



Chhattisgarh High Court Take on Unnatural Sex

Why in News?

The Chhattisgarh [High Court](#) has ruled that a man engaging in **sexual intercourse or sexual acts with his wife** does **not constitute rape**. Consequently, if a husband commits [unnatural sex](#) as defined under [Section 377](#) of the [Indian Penal Code](#) with his wife, it also cannot be treated as an offense.

Key Points

- **Case Background:**
 - The Chhattisgarh High Court heard an appeal filed by a resident of **Bastar district challenging his conviction** in his wife's 2017 death case.
 - A sessions court had **earlier ruled that the woman became ill and later died due to a forced physical relationship.**
- **Trial Court's Conviction:**
 - The sessions court convicted the appellant under:
 - **Section 377 (unnatural sex)**
 - [Section 376 \(rape\)](#)
 - [Section 304 \(culpable homicide not amounting to murder\)](#) of the Indian Penal Code, 1860.
 - The appellant was sentenced to 10 years of rigorous imprisonment based on his wife's dying declaration.
- **High Court's Ruling:**
 - The court stated that **sexual intercourse or acts by a husband with his wife cannot be termed as rape** if the **wife is above 15 years of age.**
 - It ruled that **lack of consent for unnatural sex loses significance** under these circumstances, making **Sections 376 and 377 inapplicable.**
 - The High Court also expressed skepticism about the correctness of the dying declaration, raising concerns over its reliability.

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Sexual Offences:** Section 377 of the IPC, which criminalised homosexuality among other “unnatural” sexual activities repealed completely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



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.