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THE FINE LINE BETWEEN GOOD INTENT AND CRIME: WHEN SAVING LIVES MEETS CRIMINAL LIABILITY IN BNS

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I. ABSTRACT

This Research Paper examines India's recently established act, The Bharatiya Nyaya Sanhita, 2023 (BNS), which specifically states provisions for the actions taken in good faith, for saving lives or for emergency response situations that can often blur the line between lawful conduct by a Good Samaritan and criminal liability of an action done. With reference to the use of the general exceptions under BNS, which are the sections and clauses relating to good faith, mistake of fact, necessity, and legal duty for people who intervened in situations for preservation of life, this paper tries to analyse the various situations and cases where saving lives can be protected under the good faith exceptions and where criminal liability can apply under the Bharatiya Nyaya Sanhita.

This also talks about the legal provisions that are relevant, the comparison of the precedents, and the difficulties encountered in the cases of rescue, medical negligence, bystander first aid, and Good Samaritan circumstances. While the newly established framework offers some protection to those who are saving a life in genuine good faith, there is still a lot of uncertainty and doubt about aspects like the ability to foresee an event, the obligation to help, negligence on part of the individual saving, and being held responsible for doing nothing and some other examples.

This comprehensive analysis aims to summarise and explore the development, legal framework, and future direction of BNS with context to the specific topic of good faith

provisions and necessity along with general exceptions in the Indian legal system, particularly in light of various legislative changes and social dynamics.

Keywords: Good Faith, Criminal Liability, Saving Lives, Duty of Care, Negligence, Good Samaritan

II. INTRODUCTION

The new legal framework, Bharatiya Nyaya Sanhita 2023 (BNS) is bringing light to a difficult issue that arises in cases of good motive actions, especially the case where a life is saved. Criminal liability requires two main things which are guilty act (actus reus) guilty mind (mens rea). The problem is when somebody gets hurt because the failed rescue attempt is the one that causes the harm. So, the law has to choose whether it will cover the good intention or consider the injury as the decisive factor.

“Rooted in the cardinal legal maxim “Actus non facit reum nisi mens sit rea” (an act does not make one guilty unless the mind is also guilty), these provisions reflect a balanced approach between legal responsibility and moral culpability.”¹ BNS provides a list of general exceptions which remove the offender's guilt if they lack criminal intent and also acted in good faith. One such exception, located in Section 19, corresponds with the old necessity doctrine formerly in Section 81 of the Indian Penal Code. It exempts a person who in an emergency situation causes injury to stop the coming of a bigger danger, if the intervention is reasonable, equivalent, and only aimed at preventing the greater harm.

The difference between a well-intentioned rescue or medical intervention and criminal liability remains very close even with protections. For example, a surgeon who decides to perform a high-risk operation to save a patient's life may rely on the good-faith defences under Section 30.

An untrained rescuer in a fire, may be forcibly opening a door to rescue a person trapped, in this case, the "act likely to cause harm" defined under Section 19 could be used to support the argument. That is, only if the danger they prevented was really close, and the risk they took was still reasonable to prevent the greater harm. This research focuses on BNS defences, the very thin line between the obligation to save a life and the risk of being held liable, and the opening of a dialogue regarding how legislation and policy should respond.

¹ Anupal Goswami, “Shielding Justice: A Comprehensive Analysis Of The General Exceptions Under The Bharatiya Nyaya Sanhita, 2023”, *Indian Journal of Law and Legal Research*, 9117, Volume VII (Issue II)

The BNS provides that necessity, honest mistake of fact, compulsion, and bona-fide good faith are the defences for good faith rescues. However, the exact extent of the duty to act and the level of foreseeability required for guilt are still a matter of debate in Indian courts.

III. RESEARCH METHODOLOGY

The research methodology used in this paper is completely doctrinal in nature. A distinctive approach to legal research, doctrinal research, also referred to as library-based research mainly involves the examination and evaluation of existing legal provisions, case laws, landmark judgements and academic publications. This approach works effectively for analysing the theoretical foundations of law and for presenting legal doctrines and principles in a concise manner. Statutory materials, court rulings, and authoritative texts are some of the basic sources used in doctrinal research. Secondary sources like articles, legal digests, and commentaries are also reviewed. But there are limitations to this method of research like lack of practical evidence, limited access to legal resources, complexity of the legal language etc. The paper aims to present a comprehensive understanding of good faith and criminal liability under the Bharatiya Nyaya Sanhita (BNS) and the legal system in India.

