

A General Overview on the Medico Legal Provisions of Bharatiya Nyaya Sanhita 2023

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Abstract

The Bharatiya Nyaya Sanhita 2023 brought about very extensive alteration in the criminal justice system of India because it aims at overhauling the Indian Penal Code of 1860. This review article analyzes the new code from the medico-legal perspective, focusing on the provisions that might be of interest to medical and legal professionals. Specific parts of the act regarding consent, injury, criminal responsibility, medical negligence, sexual offenses, and other important areas are discussed in order to understand legislative purpose and real-life implications. Analyzing these provisions the article exposes how strategies of the healthcare delivery are interrelated with legal obligations, patients' entitlements, professionalism, and the quest for justice in practice. Specifically, the goal of this review is to help practitioners, legal scholars, and policymakers as well as physicians be more aware and thus more cautious in the new legal environment that has emerged.

Key words: Bharatiya Nyaya Sanhita 2023, Medico Legal Provisions, Indian Penal Code.

Introduction

The Bharatiya Nyaya Sanhita 2023, is a legislative reform to update and modernize currently enforced Indian Penal Code (IPC), which came into effect in 1860, during the British colonial period⁽¹⁾. The new code attempts to reflect the changing legal, social, and technological realities of modern day India. The Bharatiya Nyaya Sanhita 2023 seeks to update the legal framework of the country by revising and replacing outdated provisions so to create an efficient and effective legal framework for the country.

Among one of its numerous provisions, the sections of medico legal issues are of utmost important as it is the epitome of the relationship between practice of medicine and the obligations that emanates from this profession⁽²⁾. The new code incorporates amendments and introduction of yet more sections dealing with such critical areas as cybercrime, organized crime, violence against women and children, and medico legal issues⁽³⁾. It attempts to develop a robust and responsive legal system which can better address the needs of a modern Indian society, by using it.

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The purpose of this review article is to analyze comprehensively the crucial medico legal sections of Bharatiya Nyaya Sanhita 2023. Through an analysis of some of these legal stipulations touching on medical negligence, assault, reproductive rights etc., we will try to make the legislative intent and practical significance of the provisions quite clear. In this review our target is to enhance knowledge of these important legal concepts to these important stakeholders thoroughly.

Medico Legal Provisions of Bharatiya Nyaya Sanhita⁽⁴⁾

Section 2 (14)

This section of BNS says injury means any harm whatever illegally caused to any person in body, mind, reputation or property. Old corresponding section is section 44 of Indian Penal Code ⁽⁵⁾. Section 44 of IPC and section 2(14) of BNS are different in that the word “denotes” in IPC is replaced by “means” in BNS.

Section 22

This section exempts a person from being held criminally responsible if they are of unsound mind at the time of committing an act. If that individual is unable to understand the nature of their actions or does not recognize that the act is wrong or illegal due to their mental state, they cannot be considered guilty of an offence. Old corresponding section in Indian Penal Code is section 84. Concept of both sections are the same.

This benefit is available only after it is proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or that even if he did not know it, it was either wrong or contrary to law then this section must be applied. This comment is from a case law ⁽⁶⁾ based on section 84 of Indian Penal Code. The burden of proof lies with the accused to prove that one is mentally ill while doing the act prohibited by law.

Section 25

Section 25 of the BNS, 2023, addresses situations where harm is caused with the consent

of an individual, provided that the act was neither intended nor known to be likely to cause death or grievous hurt. Section 87 of Indian Penal Code is the corresponding section and there is no change in the concept in the newly introduced section 25 of BNS.

When patients consent to medical treatments that might harm them, healthcare professionals are justified if the treatments aren't intended to cause grave harm, and with patients' informed consent.

Section 26

Act done to a person in good faith with their consent for the benefit of that person is not an offence. This section protects medical professionals who are doing any procedures on their patients. Here the doctor knows that procedure is likely to cause death but the procedure is done in good faith with consent of the patients and for their benefit. This concept is identical to the previous section 88 of the Indian Penal Code.

Section 27

When an act is done in good faith for the benefit of a person by consent of guardian or person having lawful charge of that person, if the person is below 12 years of age or the person of unsound mind, that act is not an offence. Here consent can be implied or expressed. It protects actions done in good faith for the benefit of a child or person with an unsound mind, taken by or with the consent of a guardian. Section 89 refers to the former equivalent section of the Indian Penal Code. The word “insane person” appears in section 89 of the IPC, while “person of unsound mind” appears in BNS section 27.

Section 28

Section 28 explains instances where consent is not valid. They are (a) Consent given under fear of injury (b) Consent given under a misconception of fact ⁽⁷⁾(c) Consent given by a person who does not understand the nature and consequence of the act due to unsoundness of mind (d) Consent given by a person who does not understand the nature and consequence of the act due to intoxication (e) Consent given by a person below 12 years of age. Section 90 is the old corresponding section of IPC. This section does not define consent but describes what not consent is ⁽⁸⁾.

Section 31

Any communication made in good faith and made for the benefit of a person, it will not be an offence if it causes any harm to the person whom it was made. This section protects medical professionals who honestly communicate with their patients even if it results unfortunate outcome. Section 93 is the old section in Indian Penal Code corresponding to section 31 of BNS.

Section 72

Disclosure of identity of victim of offences under following sections of BNS is punishable and the punishment is imprisonment for a term which may extend to two years and fine. Various sections of offences which come under this section are 64(punishment for rape), 65(punishment for rape in certain cases), 66(punishment for causing death or resulting in persistent vegetative state of victim), 67(sexual intercourse by husband upon his wife during separation), 68 (sexual intercourse by a person in authority), 69(sexual acts based on deceitful promises) 70 (gang rape) and 71 (repeat offenders of sections 64, 65, 66 and 70). This is included in the subsection(1). Subsection (2) explains the exceptions to restrictions on disclosing a victim's identity. Exceptions include disclosure made by the order of the investigating officer, with the victim's written authorization or by the next of kin if the victim is dead or a child or of unsound mind.

