Medico-Legal Litigation Under Indian Law: A Study Of Civil And Criminal Remedies With Emphasis On Section 106 Of Bharathiya Nyaya Sanhitha

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Abstract

The laws, rules and guidelines enacted to regulate the medical profession are collectively known as medical legislation. This includes law pertaining to medical education, termination from medical practice and so on. An important part of medical legislation is the chapter that deals with the legal duties placed on the medical professionals and the repercussions of breaching of those duties. Medical legislation comprises the area of the law that deals with the trial of law suits, complaints, and cases originating from the medical field.

In nowadays the medical field is more business centric therefore the patients demand from the doctors to treat their illness extravagantly, and doctors have turned to other sources of income. This leads to a negative impact in the medical field. Nowadays patients are being more aware than the earlier days they consider any adverse effects or complications occurred during treatment is because of the negligent act of the doctor. And the Physicians are frequently accused of being indifferent to their patient's need during the course of treatment, have seeked other sources to obtain money, and have failed to show to the patients the required attention they need during the course of treatment. The main reason behind the rise in frivolous medico-legal cases filed against Physicians is due to both of these incidents. The Supreme court established rules for the criminal prosecution of medical professionals in an effort to curb this annoyance and deter litigants. The number of fraudulent medico legal claims filed has decreased as a result of these standards, and doctors harassment has decreased as well.

The main content of this Article is discussing the various legislation which is applicable in settling the medico legal disputes that has arising in India. Medical litigation in India is categorised under three different headings: Civil remedies under the Consumer Protection Act 2019, Tort law, Criminal liability under the BNS, 2023.

INTRODUCTION

With rising public knowledge, the dynamics of the healthcare industry, and shifting social expectations, the intersection of law and medicine has become more significant in modern-day India. Since patients are no longer merely recipients of care, the doctor-patient relationship has evolved into a legally scrutinized exchange in which medical judgments are more scrutinized from a legal standpoint. The legal and medical professions have had to adapt to higher levels of accountability and transparency as a result of the rise in medico-legal disputes brought on by this paradigm change. Legal protection, professional responsibility, and judicial supervision have grown in significance in such a situation—for patient safety as well as the protection of medical personnel from harassment.

CONSUMER PROTECTION ACT,1986

- The Consumer Protection Act, 1986 is a beneficial legislation and the main aim behind its passing is to provide protection to both the consumers and their rights. And to provide the redressal in fast, affordable way to the consumers at the central, state and district levels.

CHARACTERISTICS OF CONSUMER PROTECTION ACT,1986

The Consumer Protection Act, 1986 is defined as the Magna Carta of consumer protection. The following are the main features of the Act.

- The Consumer Protection act, 1986 is applicable to all goods and services except the goods and services which is clearly mentioned by the Central government.
- It incorporates all sectors i.e., the Private, Public and Cooperative sectors.
- The provisions of this Act supplement those of previous Acts. No other law's applicability is restricted by this Act.
- This Act responds to consumer complaints in a clear, economical and dynamic manner within a time restriction.

- With the purpose of advancing consumer rights, interests, and education and protection, the Act empowers the central and state government to form a consumer protection council.
- The Act is based on the compensation concept, which gives the aggrieved party fair compensation. To handle complaints a three – tiered quasi-judicial apparatus is in place.
- For filing a complaint under this act the complaint should be accompanied with the stipulated amount of fees as prescribed under the Act.[1]

Free services are specifically not included in the definition of service under the Consumer Protection Act of 1986, which states that anyone who employs services or makes purchases for payment is a consumer. The definition of service includes when a physician provides services to prospective patients in exchange for payment. Claims about shortcomings in hospital and medical or dental services are fully covered under the Consumer Protection Act's Provisions dealing to the resolution of consumer disputes and the granting of remedy under Section 14 of the Act.[2]

CONSUMER PROTECTION ACT, 2019

On the 15th of July 2020 the Consumer Protection Act,2019 was notified and it came into effect on the 20th July 2020. The main aim of enacting this law is to minimize the accumulation of complaints of consumers in the consumer forums and courts in the country.