IV. LEGAL FRAMEWORK AND RELEVANT SECTIONS

The definition of Good Faith, as given in BNS under Section 2, Clause 11 is about the conduct carried out with care and thoughtful consideration. This is essential when weighing liability and circumstances where it may be applicable. A solid grasp of the "Good Faith" concept in BNS helps highlight its relevance, across the legal system.

The BNS defines "good faith" in Section 2(11) as follows:

"Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."²

The mentioned definition points out that "good faith" should not be considered as a mere psychological state or an intention of a person. It requires an external standard of "due care and attention". Hence, a person cannot simply assert that he has acted in good faith when his actions

² Bharatiya Nyaya Sanhita, 2023, s.2 cl.11.

or opinions were not reasonable or he was careless with the situation. The emphasis is on the intention, not the outcome of the situation.

One of the main features of Indian criminal law that are also reflected in BNS is the doctrine of necessity. The doctrine communicates that an individual can do those acts which are normally regarded as criminal, if he/she is in a very urgent situation, however, these acts are justified if they avert a greater evil.

Section 19 of BNS is: "***An act done out of necessity to prevent a greater harm shall not be an offense.***"³ The provision practically recognizes the justification of such acts as entering a house rescuing a person who is in danger there, giving emergency medical aid, or intervening in a dangerous situation, if the act was a proportionate response to the threat and it was done in good faith. Indeed, the law may protect a person who, in a heartfelt intention to save life, performs first aid and, as a result, causes an injury unintentionally and incidentally, therefore that person should not be considered as criminally liable.

The main factor that distinguishes these situations is the person's intention. Actions performed in good faith without any purpose or reckless indifference are usually excused by the principles of necessity and self-defence. On the other hand, behaviour that is done with intent or with gross negligence is liable to criminal sanctions.

For Example, a patient is harmed unintentionally during an emergency medical care that is done in faith, the act is lawfully protected. But an intentional harm disguised as life-saving treatment is punishable by law.

Section 19 mainly expresses the idea that any harm caused should not be more than the harm that is prevented. Therefore, courts have to make their findings based on the facts that are sensitive to the context, the level of danger and the availability of different solutions. The denial of responsibility is shattered very shortly after the establishment of negligence or recklessness. Courts require that the utmost care and diligence be exercised and not only good intentions.

BNS argues that if a person is aware that harm is inevitable, kind of an indirect intention that awareness can in some cases exclude the granting of a good-faith defence, particularly where the prohibited injury was foreseeable and could have been prevented.

³ Bharatiya Nyaya Sanhita, 2023, Ch III, s.19.

The main theme around these sections of BNS, Section 19, 25 to 27, 30 to 31 is built on the core principle of faith. These are the articles that specifically protect doctors by giving them immunity from being sued in case any personal injury happens unintentionally as a result of the medical treatment they offer to a patient.

Section 25 is as follows:

“Act not intended and not known to be likely to cause death or grievous hurt, done by consent.- Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.”⁴

Illustration: 2 people decide to fence with mutual consent, if one injures the other when playing fairly, then the injurer commits no offence.

Key elements of this include-

- The act was not aimed at killing or causing serious injury. A person, who intends to cause these serious injuries or death is excluded from the provision.
- The person who caused the harm must not know that death or grievous hurt is possible consequence of it. So, he is unaware of a serious risk of death or grievous hurt.
- The harm that was caused must be the person, who is over 18 years old and with his consent express or implied, has accepted, either to suffer the harm or to take the risk of harm.
- The exception only remains because of consent and absence of intention or knowledge of serious risk.
- So, it is an exception that leaves intact the criminal provisions that usually protect against non-consensual harmful acts where the harm is grievous or death, or the risk of that was known or purposeful.

Section 26 is given below:

⁴ Bharatiya Nyaya Sanhita, 2023, s.25.

“Act not intended to cause death, done by consent in good faith for person’s benefit.-
*Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.”*⁵

Key Elements include-

- If the person’s goal was to kill, the law simply does not apply, as the act was not meant to kill.
- The person may even know that the act will probably cause death but the clause says "not intended to cause death" which is a complicated phrase because it allows for the risk of death to be known as long as death was not the intended result from the beginning.
- The act has to be done in faith with the intention of giving the person a benefit or for their own good.
- Consent from the beneficiary or legal guardian whether express or implied must have been obtained.
- If the person is injured or there is even the possibility of it, that person has agreed to assume the risk.
- The exception cannot exist if the benefit is solely monetary.

