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Review Article

Exploring amended Indian laws in context of forensic medicine: A comprehensive review

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ABSTRACT

In sum, the adoption of the Bhartiya Nyaya Sanhita, Bhartiya Nagrik Suraksha Sanhita, and Bhartiya Sakshya Adhiniyam signifies a transformative milestone in post-independence India's legal evolution. By embracing indigenous wisdom, democratic values, and global insights, these legislations aspire to catalyze a more equitable, efficient, and accountable legal system, poised to meet the complex challenges of the 21st century. As forensic medicine continues to play an increasingly pivotal role in the Indian justice system, practitioners must remain abreast of these legal developments and uphold the highest standards of professionalism and integrity in their work.

The Indian legal system enacted in colonial era such as the Indian Penal Code of 1860, the Criminal Procedure Code of 1973, and the Indian Evidence Act of 1872 have long been under scrutiny for its relevance and adaptability to contemporary societal needs. In a historic move, the Indian Government has passed a comprehensive framework, replacing these older laws with the Bhartiya Nyaya Sanhita (BNS), Bhartiya Nagrik Suraksha Sanhita (BNSS), and Bhartiya Sakshya Adhiniyam (BSA) effective from 1st July 2024, following Presidential approval on 25th December 2023. The Bhartiya Nyaya Sanhita seeks to revolutionize criminal laws by introducing modern principles of justice, equity, and efficiency. Complementing the Bhartiya Nyaya Sanhita, the Bhartiya Nagrik Suraksha Sanhita addresses the evolving challenges of national security and public safety. Furthermore, the Bhartiya Sakshya Adhiniyam introduces groundbreaking reforms in the law of evidence, reflecting a paradigm shift towards transparency, objectivity, and inclusivity.

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1. Introduction

The Indian legal system is undergoing a significant transformation with the recent amendments and implementations of new legislation, notably the Bhartiya Nyaya Sanhita (BNS) previously known as Indian Penal Code (IPC) 1860, Bhartiya Nagrik Suraksha Sanhita (BNSS) previously known as CrPC 1973, and Bhartiya Shakshay Adhiniyam (BSA) previously known as Indian

Evidence Act (IEA) 1872. These legislative changes will have profound implications for various aspects of the judiciary and justice system, including forensic medicine practice in India. The act was passed from the both houses of parliament and got the presidential approval on 25th December 2023 and would be enacted to whole of India from 1st July 2024. In this review, we will explore the application of these new laws, the differences between the old and new laws and their particular sections in relation to use in forensic medicine in India.

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2. History of Indian Penal Code (IPC):¹

The Republic of India's official criminal code was the Indian Penal Code, which aims to cover all aspects of criminal law. It was implemented in all British Presidencies in 1862, with the exception of the Princely States, which had their own legal system and courts. The First Law Commission, headed by Thomas Babington Macaulay, created the initial draft of the Indian Penal Code. The draft was based on the modification of the law of the England and borrowing elements from the Napoleonic Code and Louisiana Civil Code of 1825. The code came into force on January 1st, 1860 after undergoing many revisions and amendments by Barnes Peacock who served as the first Chief Justice of the Calcutta High Court. Before the arrival of British rule, the penal law prevailing in India for the most part was the Muhammedan law. In its various sections, the IPC defines and imposes punishments for specific crimes. It is subdivided into 23 chapters that comprises of 511 sections. The IPC has also influenced the legal systems of other countries, particularly South Asia and parts of Africa, where similar codes based on the Indian model have been adopted.

3. History of Criminal Procedure Code 1973 (CrPC):²

The Code of Criminal Procedure was first enacted in 1882 after the administration of British India was taken over by the Crown, after the 1857 revolt. Numerous amendments were made to the Code, most notably in 1898, 1923, and 1955. After the Independence, the First Law Commission submitted its Report on the Judicial Administration, popularly known as the Fourteenth Report, with recommendations to amend the Code. Later, the Law Commission reconstituted in 1961 and submitted the Forty-first Report in 1969 which recommended the revision of the Code. The Code of Criminal Procedure Bill of 1970 was drafted based on these recommendations, but it was never implemented because Parliament was dissolved in 1972. The Code went into effect on April 1, 1974, after being reintroduced as the Code of Criminal Procedure Bill in 1972 and being approved in 1973 by both Houses of Parliament with 125 amendments. There are 2 schedules, 56 forms, 484 sections, and 37 chapters in the Code.

