

**1991 Sexual Offences and Domestic Violence Act, *Unnatural Crimes*:
Provision 16**

16.___(1) Any person who commits an act of unnatural connection with any animal is guilty of a sexual offence and liable to imprisonment for twenty years; and an offence under this subsection is complete upon penetration.

(2) Any adult male who-

(a) has sexual intercourse with another male who is a minor; or

(b) has sexual intercourse, in a public place, with another male, whether with or without the consent of that other male, is guilty of a sexual offence and liable to imprisonment for twenty years.

(3) Any female adult who-

(a) has sexual intercourse with another female who is a minor; or

(b) has sexual intercourse , in a public place, with another female, is guilty of a sexual offence and liable to imprisonment for twenty years.

(4) Notwithstanding the commission by any person of an act which amounts to an offence under this section, that person is not guilty if he committed the act under restraint, duress or fear.

(5) No prosecution shall be commenced for an offence under this section without the consent of the Attorney-General.

Provision **4** of the 1991 Sexual Offences... Act and law defines ***sexual intercourse*** as-

(a) sexual connection occasioned by any degree of penetration of the vagina of any person or the anus of any person, or by the stimulation of the vulva of any person or anus of any person, by or with-(i) any part of the body of another person, or (ii) any object used by another person, except where the penetration, or stimulation is carried out for medical purposes, and

(b) sexual connection occasioned by the introduction of any part of the penis of any person into the mouth of another person; and any reference in this Act to the act of having sexual intercourse includes a reference to any stage or continuation of that act.

neminem laedere principle:

the liberty to exercise one's rights only exists to the degree that the rights of third parties are not harmed.

fiat justitia, ruat coelum (Let justice prevail, whatever the consequences) ought to be the first principle underlying all positive law.

CHAPTER III
PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE
INDIVIDUAL

15. Whereas every person in The Bahamas is entitled to the fundamental rights and freedoms of the individual, that is to say, has the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

(a) life, liberty, security of the person and the protection of the law;

(b) freedom of conscience, of expression and of assembly and association;

and

(c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

26. (1) Subject to the provision of paragraph (4), (5) and (9) of this Article **no law shall make any provision which is discriminatory either of itself or in its effect.**

(2) Subject to the provisions of paragraphs (6), (9) and (10) of this Article, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the function of any public office or any public authority.

(3) In this Article, the expression "**discriminatory**" means affording different treatment to different person attributable **wholly or mainly** to their respective descriptions by race, place of origin political opinions colour or creed whereby person of one such description are subjected to disabilities or restrictions to which person of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Paragraph (1) of this Article shall not apply to any law so far as that law makes provision-

(a) for the appropriation of revenues or other funds of The Bahamas or for the imposition of taxation (including the levying of fees for the grant of licences; or

(b) with respect to the entry into or exclusion from, or the employment, engaging in any business or profession, movement of residence within, The Bahamas of persons who are not citizens of The Bahamas; or

(c) with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; or

(d) whereby persons of any such description as is mentioned in paragraph (3) for this Article may be subjected to any disability or restriction or may be accorded any privilege or advantage which having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society; or

(e) for authorizing the granting of licenses or certificates permitting the conduct of a lottery, the keeping of a gaming house or the carrying on of gambling in any of its forms subject to conditions which impose upon persons who are citizens of The Bahamas disabilities or restriction to which other persons are not made subject.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of paragraph (1) of this Article to the extent that it makes provision with respect to standards or qualifications (not being a standard or qualification specifically relating to race, place of origin, political opinions, colour or creed) in order to be eligible for service as a public officer or as a member of a disciplined force of for the service of a local government authority or a body corporate established by law for public purposes.

(9) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Article to the extent that the law in question makes provision whereby persons of any such description as is mentioned in paragraph (3) of this Article may be subjected to any restriction on the rights and freedoms guaranteed by Articles 21,22,23,24 and 25 of this Constitution, being such a restriction as is authorized by Article 21(2)(a), 22(5), 23(2), 24(2) or 25(2)(a) or (e), as the case may be.

15.19 Naturally, the relationship between these two articles—15 and 26— (which also appear in several of the other Constitutions), and the question of whether Article 15 is intended to have stand-alone force, has generated considerable **legal uncertainty and controversy**. The answer often depends on the particular formulation contained in the Constitution. In a line of cases the Privy Council has distinguished between the **enacting formulae** of the various constitutional provisions examined to determine **whether or not they were merely declaratory or had justiciable force** (i.e. capable of being taken to court for enforcement). **Generally**, those Constitutions which used the **enacting formula** “Whereas...” (as does The Bahamas, and Jamaica) were found to not have independent force, though to be used as **aids to interpretation where there was ambiguity**. (Report of the Constitutional Commission, 2013)

Preamble to the Bahamian Constitution
And Whereas the People of this Family of
Islands recognize that the preservation of
their Freedom will be guaranteed by a
national commitment to Self-discipline,
Industry, Loyalty, Unity and **an abiding
respect for Christian values and the
Rule of Law**; Now Know Ye Therefore:
We the Inheritors of and Successors of
these Family of Islands, recognizing the
Supremacy of God and believing in the
Fundamental Rights and Freedoms of the
Individual, Do Hereby Proclaim in Solemn
Praise the Establishment of a Free and
Democratic Sovereign Nation founded on
Spiritual Values and in which no Man,
Woman or Child shall ever be Slave or
Bondsman to anyone or their Labor
exploited or their Lives frustrated by
deprivation, and Do Hereby Provide by
these articles for the indivisible Unity and
Creation under God of the Commonwealth
of the Bahamas.

Fixed category of proscribed grounds

15.16 The third approach, which partly describes the approach taken in the Constitution of The Bahamas, is to commence with a broad statement of guarantee of rights without discrimination on the basis of sex, race, and so on, but then list a fixed category of proscribed distinctions in a definition of what is “discriminatory”. Obviously, this approach does not lend to the same flexibility of the courts to extend the categories to other groups outside the fixed categories, although in some cases the courts have strained their interpretive powers to accomplish this. (Report of the Constitutional Commission, 2013)

Broad statement of equality

15.14 The first approach is to frame a broad, positive guarantee of **“equality before the law” or “equal treatment” without specifying any particular group.**

An example of this approach is provided by the 1996 Constitution of South Africa, whose constitution begins with the simple proclamation that “Everyone is equal before the law and has the right to equal protection and benefit of the law.” The formulation in the Trinidad and Tobago Constitution is not as broad, but also guarantees “the right of the individual to equality before the law and the protection of the law” (s. 4(d)). (Report of the Constitutional Commission, 2013)