Section 27 is as follows:

“Act done in good faith for benefit of child or person of unsound mind, by, or by consent of guardian-
Nothing which is done in good faith for the benefit of a person under twelve years of age, or person of unsound mind, by, or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person:

Provided that this exception shall not extend to—

(a) the intentional causing of death, or to the attempting to cause death;

⁵ Bharatiya Nyaya Sanhita, 2023, s.26.

(b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

(c) the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

(d) the abetment of any offence, to the committing of which offence it would not extend.”⁶

Key elements include-

- Such persons include children under 18 years and mentally ill people who lack the mental capacity.
- The intervention has to be done in good faith for the person's benefit.
- It may be done by a guardian, or with a guardian's consent.
- This provision extends the consent-benefit exception to those who are cognitively impaired and hence cannot make a valid consent according to law.

Section 30 is stated below:

“Act done in good faith for benefit of a person without consent.-Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit:

Provided that this exception shall not extend to-

(a) the intentional causing of death, or the attempting to cause death;

(b) the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

⁶ Bharatiya Nyaya Sanhita, 2023, s.27.

(c) the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

(d) the abetment of any offence, to the committing of which offence it would not extend.”⁷

Key elements include-

- This serves as a fundamental safeguard for the situations that require emergency interventions like a surgeon performing an operation, who nevertheless acts in good faith, may escape liability even if the intervention is carried out without the consent of the person.
- This feature becomes really significant when the person is unconscious, incapacitated, a minor, or no guardian is present.
- It is directly related to the case of life-saving acts when it is impossible to get prior consent. It simply embodies the law's acknowledgment of the necessity of the intervention.
- The limitation is quite significant though, in case the person intervening is aware that death is inevitable as a result of his actions and he intentionally brings it about (except to prevent a greater harm), then the exception will not work, liability will be there for negligent or reckless medical conduct for example.

Section 31 is as follows:

***“Communication made in good faith.*—No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.”⁸**

Illustration: A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Key Elements include-

⁷ Bharatiya Nyaya Sanhita, 2023, s.30.

⁸ Bharatiya Nyaya Sanhita, 2023, s. 31.

- This includes the sharing of information, advice, or opinions that may hurt someone's feelings or their psychological state, but are still done in good faith for the recipient's benefit.
- It shields professionals, most often doctors who provide truthful, well-intentioned views, even if the communication indirectly brings about harm to the person receiving the news.
- This indicates that harm to be psychologically caused by a communication to trigger liability is not necessary, if the communication is made in good faith and for the benefit. But again, there may be different limitations like if the communication is reckless, malicious, or negligent.
- It helps to highlight the fact that the main elements of this still remains the intent, good faith, benefit, and professional context.

Each of these parts of BNS, taken together, emphasizes the fundamental legal requirement that a person must operate in good faith, have an honest intention and be free from any malice or gross negligence to be able to successfully excuse the presumption of criminal liability, more so where the acts relate to saving lives, medical assistance or performance of public duty. The safeguard extends to intentionally performed and some unintentionally non-consented but generally necessary interventions.

V. CONCLUSION

The distinction between well-intentioned behaviour and criminal liability in the Bhartiya Nyay Sanhita is a very important part of criminal law at the root level. Even though the law acknowledges the moral obligation to rescue lives and offers safeguards for those acts done in good faith, it also sets boundaries so as not to allow the same to be abused or for ill-intent to be carried out. Actions driven by pure love for one's neighbour, those necessarily arising from emergency situations, and those having been done in a reasonable manner are as a rule, protected by the law under the provisions of necessity and good faith.

At the same time, it equally calls for accountability in situations of reckless behaviour, gross negligence, or malicious intention and thus does not allow compassion to rule justice. The present-day society demands continuous legal revision and judicial discretion to be able to find the right balance between individual morality and societal order thus ensuring protection of both.

This is in agreement with the constitution by securing individual rights and at the same time, it is beneficial for the society as a whole. This creative legal structure confirms that the main aim of the criminal law is not only to punish but to give justice in a considerate way taking into account human imperfection and the necessity of the situations for saving lives and preventing harm.

To sum up, the fine line between saving people and being held legally liable is not theoretical concept, it exists and the BNS details it with a great deal of precision and delicacy. Legally, a person can intervene in necessary circumstances to save lives, in a responsible manner with no malice, benefit or recklessness. It is the only way that the promise of protection in the BNS can be more than just a provision but a real support to good Samaritans and professionals, committed to saving lives.

VI. **REFERENCES**

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