

RECORDING VICTIMS' STATEMENTS AND SAFEGUARDS IN SEXUAL OFFENCE CASES UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

by

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ABSTRACT

The statement of a victim is an important part of the investigation and trial of sexual offences. The manner in which such a statement is recorded can directly affect the fairness of the criminal justice process as well as the dignity and privacy of the victim. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which came into force on 1 July 2024, reorganises several procedural safeguards relating to victims of sexual offences.¹ This paper examines Sections 176, 180, 183 and 184 of the BNSS and analyses their significance in recording victims' statements and protecting their rights. Section 176 provides for recording the statement of a rape victim at her residence or at a place of her choice and permits audio-video recording. Section 180 provides for recording the statements of women in specified sexual offences by a woman police officer or woman officer. Section 183 provides for recording statements before a Magistrate and, as far as practicable, by a woman Magistrate. It also contains additional safeguards for persons with mental or physical disabilities. Section 184 provides a time-bound framework concerning the medical examination of a rape victim.² The paper further examines privacy, in-camera proceedings, witness protection and investigation updates. Finally, it considers practical challenges such as infrastructure, trained personnel, digital security and uniform implementation of these safeguards.

Keywords: BNSS, sexual offences, victim statement, Magistrate, audio-video recording, privacy, dignity, victim protection, medical examination.

¹ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 176, 180, 183, 184, 193, 366, 398

² Bharatiya Nagarik Suraksha Sanhita, 2023, Section 176, 180, 183, 184

1. Introduction

Sexual offences are different from many other criminal offences because the investigation and trial may require the victim to repeatedly narrate an experience that is highly personal and traumatic. The manner in which the victim's statement is recorded is therefore not merely a procedural issue. It is also connected with dignity, privacy, accuracy and fairness in the criminal justice process.

The Bharatiya Nagarik Suraksha Sanhita, 2023 replaced the Code of Criminal Procedure, 1973 with effect from 1 July 2024.³ The new procedural framework contains several provisions intended to incorporate technology, time-bound investigation and safeguards for victims and witnesses.

Section 176 of the BNSS specifically deals with the manner in which the statement of a rape victim is to be recorded during investigation. It provides that the statement should be recorded at the residence of the victim or at a place of her choice and, as far as practicable, by a woman police officer. The provision also permits the statement to be recorded through audio-video electronic means, including a mobile phone.⁴

Section 180 further provides that, in specified sexual offences against women, the statement of the woman shall be recorded by a woman police officer or any woman officer.⁵ The provision also recognises audio-video electronic recording of statements.

Another important safeguard appears in Section 183. In specified sexual offences, the Magistrate is required to record the statement of the person against whom the offence has been committed as soon as the commission of the offence is brought to the notice of the police. As far as practicable, the statement is to be recorded by a woman Magistrate; in her absence, it may be recorded by a male Magistrate in the presence of a woman.⁶

³ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 1(2)

⁴ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 176(1)

⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 180(3)

⁶ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 183(6)(a)

The BNSS also provides special safeguards where the person giving the statement has a temporary or permanent mental or physical disability. In such circumstances, the Magistrate is required to take the assistance of an interpreter or special educator and the statement is to be recorded through audio-video electronic means, preferably through a mobile phone.⁷

The medical examination of a rape victim is separately governed by Section 184. The provision requires the victim to be sent to a registered medical practitioner within twenty-four hours from the receipt of information concerning the commission of the offence, subject to the statutory consent requirement.⁸

These provisions demonstrate that victim protection under the BNSS is not confined to a single stage. It extends from the initial recording of the statement to Magistrate recording, medical examination, investigation updates, trial proceedings and witness protection.

However, the existence of statutory safeguards does not automatically ensure effective implementation. The availability of trained women officers and woman Magistrates, technological infrastructure, secure storage of digital records and protection of confidential information remain important practical concerns. The purpose of this paper is therefore to examine both the statutory framework and these implementation issues.

2. Research Problem

The principal research problem is whether the procedural safeguards contained in the BNSS are sufficient to ensure that the statements of victims of sexual offences are recorded in a manner that protects their dignity, privacy, accuracy and evidentiary reliability.