4. History of Indian Evidence Act (IEA) 1872:³

The Indian Evidence Act, which was initially passed in India by the Imperial Legislative Council in 1872, included a number of rules and regulations pertaining to the admissibility of evidence in Indian courts. Indian Evidence Act 1872, has 11 chapters and 167 sections and came into force on 1 September 1872.

4.1. Debated provisions of the IPC:

1. Section 377 (Unnatural sexual offences): It punishes consensual sexual acts between consenting adults belonging to the same sex. With the advent of time, several voices advocated for the decriminalization of this part which punishes homosexuality. The Supreme Court, finally in the case *Navtej Singh Johar vs Union of India*, obliged and decriminalized the portion.⁴ In September 2018, a five-judge bench of the Supreme Court unanimously decriminalized consensual sex between two adults irrespective of their gender and partially struck down Section 377 of the IPC. Sections that criminalized consenting unnatural sex were described by the court as "irrational, indefensible, and manifestly arbitrary." The court further observed that discrimination against members of the LGBTQ community was caused by the use of Section 377 as a weapon to harass them.
2. Section 309 (Attempt to commit suicide): This section prescribed punishment of up to one year for attempting suicide. There is a longstanding recommendation of the Law Commission to decriminalize Section 309 from the statute books. But the amendment to this effect has not been carried, albeit, the use of the provision was minimized, by the coming into force of the Mental Healthcare Act, 2017.⁴ As per the clause contained in Section 115(1) of the Mental Healthcare Act, 2017, there is the presumption of severe stress on a person who attempted suicide and such person is not to be punished under Section 309 IPC.⁴
3. Section 497 (Adultery): It criminalized and prescribed punishment for the man who consensually having sexual intercourse with the woman who is already married to some other man, not amounting to the rape. It was criticized for treating a woman as the private property of her husband and imposing moral principles on married couples. This section was finally struck down by the Supreme Court of India in September 2018 while disposing of the case of *Joseph Shine vs Union of India*.⁵

5. *Bhartiya Nyaya Sanhita* (BNS):⁶

The *Bhartiya Nyaya Sanhita*, previously known as Indian Penal Code, forms the backbone of India's criminal justice system. The recent amendments to this code reflect a concerted effort to modernize and strengthen the legal framework to address emerging challenges in the society. From cybercrimes to crimes against women, the revised penal code covers a wide range of offenses, each with its own set of legal implications for forensic medicine practitioners.

Table 1: Important IPC sections and their new counterparts as per BNS

IPC ¹	Defines	New BNS ⁶
8	Defines Gender	Repealed
10	Man or Woman	Repealed
82	Act of a child under seven years of age	20
83	Act of a child above seven and under twelve of immature understanding	21
84	Act of a person of unsound mind / mental illness	22
85	Act of a person incapable of judgment by reason of intoxication caused against his will	23
86	Offence requiring a particular intent or knowledge committed by one who is intoxicated	24
87	Act not intended and not known to be likely to cause death or grievous hurt, done by consent	25
88	Act not intended to cause death, done by consent in good faith for person's benefit	26
89	Act done in good faith for benefit of child or insane person, by or by consent of guardian	27
90	Consent known to be given under fear or misconception, Consent of insane person. Consent of child.	28
92	Act done in good faith for benefit of a person without consent	30
166B	Punishment for nontreatment of victim	200
172	Absconding to avoid service of summons or other proceeding	206
173	Preventing service of summons or other proceeding, or preventing publication thereof	207
174	Non-attendance in obedience to an order from public servant	208
176	Omission to give notice or information to public servant by person legally bound to give it	211
191	Giving false evidence	227
192	Fabricating false evidence	228
193	Punishment for false evidence	229
197	Issuing or signing false certificate	234
201	Causing disappearance of evidence of offence, or giving false information to screen offender	238
228A	Disclosure of identity of the victim of certain offences, etc.	72
269	Negligent act likely to spread infection of disease dangerous to life	271
270	Malignant act likely to spread infection of disease dangerous to life	272
279	Rash driving or riding on a public way	281
299	Culpable homicide	100
300	Murder	101
301	Culpable homicide by causing death of person other than person whose death was intended	102
302	Punishment for murder	103
303	Punishment for murder by life-convict	104
304	Punishment for culpable homicide not amounting to murder	105
304A	Causing death by negligence	106
304B	Dowry death	80
305	Abetment of suicide of child or insane person	107
306	Abetment of suicide	108
307	Attempt to murder	109
308	Attempt to commit culpable homicide	110
309	Attempt to commit suicide	Repealed
312	Causing miscarriage	88
313	Causing miscarriage without woman's consent	89