NEED FOR THE CONSUMER PROTECTION ACT, 2019

In order to combat consumer rights abuses, unfair business practices, deceptive advertising and any other situation that jeopardizes consumer rights, the Indian legislature passed the Consumer Protection Act, 2019. Since online buying and selling of goods and services has grown significantly in recent years due to

[1] K Kannan, A textbook of Medical Jurisprudence and Toxicology, 117, (Lexis Nexis 26th ed 2019)
[2] Agarwal @ Vicky v. Ashok Arora, (1993) 1 CPJ 113

technical improvements, parliament intended for the Act to include provisions for e-consumers. By creating consumer protection councils to settle disputes and offer sufficient compensation to consumers whose rights have been infringed, the Act seeks to protect the rights and interests of consumers. Additionally, it uses alternative dispute resolution processes to quickly and effectively address consumer issues. In order to making the consumers aware about their rights and duties the Act motivates consumer education.

MAJOR OBJECTIVES OF THE CONSUMER PROTECTION ACT, 2019

The main goal of the Act is to safeguard the consumer interests and create a reliable and efficient system for resolving consumer disputes.

- The Act's main objective is to stop the promotion of goods that endanger property and human health.
- Educate consumers about the standard, purity, quantity, potency and quality of products to shield them from deceptive business tactics.
- Create consumer protection councils to safeguard the rights and interests of consumers.
- Ensures that the goods available in the market are at competitive pricing.
- Seek remedies for unfair business practices or dishonest customer exploitation.
- Safeguard the consumers by appointing authorities to handle and resolve consumer problems in a timely and appropriate manner.
- Inform the consumers regarding the after effect of non- compliance of the statutes.
- When the consumer faces any problem or disagreement make promises to the consumer that their interest will be safeguarded in the appropriate forums.
- Offer consumer education so that consumers get aware about their rights.
- For resolving consumer complaints use alternative dispute resolutions.

MAJOR CHANGES INCORPORATED IN THE CONSUMER PROTECTION ACT 2019

The following modifications were made when the Consumer Protection Act of 2019 was passed:

- Provisions in the Consumer Protection Act of 2019 facilitates online complaint filing for consumers. The E-Dakhil portal, which was created by the Central government of India in this regard, provides consumers throughout India with an easy, rapid, and affordable way to contact the proper consumer forums in the event that a disagreement arises.
- The Act sets the guidelines for both direct sales and e-commerce.
- The Consumer Protection Act of 2019 contains provisions for mediation and other kinds of alternative dispute resolution, allowing parties to resolve their issues amicably without having to face the hassle and cost of going to court.
- Unfair contracts, Product liability, and three other unfair business practices are covered by the Consumer Protection Act of 2019. The Act also includes clauses addressing unfair contracts and product responsibility. The prior Act in comparison only specified six types of unfair business practices.
- The Act of 2019 created the Advisory committee on the promotion and protection of Consumer Rights.
- There are no provisions for selection committees under the Consumer Protection Act of 2019. Rather, it grants the Central Government the power to propose each and every board member.

The Indian Parliament consequently passed and implemented the Consumer Protection Act, 2019 to incorporate e- commerce laws in light of the shifts in the digital age. This is because digitization has made it possible for convenient payment methods, a wide range of options, better services etc.

CONSUMER MEANING UNDER THE ACT

Any individual or a band of individuals who acquires goods and services for their private use and not for any other use especially not for any manufacturing or resale. Such type of individual is known as consumer. Sec 2 (7) of the Consumer Protection Act, 2019 defines the term consumer as a person who buys products or services for consideration and for their personal, commercial or resale use. In the explanation of the section, it clearly states that "buys any goods" and "hires or avails any services" includes all types of online transactions done through electronic means, teleshopping etc.

The 2019 Consumer protection Act has widened the definition of the term consumer. Any occurrence of medical negligence from the healthcare provider is considered to be a failure which is stated in section 42 (11) of the Consumer Protection Act, 2019. The medical services would fall under the consumer protection Act, 2019 was decided by the Kerala High Court in a recent decision. Two doctors petitioned before Justice N Nagaresh for declaring two statements i.e.

- That the medical profession and practice do not come under the purview of "service" defined under section 2(42) of the Consumer Protection Act, 2019.
- Consumer forums under the Consumer Protection Act, 2019 do not have authority to consider complaints about medical negligence and deficiencies in medical service.

The court continued by noting that the Consumer Protection Act's Section 2 (42) is extremely explicit that the parliament sought to expressly emphasize that some services, such as banking, financing, insurance, transportation etc., which are in the nature of public utility services, would fall under the category of "services" according to a reading of the inclusive part of section 2 (42). The definition is not encompassing, it is inclusive. Thus, all services offered to prospective customers would be covered by section 2 (42), with the exception of those provided for free or in accordance with a personal service agreement.