Although the BNSS provides specific safeguards, practical questions remain regarding their implementation. Audio-video recording requires appropriate equipment, secure storage and controlled access. Similarly, provisions relating to women police officers and, as far as practicable, women Magistrates require sufficient institutional availability.

⁷ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 183(6)(a)

⁸ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 184(1)

The study therefore examines the difference between the statutory protection provided by the BNSS and the practical requirements necessary to make such protection effective.

3. Objectives of the Study

The objectives of this paper are:

1. To examine the provisions of the BNSS relating to the recording of statements of victims of sexual offences.
2. To analyse Sections 176, 180, 183 and 184 of the BNSS.
3. To examine the role of women police officers and women Magistrates in recording victims' statements.
4. To study the use of audio-video electronic means in the recording process.
5. To examine safeguards relating to privacy, dignity and confidentiality.
6. To study the relevance of medical examination and time-bound investigation.
7. To identify practical challenges in implementing the statutory safeguards.
8. To suggest measures for improving the implementation of victim-centred procedural safeguards.

4. Research Questions

1. What safeguards does the BNSS provide for recording statements of victims of sexual offences?
2. How does the BNSS framework differ from the earlier CrPC framework?
3. What is the significance of Sections 176, 180 and 183 in protecting victims during statement recording?
4. How can audio-video recording assist the statement-recording process?
5. What safeguards does the BNSS provide for persons with mental or physical disabilities?
6. How do privacy, in-camera proceedings and witness protection contribute to victim protection?
7. What practical challenges may affect the implementation of these safeguards?

5. Research Methodology

This study adopts a doctrinal legal research methodology. The research is primarily based on statutory provisions, judicial decisions, government materials and secondary legal literature.

The principal legislation examined is the Bharatiya Nagarik Suraksha Sanhita, 2023, particularly Sections 176, 180, 183, 184, 193, 366 and 398. The study also refers to the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Sakshya Adhiniyam, 2023 and the Protection of Children from Sexual Offences Act, 2012 wherever relevant.

Judicial decisions concerning victim testimony, privacy, dignity, medical examination and the treatment of victims in sexual offence proceedings are also examined.

6. Legal Framework under the BNSS

6.1 Section 176 – Recording of the Victim's Statement

Section 176 of the BNSS contains a specific safeguard concerning the statement of a rape victim. The provision requires that the statement be recorded at the residence of the victim or at a place of her choice. As far as practicable, it should be recorded by a woman police officer and in the presence of her parents, guardian, near relatives or a social worker of the locality.⁹

The provision further states that the statement may also be recorded through audio-video electronic means, including a mobile phone.¹⁰

This is significant because the provision recognises that requiring a victim to narrate the incident only within the traditional police-station environment may not always be appropriate.

However, the wording of Section 176 should be carefully noted. The provision states that audio-video recording may be used. Therefore, it should not be described as an absolute statutory requirement that every rape victim's statement must necessarily be audio-video recorded.

⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 176(1)

¹⁰ Bharatiya Nagarik Suraksha Sanhita, 2023.

The significance of the provision lies in giving legal recognition to technology as an additional means of recording the victim's statement.

6.2 Section 180 – Statement before the Police

Section 180 deals with examination of witnesses by police.

In specified sexual offences committed or attempted against a woman, the statement of the woman is to be recorded by a woman police officer or any woman officer.¹¹ This requirement is intended to provide a more sensitive environment for the recording of the victim's account.

Section 180 also recognises the use of audio-video electronic means in recording statements.¹² The provision therefore combines the conventional police-recording procedure with technological means of preserving the statement.

The use of a woman officer and the availability of audio-video recording should, however, be understood as procedural safeguards rather than substitutes for proper investigation and judicial evaluation.

6.3 Section 183 – Recording of Statement by Magistrate

Section 183 is particularly significant because it moves the recording of the victim's statement beyond the police stage and provides for judicial recording by a Magistrate.

For specified sexual offences, the Magistrate is required to record the statement of the person against whom the offence has been committed as soon as the commission of the offence is brought to the notice of the police.¹³

¹¹ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 180(3)

¹² Bharatiya Nagarik Suraksha Sanhita, 2023.

