiary safeguards and preserving fair trial rights.

More broadly, legislatures should assess protection through the experiences of those seeking help. A comprehensive framework should recognise coercion within intimate relationships, clarify overlapping offences, and avoid paternalistic assumptions that equate women's wellbeing exclusively with marriage. Accountability should protect decision-making freedom throughout intimate and public life.

5. REPORTING, INVESTIGATION, AND SURVIVOR PARTICIPATION UNDER THE BNSS,2023

Section 173 permits information about cognisable offences irrespective of territorial location and allows electronic communication, subject to signature within three days. It requires recording by a woman police officer or woman officer for specified offences. Section 184 requires consent for a rape-related medical examination and forwarding the medical report within seven days (Bharatiya Nagarik Suraksha Sanhita, 2023).

These safeguards need accessible implementation. A reporting option has limited value when a woman lacks a private phone, cannot read the interface, or fears that a shared device will

reveal her complaint. Police stations should offer confidential assistance, explain the next steps, and provide accessible communication without demanding repeated narration.

Section 193 prescribes a two-month investigation period for specified sexual offences and listed POCSO offences. It should not be described as a universal deadline for every offence against women. Sections 396–398 address compensation, free treatment for specified victims, and state witness protection schemes.

Administrative performance should be assessed through implementation: whether medical care was promptly provided, whether threats were addressed, and whether survivors received intelligible updates. Deadlines need trained personnel and forensic capacity. Rushed paperwork, unsupported conclusions, or mechanical filing cannot substitute for a thorough investigation that serves both survivor protection and reliable adjudication.

6. EVIDENCE, CREDIBILITY, AND PROCEDURAL FAIRNESS UNDER THE BSA,2023

Section 48 excludes character and previous sexual experience as relevant evidence of consent in specified prosecutions. Section 120 creates a presumption concerning absence of consent only in prosecutions under BNS Section 64(2), when its conditions are satisfied. It is not a universal presumption governing every allegation (Bharatiya Sakshya Adhiniyam, 2023).

These rules help separate evidentiary assessment from moral judgment. Courts should examine the evidence actually bearing upon the alleged incident. They should not expect every survivor to display identical emotions or respond to danger in an identical manner. At the same time, reasoned scrutiny of inconsistencies remains part of fair adjudication; respectful treatment does not predetermine guilt.

The BSA recognises electronic and digital records, with Sections 61–63 governing their evidentiary treatment. Messages, recordings, and platform records may illuminate coercion, but authenticity and statutory requirements matter. Investigators should preserve originals, document handling, and protect unrelated private material. Careful evidence practices support credible prosecutions while reducing unnecessary intrusion into women's lives.

7. CONTEMPORARY CHALLENGES: DIGITAL ABUSE AND UNEQUAL ACCESS

Digital abuse makes dignity vulnerable beyond physical spaces. Fabricated sexual imagery, account impersonation, threats to circulate intimate material, and coordinated harassment can disrupt education, employment, and relationships. The Information Technology Act contains provisions concerning privacy violations and sexually explicit electronic content; their applicability depends upon the facts and statutory requirements (Information Technology Act, 2000, ss. 66-E, 67-A).

The appropriate response to these harms should combine prompt evidence preservation, legally authorised removal processes, specialist investigation, and support that does not blame women for participating online. A criminal complaint cannot by itself reverse repeated circulation. Institutions must therefore develop practical coordination between investigators, service providers, legal aid personnel, and counsellors.

Offline inequalities remain equally important. Travel costs, language barriers, dependence on an alleged perpetrator, and fear of retaliation can make reporting difficult. For a daily wage worker, attending repeated hearings may threaten household income. Access to justice should therefore include transport assistance, flexible communication, interpretation, childcare support where needed, and timely legal advice. These are material conditions of participation, not peripheral welfare concerns.

Confidentiality requires particular attention when justice processes become digital. A survivor may welcome remote participation yet lack a secure room in which to speak. Electronic case records can improve coordination while creating additional opportunities for unauthorised access. Agencies should therefore assess privacy before choosing a communication method, explain who can view sensitive material, and establish secure retention practices. Technology should accommodate the person using it. Its success cannot be measured solely by the number of documents uploaded or hearings conducted online; meaningful evaluation must consider accessibility, comprehension, confidentiality, and the reliability of participation throughout proceedings.

8. INTERNATIONAL PERSPECTIVES

The Universal Declaration of Human Rights places dignity and equality at the foundation of human rights. CEDAW supplies a framework for eliminating discrimination against women.

General Recommendation No. 35 explains gender-based violence through discrimination and recommends coordinated prevention, protection, prosecution, and redress, including attention to technology-mediated harm (United Nations General Assembly, 1948, 1979; CEDAW Committee, 2017).

These standards encourage assessment of institutional conduct as well as legislative text. The practical question is whether authorities respond with appropriate diligence when a woman reports danger, requests protection, or seeks a remedy. International standards are particularly useful for identifying the responsibilities that fall between agencies and consequently risk being neglected.

Section 74 of the Sexual Offences Act 2003, applicable in England and Wales, connects consent with choice, freedom, and capacity. This offers a useful comparative emphasis for examining coercive circumstances. Comparison should illuminate legal reasoning rather than assume that another jurisdiction's wording can resolve India's institutional difficulties (Sexual Offences Act 2003).

The Council of Europe's Istanbul Convention organises action around prevention, protection, prosecution, and coordinated policies. India is not a party; its relevance here is comparative rather than directly binding. Its integrated approach suggests the value of linking criminal accountability with shelters, healthcare, specialist services, and professional training (Council of Europe, 2011).