IMPORTANCE OF CONSUMER PROTECTION ACT IN MEDICAL PROFESSION

The Supreme Court of India confirmed in its landmark ruling in Indian Medical Association v. V. P. Shantha and Others[3] that the Consumer Protection Act, 2019 applies to both Surgical and medical services provided to a patient. As a result, the Consumer Protection Act now oversees the entire medical field. It has established clear guidelines regarding professional negligence under the Consumer Protection Act of 2019.

In this case two divisive expressions i.e. "contract for service" and "contract of service" has been noted, defined, and carefully investigated by the Supreme Court. A "contract for service" is an arrangement in which one party agrees to render technical or professional services to other parties using his own expertise and discretion rather than being subject to strict guidance or control. A "contract of service denotes a master-servant relationship and involves an obligation to follow directions on the job to be done and how it should be done. Consequently, the Supreme Court came to the conclusion that the services provided by a medical professional can be regarded as personal in nature since there is a degree of reciprocal confidence and trust in connection between the patient and the professional. However, because the doctor and patient do not have a master servant relationship, the doctor-patient contract cannot be regarded as a contract of personal service; and the service provided by the physician to his patient under such a contract are not covered by the exclusionary portion of the definition of "service" found in Section 2 (42) of the Consumer Protection Act, 2019. The aforementioned Supreme Court decision seems to have settled the controversy surrounding the Consumer Protection Act's applicability to India's medical industry. The Supreme Court established clear guidelines for identifying which treatments are permitted and which are not in this landmark ruling. However generally speaking, the Act covers medical treatments that are not given for free. There has been a wide range of responses to the Supreme Court's ruling. It has

[3] Indian Medical Association v. V.P Shantha, AIR 1996 SC 550

drawn both a claim and criticism. There might be advantages in the form of prompt decisions, affordable justice, simple processes, recompense for victims improved patient care quality and more careful physicians. However, it has been harshly denounced by the whole medical community. Consumer Protection Act coverage does not include the following "medical services": when a doctor performs professional services for his employer in his role as an employee, this is known as a contract of personal service. In other words, a medical treatment would not qualify as "service" under the Act if there was a master servant relationship between the patient and the provider. The Act is not applicable at a government or non- government hospital, health center, or dispensary if no payments are collected from patients, regardless of their financial situation. Over time, the conventional understanding of the doctor-patient relationship has undergone significant modification. It did not make sense to accuse or sue a doctor for negligence in the past, when the doctor-patient relationship was based on faith and trust. But throughout time, there has been a notable rise in lawsuits against physicians in addition to a rise in cases of medical malpractice on the part of physicians that have caused patients to suffer harm or pass away. As a result, physicians have also turned to certain methods of diagnosis and treatment. This could result in harm or death for the patient.

In Mohanan v. Prabha G. Nair and others [4]the Supreme Court denied the appellant's opportunity to provide evidence to the magistrate. A doctor cannot be held criminally responsible for his patient's death just because the patient passes away in the hospital; this does not prove that the doctor's negligence was the cause of the death. It must be demonstrated that he acted with reckless disregard for the patient's life and safety and that his carelessness or incapacity went beyond ordinary recompense. Only by scanning the material could it be ascertained that the doctor was negligent. The learned single judge's decision to reject the initial complaint was not warranted. Thus, the magistrate was given instruction to consider the case legally. "Consumer"[5] refers to any individual who hires, omits

[4] Mohanan v. Prabha G. Nair and Others, 1 (2004) CPJ 21 (SC).
[5] P.V.Rama Raju - The Consumer Protection Act, 1986,Latest Edition 2003, S.Gogia & Company Section 2(l)(d) of The Consumer Protection Act.

or benefits from any service for consideration that has been paid, promised, partially promised or under any system of deferred payment. It also includes any recipient of such services who is not the hirer, provided that the first mentioned individual has given their consent.

A consumer is a patient who pays for doctor or hospital services. Anyone who pays for the patient's care. Patient's legal representatives or heirs. Patient's spouse, parents and children. Payment in the form of a registration fee or a nominal administrative fee as in the case of government general hospitals, does not constitute consideration, therefore patients receiving care in such hospitals are not entitled to reimbursement under the Consumer Protection Act as consumers. A person who obtains free medical care in a government or nonprofit hospital is not considered a consumer under the Act. In the event of death of a patient who is a consumer, the deceased's legal heirs (representatives) shall be regarded as "consumers". If the payment was paid by a non-legal heir of the deceased, that individual will also be regarded as a "consumer". A consumer is also someone who purchases service from others. Free services are therefore not covered by this Act.