¹³ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 183(6)(a)

The provision states that, as far as practicable, the statement should be recorded by a woman Magistrate. In her absence, a male Magistrate may record the statement in the presence of a woman.¹⁴

The phrase “**as far as practicable**” is important. The provision does not establish an absolute rule that every statement must be recorded exclusively by a woman Magistrate. Instead, it establishes a legislative preference for a woman Magistrate while providing a procedure for situations in which one is not available.

This distinction is important for accurate legal writing.

6.4 Safeguards for Persons with Mental or Physical Disabilities

Section 183 also contains specific safeguards for persons who are temporarily or permanently mentally or physically disabled.

The Magistrate is required to take the assistance of an interpreter or special educator while recording the statement. The statement is to be recorded through audio-video electronic means, preferably through a mobile phone.¹⁵

The provision also allows such a recorded statement to be treated as a statement in lieu of examination-in-chief, subject to the statutory framework governing cross-examination.¹⁶

This provision is significant because equality before the criminal justice system requires not merely formal access to procedure but meaningful ability to communicate.

7. Medical Examination – Section 184

Section 184 deals with the medical examination of a rape victim.

¹⁴ Bharatiya Nagarik Suraksha Sanhita, 2023.

¹⁵ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 183(6)(a)

¹⁶ Bharatiya Nagarik Suraksha Sanhita, 2023.

The provision requires the victim to be sent to a registered medical practitioner within twenty-four hours from the time of receiving information concerning the commission of the offence.¹⁷ The examination is subject to the consent requirements prescribed by the provision.

The registered medical practitioner is required to prepare a report containing the information specified by law and to forward the report to the investigating officer within seven days.¹⁸

The time-bound framework is relevant to the present study because the victim's statement does not exist independently from other investigative material. The statement, medical evidence and other evidence are components of the broader investigation.

Medical examination must nevertheless be conducted in a manner that respects the victim's dignity and bodily autonomy.

The Supreme Court has repeatedly rejected invasive and scientifically unsupported approaches to examination of sexual assault survivors. In *Lillu @ Rajesh v. State of Haryana*, the Court held that the two-finger test and its interpretation violate the survivor's right to privacy, physical and mental integrity and dignity.¹⁹ The Supreme Court has subsequently referred to *Lillu @ Rajesh* as an authority emphasising these protections.²⁰

The Supreme Court subsequently reiterated the concern in *State of Jharkhand v. Shailendra Kumar Rai*, where the Court deprecated the two-finger test and addressed its lack of scientific basis and its potential to re-traumatise survivors.²¹

Thus, the medical examination process should be viewed as an evidentiary procedure that must operate within the broader constitutional framework of dignity and privacy.

¹⁷ Bharatiya Nagarik Suraksha Sanhita, 2023. Section 184(1)

¹⁸ Bharatiya Nagarik Suraksha Sanhita, 2023. Section 184(6)

¹⁹ *Lillu @ Rajesh v. State of Haryana*, (2013) 14 SCC 643

²⁰ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC

²¹ *State of Jharkhand v. Shailendra Kumar Rai*, (2022) 14 SCC 299

8. Evidentiary Importance of the Victim's Testimony

The recording of a victim's statement is important because the victim's testimony may constitute significant evidence in a sexual offence prosecution.

The Supreme Court has consistently recognised that the testimony of a prosecutrix, if found reliable and trustworthy, can form the basis of conviction without a general rule requiring independent corroboration.

In *State of Punjab v. Gurmit Singh*, the Supreme Court emphasised the need for courts to approach the testimony of a rape survivor with sensitivity and rejected approaches based upon unjustified assumptions concerning the survivor's conduct.²²

The principle was also reiterated in later decisions. In *State of Himachal Pradesh v. Raghubir Singh*, the Court recognised the evidentiary significance of credible testimony of the prosecutrix.²³

This principle demonstrates why the process of recording a victim's statement should be conducted carefully. The recording process should minimise unnecessary influence, intimidation and repeated narration while preserving the substance of what the victim communicates.

At the same time, audio-video recording does not automatically determine the truth of the statement. The court continues to evaluate the evidence according to the applicable law and the circumstances of each case.