Continued on next page

Table 1 continued

314	Death caused by act done with intent to cause miscarriage	90
315	Act done with intent to prevent child being born alive or to cause it to die after birth	91
316	Causing death of quick unborn child by act amounting to culpable homicide	92
317	Exposure and abandonment of child under twelve years, by parent or person having care of it	93
318	Concealment of birth by secret disposal of dead body	94
319	Hurt	114
320	Grievous hurt	116
321	Voluntarily causing hurt	115
322	Voluntarily causing grievous hurt	117
323	Punishment for voluntarily causing hurt	Repealed
324	Voluntarily causing hurt by dangerous weapons or means	118 (1)
325	Punishment for voluntarily causing grievous hurt	Repealed
326	Voluntarily causing grievous hurt by dangerous weapons or means	118(2)
326A	Voluntarily causing grievous hurt by use of acid, etc.	124 (1)
326B	Voluntarily throwing or attempting to throw acid	124 (2)
	Causing hurt by means of poison, etc., with intent to commit an offence	123
327,329	Voluntarily causing hurt or grievous hurt to extort property, or to constrain to an illegal to an act	119
330, 331	Voluntarily causing hurt or grievous hurt to extort confession, or to compel restoration of property	120
332, 333	Voluntarily causing hurt or grievous hurt to deter public servant from his duty	121
334, 335	Voluntarily causing hurt or grievous hurt on provocation	122
339	Wrongful restraint	126
340	Wrongful confinement	127
349	Force	128
350	Criminal force	129
351	Assault	130
354	Assault or criminal force to woman with intent to outrage her modesty	74
354 A	Sexual harassment and punishment for sexual harassment	75
354 B	Assault or use of criminal force to woman with intent to disrobe	76
354 C	Voyeurism	77
354 D	Stalking	78
359	Kidnapping	137
362	Abduction	138
375	Rape	63
376 (1,2)	Punishment for rape	64 (1,2)
376 A	Punishment for causing death or resulting in persistent vegetative state of victim	66
	Punishment for rape on woman under sixteen years of age	65(1)
376 AB	Punishment for rape on woman under twelve years of age	65 (2)
376 B	Sexual intercourse by husband upon his wife during separation	67
376 C	Sexual intercourse by a person in authority	68
	Sexual intercourse by employing deceitful means etc.	69
376 D	Gang rape	70
	Punishment for gang rape on a woman	70 (1)
	Punishment for gang rape on a woman under eighteen years of age	70 (2)
376 DA	Punishment for gang rape on woman under sixteen years of age	Repealed
376 DB	Punishment for gang rape on woman under twelve years of age	Repealed
376 E	Punishment for repeat offenders	71
377	Unnatural offences	Repealed

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Table 1 continued

463	Forgery	336
	Sexual intercourse by employing deceitful means etc.	69
493	Cohabitation caused by a man deceitfully inducing a belief of lawful marriage	81
497	Adultery	Repealed
498 A	Husband or relative of husband of a woman subjecting her to cruelty	85
499	Defamation	356
509	Word, gesture or act intended to insult modesty of a woman	79
510	Misconduct in public by a drunken person	355

Table 2: Important CrPC sections and their new counterparts as per BNSS

CrPC ²	Defines	BNSS ⁷
53	Examination of accused by medical practitioner at the request of police officer	51
53 A	Examination of person accused of rape by medical practitioner	52
54	Examination of arrested person by medical officer	53
61-69	Form of summons	63 – 71
164 A	Medical examination of the victim of rape	184
174	Police inquest	194
175	Power to summon witness by police	195
176	Inquiry by Magistrate into cause of death	196
327(2)	In camera trials	260(2)
416	Postponement of capital sentence on pregnant woman	456

