



Guest Editorial

Bhartiya Nyaya Sanhita on sexual offences: A progressive rewrite or unnatural regressive silence

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Received: 15-06-2024; Accepted: 24-06-2025; Available Online: 07-07-2025

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1. Introduction

India, often referred to as 'Dev Bhoomi', meaning "the land of gods", is a country of many ancient civilisations, where the echoes of spiritual awareness meet the aspirations of a modern democracy. Woven into a complex fabric from varied cultures, countless deities, and with a dynamic history, India stands at the intersection of mythology and modernity. Against this intricate background, the replacement of the colonial Indian Penal Code (IPC)¹ with Bharatiya Nyaya Sanhita (BNS)², Criminal Procedure Code (CrPC) with Bharatiya Nagarik Suraksha Sanhita (BNSS), and Indian Evidence Act (IEA) with Bharatiya Sakshya Adhiniyam (BSA) has patent a historic move after considering essential changes, especially the gender rights, sexual orientation and bodily autonomy. But one of the major critical zones of analysis within BNS is its approach to sexual offences, particularly the inclusivity of gender, protection of vulnerable individuals, and the balance between morality and legality.

2. Sexual Offences under IPC, 1860

2.1. Natural sexual offences

Section 375 IPC¹ defines rape as the act of a man engaging in sexual intercourse with a woman against her will or without her consent. The definition of rape was further amended after enforcement of Criminal Law Amendment Act 2013, shortly after deadliest Delhi Nirbhaya rape case in 2012, which broadened the definition covering all the aspects and

possibilities. But the definition was gender-specific, thereby excluding male and transgender victims of rape.

2.2 Unnatural sexual offences

Previously, section 377 IPC criminalised all sexual acts deemed "against the order of nature," irrespective of consent. It broadly included anal intercourse (sodomy), oral sex, and bestiality. It was commonly misused to criminalise and stigmatise members of the LGBTQ+ community until the landmark judgment in Navtej Singh Johar vs. Union of India (2018)³, wherein the Honourable Supreme Court decriminalised consensual sexual acts between adults, regardless of gender.

3. Sexual Offences Under Bharatiya Nyaya Sanhita, 2023

3.1 Relevant provisions

Section 63 of BNS² is the counterpart of 375 IPC¹ and it retains the original definition of rape but it is still defined in a gender-specific manner. The counterpart of section 376 is section 64 of BNS, which has strictly increased the punishment for offenders of such a heinous crime. However, there is no counterpart for Section 377 IPC in the current BNS.

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4. Key Comparisons and Gaps

4.1 Decriminalization of consensual same-sex acts

Not including any provision in BNS resembling 377 IPC aligns with the Navtej Singh Johar vs. Union of India³ ruling and is a forward step for LGBTQ+ communities in India. Now, the legislature recognises that consensual sexual acts between adults, regardless of their sexual orientation, should not be criminalised or penalised. This reform resembles legislative frameworks of many developed nations, where the laws focus on consent rather than the nature of the act.

4.2. Absence of protection for adult male victims

Notwithstanding the progressive tone of BNS regarding consensual sexuality, it fails to address non-consensual sexual acts involving adult male victims. Further, the absence of a gender-neutral definition of rape continues to preserve a narrow understanding of sexual violence. This legal lacuna leaves adult men and transgender individuals without legal recourse in cases of non-consensual and forced anal or oral sex. The developed countries like UK and US have already recognized male rape and provide clear criminal laws on non-consensual un-natural sexual offences irrespective of gender.

4.3. Bestiality

Section 377 IPC served the dual purpose of criminalising non-consensual or forceful unnatural sexual acts and protecting animals from sexual abuse by humans. Its omission in the BNS, without any alternative provision to penalise bestiality, is an evident lapse. Sexual abuse of animals, although rare, remains a serious offence raising ethical, moral, and public health concerns.

4.4. Alignment with international norms

Many International organisations have highlighted the importance of inclusive, non-discriminatory laws addressing sexual offences:

Article 2 of the Universal Declaration of Human Rights (UDHR) prohibits discrimination on any ground, including gender.

Article 26 of the International Covenant on Civil and Political Rights (ICCPR) ensures equality before the law and equal protection.

WHO (World Health Organisation) and OHCHR (Office of the United Nations High Commissioner for Human Rights) advocate for gender-neutral legal frameworks to combat sexual violence comprehensively.

But, unfortunately, BNS 2023, by failing to protect non-female victims and ignoring non-consensual unnatural acts, deviates from the direction set by these international organisations.

5. Frequently Asked Questions

1. As India is rising on the path of socio-economic development and aspires to combat developed nations, However, legislation of sexual offence in India, in 2025, still lacks gender-neutral rape laws. As a result, adult male individuals are not recognised as victims of rape under the existing law. This legal gap is in contrast with many developed countries, where sexual offences are defined purely in a gender-neutral manner.
2. A relevant question arises that under which section of BNS can a First Information Report (FIR) be registered if an adult male alleges being sexually assaulted, forceful and non-consensual anal or oral sex by another adult male? Upon discussion by the author, several high-ranking police officers and subject experts were unable to provide a definitive or consistent legal answer. Some suggested that such acts might be prosecuted under sections related to Hurt, Grievous Hurt, Criminal Force, or Assault. However, this piecemeal approach highlights the failure of any provision addressing forceful and non-consensual sexual acts involving adult male victims.
3. Although rare, if a complaint is made for bestiality, i.e. sexual abuse of an animal by a human, then the question arises that the perpetrator will face legal consequences under which statutory section of BNS. Currently, provisions under the Prevention of Cruelty to Animals Act, 1960, could potentially be invoked, but clarity in BNS remains insufficient.

6. Recommendations to Stakeholders

1. Adopt Gender-Neutral Laws for sexual offences: The definition of rape must include all victims irrespective of gender.
2. Re-criminalise Non-Consensual Unnatural Acts: Reintroduce a provision to penalise forceful and non-consensual unnatural sexual offences irrespective of gender.
3. Codify Bestiality as a Criminal Offence: Enact explicit laws penalising sexual acts with animals, aligning with international animal welfare standards.
4. Educate and Train Law Enforcement: Introduce a sensitivity drill for police, medical professionals, and the judiciary to handle cases involving male and transgender victims of such heinous crimes.
5. Public Awareness Campaigns: Destigmatise male and LGBTQ+ victimhood in sexual violence through educational initiatives and awareness programs.

7. Conclusion

While the Bharatiya Nyaya Sanhita made an extraordinary effort to modernise and streamline Indian criminal law, it still failed in its approach to sexual offences. Failure to protect male and gender-diverse victims, along with the oversight of laws against bestiality, leaves the legal framework incomplete. To truly achieve justice and equality, the Indian legislature should undertake legal reforms to protect the dignity and fundamental rights of all its citizens.

8. Source of Funding

None.

9. Conflict of Interest

None.

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Cite this article: Dixit P. Bharatiya Nyaya Sanhita on sexual offences: A progressive rewrite or unnatural regressive silence. *Int J Foren Med Toxicol Sci.* 2025;10(2):34-36.