



Delhi HC Questions Missing Provisions for Unnatural Sex in BNS 2023

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The **Delhi High Court** has raised concerns over the exclusion of penal provisions for unnatural sex and sodomy from the newly enacted [Bharatiya Nyaya Sanhita 2023](#), replacing the [Indian Penal Code \(IPC\), 1860](#).

- The court questioned the absence of provisions equivalent to **Section 377 of the IPC in the BNS, which previously criminalized non-consensual unnatural sex.**
 - In India, "unnatural sex" refers to **sexual activities considered against the order of nature**. Section 377 of the IPC defines "**unnatural offenses**" as voluntary carnal intercourse against the order of nature with any man, woman, or animal.
- The exclusion has raised concerns about the protection of the [LGBTQ community](#), male victims of sexual assault and other vulnerable groups.
 - The Central government acknowledged the issue but emphasised that **courts cannot direct the legislature to enact specific provisions in law.**
- In 2018, the **Supreme Court decriminalised homosexuality** by striking off parts of **Section 377** of the IPC which were held violative of [Fundamental Rights of LGBTQ Community](#).
- **BNS came into effect on 1st July 2024**, replacing the IPC but has been criticized for leaving a critical void in legal protection against non-consensual sexual acts.

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BHARATIYA NYAYA SANHITA (BNS), 2023

BNS 2023 replaced Indian Penal Code 1860, incorporating 358 sections (511 in IPC), maintaining most of the IPC provisions, introducing new offences, eliminating court- struck-down offences, and enhancing penalties for various offences.

New Offences

- **Promise to Marry:** Criminalising “deceitful” promises to marry
- **Mob Lynching:** Codify offences linked to mob lynching and hate-crime murders
- Ordinary criminal law now covers **Organized Crime** and **Terrorism**, including a broader scope for terror financing in BNS compared to UAPA
- **Attempt to Suicide:** Criminalises attempts to commit suicide with intent to compel or restrain any public servant from discharging official duty
- **Community Service:** Added as possible form of punishment

Deletions

- **Unnatural Sexual Offences:** Section 377 of the IPC, which criminalised homosexuality among other “unnatural” sexual activities repealed completely
- **Adultery:** Offence of adultery omitted in consonance of apex court judgement
- **Thugs:** Section 310 of IPC fully omitted
- **Gender Neutrality:** Some laws dealing with children modified to bring gender neutrality



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Other Modifications

- **Fake News:** Criminalisation of publishing false and misleading information
- **Sedition:** Introduced under a new name ‘deshdroh’ with wider definition
- **Mandatory Minimum Sentence:** In several provisions, mandatory minimum sentences prescribed which may limit scope for judicial discretion
- **Damage to Public Property:** Carry a graded fine (i.e. fine corresponding to the amount of damage caused)
- **Death by Negligence:** Elevates punishment for causing death by negligence from two to five years (for doctors - 2 yrs imprisonment)

Key Issues

- **Criminal Responsibility Age Discrepancy:** Criminal responsibility starts at seven, extendable to 12 based on maturity, potentially conflicting with global recommendations
- **Inconsistencies in Child Offense Definitions:** It sets child age below 18, but age criteria for offenses like rape differ, causing inconsistency
- **Retention of IPC Provisions on Rape and Sexual Harassment:** Maintains IPC provisions on rape and sexual harassment, omitting **Justice Verma Committee's 2013** suggestions for gender-neutral rape and recognizing marital rape as an offense.

Read more: [The Bharatiya Nyaya Sanhita, 2023](#), [Supreme Court Decriminalizes Homosexuality](#)

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