9. Privacy and Confidentiality

Privacy is particularly important in sexual offence cases because disclosure of the identity or personal details of the victim can expose the victim to further social harm.

²² *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384

²³ *State of Himachal Pradesh v. Raghubir Singh*, (1993) Supp. 2 SCC 622

In *Nipun Saxena v. Union of India*, the Supreme Court addressed the protection of the identity of victims of rape and sexual offences and directed that the identity of such victims should not be disclosed.²⁴ The Court's directions concerning protection of the identity of rape victims have subsequently been reiterated by the Supreme Court.²⁵

The Court's approach demonstrates that confidentiality is not merely an administrative concern. It is connected with the protection of the victim from further social victimisation and stigma.

This principle is particularly relevant to audio-video statements because such recordings may contain highly sensitive information. If the recording is improperly copied, accessed or circulated, the technological safeguard may itself become a source of privacy harm.

Therefore, technological recording must be accompanied by secure storage and restricted access.

10. In-Camera Proceedings

Section 366 of the BNSS provides for in-camera inquiry and trial in rape cases and specified sexual offences.²⁶ As far as practicable, the in-camera trial is to be conducted by a woman Judge or Magistrate.

The purpose of in-camera proceedings is to protect the privacy of the victim and prevent unnecessary public exposure of sensitive evidence.

The Supreme Court had already recognised the importance of such protection under the earlier procedural framework. In *State of Punjab v. Gurmit Singh*, the Court stressed that rape trials should be conducted with sensitivity and that the privacy of the prosecutrix must be respected.²⁷

The BNSS therefore continues and reorganises this principle within the new procedural framework.

²⁴ *Nipun Saxena v. Union of India*, (2019) 2 SCC 703

²⁵ See *Nipun Saxena v. Union of India*, (2019) 2 SCC 703

²⁶ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 366

²⁷ *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384

11. Witness Protection

Section 398 of the BNSS requires every State Government to prepare and notify a Witness Protection Scheme.²⁸

Witness protection is relevant to sexual offence cases because victims and other witnesses may face intimidation, pressure or threats during investigation and trial.

The statutory requirement to create a Witness Protection Scheme is an important procedural safeguard. However, its effectiveness depends upon the actual scheme adopted by the State and the availability of institutional mechanisms to implement it.

12. Investigation Progress and Victim Participation

Section 193(3)(ii) of the BNSS requires the police officer to inform the informant or victim about the progress of the investigation within ninety days, including through electronic communication.²⁹

For specified sexual offences under the Bharatiya Nyaya Sanhita and offences under the Protection of Children from Sexual Offences Act, Section 193 also provides a two-month period for completion of investigation from the date on which the information is recorded by the officer in charge of the police station.³⁰

These provisions are important because they recognize that the victim should not remain completely uninformed about the progress of the criminal investigation.

The right to receive information does not make the victim a party controlling the prosecution, but it provides a degree of procedural participation and transparency.

²⁸ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 398

²⁹ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 193(3)(ii)

³⁰ Bharatiya Nagarik Suraksha Sanhita, 2023, Section 193(2)

13. Pre-BNSS and Post-BNSS Framework

The following comparison helps identify the changes in the procedural framework:

Issue	Earlier CrPC	BNSS
Police examination of witnesses	Section 161	Section 180
Magistrate recording of statements	Section 164	Section 183
Medical examination of rape victim	Section 164A	Section 184
Recording rape victim's statement	General framework under CrPC and later amendments	Specific safeguards under Section 176
Woman officer requirement	Available through statutory amendments/procedure	Expressly provided in specified offences under Section 180
Audio-video recording	Limited statutory integration	Expressly recognised in several BNSS provisions
Medical report	Former Section 164A framework	Section 184 provides seven-day forwarding period
Investigation update	No equivalent general BNSS-style provision	Section 193(3)(ii) provides 90-day victim/informant update
Witness protection	Judicially developed framework	Statutory basis under Section 398
In-camera proceedings	Section 327 CrPC	Section 366 BNSS

The comparison should not be understood to mean that all safeguards under the BNSS were completely absent under the CrPC. Several protections had already developed through statutory amendments and judicial decisions. The significance of the BNSS is that these safeguards have been incorporated and reorganized within the new procedural framework.