Section 228 A of Indian Penal Code corresponds to this section of BNS. In BNS 72 word "minor" is replaced by 'child'. Child is defined in section 2(3) of BNS as any person below the age of eighteen years. This is a new addition.

Sections 88 to 92

88: Penalises miscarriage of a pregnant woman intentionally but which are done in good faith to save her life is not included. This section applies to self induced miscarriage also. Section 312 of Indian Penal Code corresponds to this section of BNS. There is no difference between these two sections.

89: If a person commits the offence under section 88 without the consent of woman the punishment is more. Old corresponding section of IPC is 313. Only difference is in place of words "defined in

last preceding section" previous section number is mentioned in BNS.

90: Has two subsections. First section: If intention is to cause miscarriage of a woman with a child but the act causes death of the woman, punishment is 10 years and fine. Second section: explains the punishment if act mentioned in first section is done without the consent of woman. BNS Section 90 criminalizes causing the death of a pregnant woman with the intent to induce miscarriage. It is not essential for the offender to know that the act is likely to cause death. This section corresponds to Section 314 of old IPC.

91: Any act which is done before the birth of child and with the intention of preventing that child from being born alive or causing that child to die after birth is punishable if the act is not done in good faith for the purpose of saving mother's life.

92: Provides punishment for those who causes the death of an unborn child, which could survive outside the womb, through actions that would be considered culpable homicide if they caused the death of an adult.

Section 315 and 316 of IPC corresponds to the above two sections of BNS respectively and there is no change in BNS from IPC in these two sections.

Section 106

Section 106 of the BNS says, whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine. "Registered medical practitioner" has been defined as a medical practitioner who possesses any medical qualification recognised under the National Medical Commission Act, 2019, and whose name has been entered in the National Medical Register or a State Medical Register under that Act. Thus, under BNS, if found guilty, imprisonment could be mandatory.

Section 304 A of the old Indian Penal Code is replaced with Section 106 (1) in the BNS. Under Section 304 A, whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 114 and 116

Section 114 of BNS defines hurt as whoever causes bodily pain, disease or infirmity to any person is said to cause hurt while section 116 covers grievous hurt. The following kinds of hurt only are designated as "grievous", namely:--

- (a) Emasculation;
- (b) Permanent privation of the sight of either eye;
- (c) Permanent privation of the hearing of either ear;
- (d) Privation of any member or joint;
- (e) Destruction or permanent impairing of the powers of any member or joint;
- (f) Permanent disfiguration of the head or face;
- (g) Fracture or dislocation of a bone or tooth;

(h) Any hurt which endangers life or which causes the sufferer to be during the space of fifteen days in severe bodily pain, or unable to follow his ordinary pursuit. Section 319 is the corresponding old section in IPC for BNS 114 and 320 is the old section in IPC for BNS 116. The difference in BNS is suffering threshold period for grievous hurt is reduced from twenty days to fifteen days in subsection (h) of section 116.

Section 200

A person who is in charge of a hospital (public or private) or any other person, who does not act according to the provisions of section 397 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023,⁽⁹⁾ can attract punishment of imprisonment up to one year or fine, or both.

Section 397 of the BNSS deals with Treatment of victims: Private and Public hospitals are bound to

provide first-aid or medical treatment to the victims free of cost, if the victims are covered under following sections of offences: section 64 (punishment for rape), section 65(punishment for rape in certain cases), section 66 (punishment for causing death or resulting in persistent vegetative state of victim), section 67(sexual intercourse by husband upon his wife during separation) , section 68 (sexual intercourse by a person in authority), section 70(gang rape), section 71 (repeat offenders of sections 64,65,66 and 70)or sub-section (1) of section 124 (injury caused by throwing of acid) of the BNS. Victims covered under the sections 4, 6, 8 or 10 of the Protection of Children from Sexual Offences Act, 2012 are included. Section also stipulates that Information must be given to police immediately.

Section 166 B is the corresponding section in IPC and there is no change in BNS from this section.

Section 271 and 272

Section 271 provides punishment for any negligent act that is likely to spread infection of disease dangerous to life. Punishment for spreading infection by negligent action is imprisonment up to six months or fine, or both. While section 272 provides punishment for malignant act that likely to spread infection of disease dangerous to life, where the punishment is imprisonment up to two years or fine, or both. Term malignant act here indicates a deliberate intention on the part of the accused. Section 269 and 270 of IPC corresponds to the above two sections of BNS respectively and there is no change in BNS from IPC in these two sections.

Section 273

This section deals with disobedience to quarantine rules made by the government in places where infectious disease prevails .Punishment for violation is imprisonment up to six months or fine or both. An increase in quarantine misbehaviour can result in surge of pandemic/spread of infection. Section 271 is the corresponding section in IPC where Word "vessel" is used and this word is replaced by the phrase "mode of transport in BNs section 273.

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Conclusion

Bharatiya Nyaya Sanhita 2023 marks a historic turn in the Indian legal system especially in reference with medico legal provisions which affect most directly the healthcare professionals, the patients and society at large. Specific sections of the Sanhita reviewed in this article include medical negligence, assault, reproductive rights etc, as Sanhita is aimed at clarifying and strengthening legal standards specific to medical field. We hope this will provide insight to healthcare professionals about these provisions, explaining how this new legislation goes to the heart of the practical and moral obligations incumbent on people working in healthcare. In moving forward, having these stakeholders familiarity with these updated legal frameworks is paramount in allowing these stakeholders to operate in a more accountable and morally sound healthcare environment.

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