9. PRIORITIES FOR EFFECTIVE IMPLEMENTATION

The first priority is professional competence. Police, prosecutors, medical personnel, and judges need practical training in consent, trauma, disability accommodation, confidentiality, and digital evidence. Training should use realistic situations and be assessed through changes in professional practice.

These standards should inform routine administrative decisions.

Second, survivors should have a reliable point of contact who explains procedures, support options, and hearing developments. Coordination should reduce avoidable repetition without compromising accurate recording or the accused's opportunity to challenge evidence.

Third, institutions should publish anonymised performance information on reporting access, investigation delays, compensation processing, and witness protection. Complaint mechanisms should address refusal, intimidation, and improper disclosure. Evaluation must preserve the presumption of innocence: a conviction target can distort investigation, while an acquittal alone does not establish that a complaint was fabricated. Accountability requires examining reasons and process quality.

Coordination should have identified responsibilities and dependable funding. Hospitals, police stations, legal services authorities, and support organisations should know which agency must act when an urgent need emerges. Referral should involve confirming that assistance was received, rather than simply handing over another address. Independent reviews could examine anonymised case journeys to identify recurring gaps between agencies. Women who have used the system should help design these reviews through voluntary, confidential consultation. Their experiences can reveal practical obstacles that administrative statistics overlook, including exhausting repetition, unclear instructions, and avoidable waiting.

10. FUTURE SCOPE

Future research should compare implementation across states and districts through interviews, court observation, and anonymised case analysis. Indicators should include reporting difficulties, survivor participation, evidentiary quality, access to assistance, and longer-term safety. Research must distinguish changes attributable to the new framework from earlier trends and differences in reporting practices.

Legislative review should also examine marital sexual violence, the operation of Section 69, digital sexual abuse, and protection across diverse gender identities. Survivor organisations, disability advocates, defence lawyers, and frontline professionals should participate in this assessment. Periodic review can identify whether reforms expand agency or unintentionally create new barriers.

11. CONCLUSION

India’s reformed criminal justice framework creates an opportunity to make women’s dignity visible throughout the justice process. Its success depends upon the relationship between substantive protection, accessible procedures, careful evidence, and sustained institutional

support. Continuity with earlier law must be acknowledged, and unresolved inequalities require candid examination.

Gender justice is achieved when women can seek protection without humiliation, participate without intimidation, and exercise autonomy without losing legal recognition. Fairness to accused persons remains essential to that commitment. The lasting measure of reform will be the quality of everyday encounters between women and justice institutions, and the extent to which those encounters make constitutional equality a practical reality.

References

1. Indian Penal Code, No. 45 of 1860 (India).
2. United Nations General Assembly. (1948). *Universal Declaration of Human Rights (Resolution 217 A [III]).* https://www.un.org/en/about-us/universal-declaration-of-human-rights
3. Constitution of India. (1950). https://www.indiacode.nic.in/bitstream/123456789/19150/1/constitution_of_india.pdf
4. Tuka Ram v. State of Maharashtra, (1979) 2 SCC 143 (Supreme Court of India, judgment delivered September 15, 1978). https://indiankanoon.org/doc/1092711/
5. United Nations General Assembly. (1979). *Convention on the Elimination of All Forms of Discrimination against Women (Resolution 34/180).* https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women
6. Criminal Law (Amendment) Act, 1983 (India). https://www.indiacode.nic.in/repealedfileopen?rfilename=A1983-43.pdf
7. Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India). https://indiankanoon.org/doc/1031794/
8. Information Technology Act, No. 21 of 2000 (India). https://www.indiacode.nic.in/indiacode/handle/123456789/1999?locale=en

9. Sexual Offences Act 2003, c. 42 (UK). https://www.legislation.gov.uk/ukpga/2003/42/section/74

10. Protection of Women from Domestic Violence Act, No. 43 of 2005 (India). https://www.indiacode.nic.in/bitstream/123456789/2021/5/A2005-43.pdf

11. Council of Europe. (2011). *Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210).* https://www.coe.int/en/web/istanbul-convention/the-convention

12. Protection of Children from Sexual Offences Act, No. 32 of 2012 (India). https://www.indiacode.nic.in/bitstream/123456789/2079/1/AA2012-32.pdf

13. Criminal Law (Amendment) Act, No. 13 of 2013 (India). https://www.mha.gov.in/acts-rules?page=4

14. Lillu alias Rajesh v. State of Haryana, (2013) 14 SCC 643 (India). https://indiankanoon.org/doc/78844212/

15. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013 (India). https://www.indiacode.nic.in/bitstream/123456789/2104/1/A2013-14.pdf

16. Committee on the Elimination of Discrimination against Women. (2017). *General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (CEDAW/C/GC/35).* https://docs.un.org/en/CEDAW/C/GC/35

17. Aparna Bhat v. State of Madhya Pradesh, (2021) 3 SCC 247 (India). https://api.sci.gov.in/supremecourt/2020/20318/20318_2020_35_1501_27140_Judgement_18-Mar-2021.pdf

18. Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023 (India). https://www.indiacode.nic.in/indiacode/handle/123456789/20099?view_type=browse

19. Bharatiya Nyaya Sanhita, No. 45 of 2023 (India). https://www.indiacode.nic.in/indiacode/bitstream/123456789/20062/1/a202345.pdf

20. Bharatiya Sakshya Adhiniyam, No. 47 of 2023 (India). https://www.indiacode.nic.in/indiacode/handle/123456789/20063