14. Critical Analysis

The BNSS establishes a detailed procedural framework for recording statements of victims of sexual offences. The provisions concerning the victim's place of statement, involvement of women officers, Magistrate recording, disability assistance, audio-video technology, medical examination, investigation updates, privacy and witness protection demonstrate an attempt to make the criminal process more responsive to victims.

However, statutory recognition alone cannot guarantee effective implementation.

14.1 Availability of Women Officers and Magistrates

The practical implementation of Sections 180 and 183 depends partly on the availability of trained women officers and Magistrates.

The statutory phrase “as far as practicable” in relation to a woman Magistrate recognises that institutional availability may vary. Nevertheless, States and judicial institutions should ensure sufficient personnel so that the safeguard is not reduced to a merely formal provision.

14.2 Digital Infrastructure

Audio-video recording can provide a more accurate record of what was communicated. However, digital recordings also create privacy and data-security concerns.

A victim's statement may contain intimate information, personal details and sensitive evidence. Unauthorized access, copying or circulation may cause serious harm.

Therefore, secure digital storage, access controls and audit mechanisms are necessary.

14.3 Training

Effective implementation requires training of police officers, Magistrates and other personnel in:

- trauma-sensitive communication;
- confidentiality;
- appropriate questioning;
- handling of persons with disabilities;
- use of audio-video technology;
- preservation of digital evidence; and
- avoiding unnecessary repetition of the victim's statement.

14.4 Rural and Resource Constraints

Technology-based procedures may be more difficult to implement where police stations and courts have inadequate infrastructure.

The research materials considered for this paper identify implementation, training, technology, infrastructure, resources and victim/witness protection as practical challenges.

Therefore, procedural reform must be accompanied by institutional resources.

15. Suggestions

The following measures may strengthen the implementation of the BNSS safeguards:

15.1 Standardized Statement-Recording Protocol

A uniform protocol should be developed for recording statements of victims of sexual offences, covering the place of recording, responsible personnel, use of technology, storage and transmission.

15.2 Secure Digital Storage

Audio-video statements should be stored in secure systems with restricted access. Unauthorized copying, forwarding or publication should be prevented.

15.3 Regular Training

Police officers, Magistrates, medical professionals and other personnel should receive regular training concerning victim-sensitive procedures.

15.4 Availability of Women Personnel

Adequate numbers of trained women police officers and judicial officers should be made available, particularly in areas where implementation may otherwise be difficult.

15.5 Accessibility for Disabled Victims

Courts and police stations should ensure access to interpreters and special educators as contemplated under Section 183.

15.6 Monitoring of Time Limits

The statutory timelines concerning medical examination, medical reports, investigation and victim updates should be monitored through appropriate case-management systems.

15.7 Protection of Confidentiality

The victim's identity and personal information should be protected throughout investigation, trial and any permitted publication.

16. Conclusion

The Bharatiya Nagarik Suraksha Sanhita, 2023 provides a structured procedural framework for protecting victims of sexual offences. Sections 176, 180 and 183 address different stages of statement recording, while Section 184 provides a time-bound framework for medical examination. Sections 193, 366 and 398 further address investigation updates, in-camera proceedings and witness protection.

The importance of these provisions lies not only in the procedural changes themselves but also in their potential to protect dignity, privacy and fairness. Recording the victim's statement at a place of her choice, involving women officers, providing Magistrate-level recording, assisting persons with disabilities and permitting the use of audio-video technology can contribute to a more sensitive criminal justice process.

At the same time, these statutory provisions cannot operate effectively without appropriate implementation. Infrastructure, trained personnel, secure digital systems, confidentiality and institutional monitoring are necessary to convert statutory safeguards into practical protection.

Therefore, the effectiveness of the BNSS in protecting victims of sexual offences depends upon the relationship between **law, procedure and implementation**. A victim-centred criminal justice system should ensure not merely that a statement is recorded, but that it is recorded accurately, respectfully, securely and without unnecessary repetition or exposure.

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Indian Journal of Contemporary
Legal and Social Issues