Table 3: Important IEA sections and their new counterparts as per BSA

IEA ³	Defines	BSA ⁸
32	Dying declaration	6(j)
60	Oral evidence	54, 55
61	Documentary evidence	56 - 73
45	Expert witness	39
101	Burden of proof	104
102	On whom the burden of proof lies	105
135	Examination of witness	140
138	Order of examination in court	143
141	Leading questions	146
107	Presumption of survivorship	110
108	Presumption of death	111

In the context of forensic medicine, the Bhartiya Nyaya Sanhita plays a crucial role in defining the admissibility and relevance of forensic evidence in criminal proceedings. The amendments provide clearer guidelines for the collection, preservation, and analysis of forensic evidence, ensuring that it withstands legal scrutiny and contributes to the pursuit of justice.

6. Bhartiya Nagrik Suraksha Sanhita (BNSS):⁷

The Bhartiya Nagrik Suraksha Sanhita, previously known as Criminal Procedure Code, represents a positive approach to enhancing public safety and security in India. This comprehensive legislation encompasses measures aimed at preventing and combating various forms of threats, including terrorism, organized crime, and public disorder. Forensic medicine practitioners play a vital role in the implementation of the Bhartiya Nagrik Suraksha Sanhita by providing expertise in the investigation and analysis of evidence related to security threats. From forensic pathology

in cases of terrorist attacks to digital forensics in cybercrime investigations, forensic professionals contribute invaluable insights that aid law enforcement agencies in safeguarding the nation and its citizens.

6.1. Bhartiya shakshay adhiniyam (BSA):⁸

The Bhartiya Shakshay Adhiniyam, previously known as Indian Evidence Act, governs the admissibility and use of evidence in Indian courts. The recent amendments to this act reflect a concerted effort to streamline the legal process and enhance the reliability of evidence presented in court proceedings.

In the field of forensic medicine, the Bhartiya Shakshay Adhiniyam establishes standards for the collection, documentation, and presentation of forensic evidence in legal proceedings. By ensuring adherence to scientific principles and best practices, the amended evidence act reinforces the credibility of forensic medicine practice and strengthens the role of forensic experts as impartial witness of truth in the justice system.⁹

6.2. IPC sections and their new counterparts as per BNS:

The IPC sections relevant to practice of forensic medicine and the changes made in these sections in BNSS is represented in tabulated format. (Table 1)

6.3. CrPC sections and their new counterparts as per BNSS

The CrPC sections relevant to practice of forensic medicine and the changes made in these sections in BNS is represented in tabulated format. (Table 2)

6.4. IEA sections and their new counterparts as per BSA

The IEA sections relevant to practice of forensic medicine and the changes made in these sections in BSA is represented in tabulated format. (Table 3)

7. Conclusion

The recent amendments and implementations of the Bhartiya Nyaya Sanhita, Bhartiya Nagrik Suraksha Sanhita, and Bhartiya Shakshay Adhiniyam mark a significant milestone in India's legal evolution. In the domain of forensic medicine, these legislative changes provide a solid groundwork for advancing the practice and ensuring that justice is served speedily and effectively. Inspired by indigenous legal philosophies and global best practices, BNS aims to streamline legal procedures, enhance access to justice and foster public trust in the judiciary. This legislation marks a significant departure from the colonial

legacy, emphasizing the protection of individual rights, fair trial processes, and proportionate sentencing. BNSS with a focus on preventive measures, intelligence gathering, and rapid response mechanisms, aims to safeguard citizens against emerging threats while upholding constitutional liberties. By integrating technological advancements and interdisciplinary approaches, this legislation endeavors to create a robust framework for homeland security in the digital age. BSA emphasizing the admissibility of diverse forms of evidence, including electronic data and expert testimony, it promotes a more advanced understanding of truth-seeking in judicial proceedings. Through stringent safeguards against tampering and manipulation, this statute seeks to enhance the reliability and integrity of evidentiary processes, thereby fortifying the foundations of judicial decision-making. As forensic medicine continues to play an increasingly pivotal role in the Indian justice system, practitioners must remain abreast of these legal developments and uphold the highest standards of professionalism and integrity in their work.

8. Source of Funding

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9. Conflict of Interest

None.


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