JUDICIAL INTERPERTATION ON PATIENT AS A CONSUMER

A patient who does not use the doctor's service is not considered as a patient. According to the Supreme Court decision in the Indian Medical Association v. V.P. Shantha and others[6] a medical professional's consultation, diagnosis and treatment both medical and surgical would be considered as services. Consumers as defined by the Act, unless a physician or hospital offers free services to all of its patients or under a private contract. According to the Act definition of "Service" a medical practitioner's consultation, diagnosis, and treatment both medical and surgical given to a patient or in accordance with an agreement would be regarded as "Service". Medical Services fall under the definition of "Service". Physicians and hospitals are subject to the act's summary jurisdiction, which allows them to provide compensation and other reliefs to those who have lost anything because of

[6] Supra note 3

carelessness or inadequate treatment. The service includes medical and surgical diagnosis and treatment as well as consultation.

Professional men are required to demonstrate a certain fundamental degree of competence and use reasonable caution when doing their duties. Medical personnel are not immune from lawsuits and may be held liable in tort or contract for failing to use reasonable caution when doing their duties. Medical personnel are not immune from lawsuits and may be held liable in tort or contract for failing to use reasonable care and competence. Services provided at a government hospital, health center or dispensary where all patients free care are not covered under this Act. The registration fee won't be considered as payment for the services in these cases. Service rendered for free by a medical negligence practitioner connected to a hospital or nursing home are exempt from the Act. Services rendered by a medical officer working in a hospital or nursing home, where all services are rendered without charge are exempt from the Act. The Act does not cover services provided at a non- government hospital or nursing home where all patients, wealthy or not, receive free care and no payment is collected from them. The Act covers services offered at government hospitals, clinics and dispensaries, where certain services are given for free and others at a cost. The Act covers services that patients are required to pay for at a non- government hospital or nursing home. Services rendered at private hospitals or nursing homes where those who can afford to pay are required to do so and those who cannot afford to pay are given free treatment are covered by the Act.

The Act covers services rendered by a doctor, hospital or nursing home for which the patient's employer pays for and indemnifies the patient's and his family member's medical bills. Services rendered by a physician, hospital, or nursing home for which the patient receives payment and indemnification under the terms of a medical insurance policy contract are exempt from the Act. Medical service fall under the category of "Service". In order to provide compensation and other reliefs envisioned by the act to someone who has suffered a loss as a result of negligence or inadequate service, doctors and hospitals are subject to the legislation's summary jurisdiction. The service includes diagnosis, treatment and consultation in medicine and surgery. Professional men ought to be at least

somewhat competent and carry out their duties with due diligence. Medical Personnel are not immune from lawsuits and may be held liable in tort or contract for failing to use reasonable care and competence.

In the case of Consumer Unity and Trust Society, Jaipur V. Bank of Baroda Chairman and Managing Director[7] the Supreme Court of India held that if carelessness is proven to be the cause of the loss or damage, or if negligence is proven but the loss or injury is not proven, compensation cannot be given. Furthermore, unless a third component – namely a link between the two needs – is also proven, compensation cannot be given even in cases where loss or harm and negligence are proven. It is essential to show that the other party's negligence resulted in the loss or harm.

The Consumer Forum uses the same guidelines that apply to claims for any other type of negligence when determining compensation for loss or injury brought on by negligence. The Supreme Court has granted Rs. 1 crore as compensation for medical malpractice in the case of Nizam Institute of Medical Sciences V. Prashanth S. Dhananka and Others.[8]The complainant in this lawsuit requested 7.5 crore as compensation in total under the following headings:

- Loss of future profits
- Current and potential financial difficulties
- Financial crisis
- Life satisfaction and dwindling life expectancy
- Financial restitution for the complainant's maternal uncle, younger brother and parents.

The Supreme Court awarded the following damages in this case:

The Complainant is an IT engineer with a good education who works for living and makes Rs. 28 lacs a year. His job insists him to travel a lot. He is currently unable to move his own and is confined to a wheelchair. He needs an attendant driver. According to the court, it would be reasonable for him to need a driver cum

[7] Consumer Unity and Trust Society, Jaipur v. Chairman and Managing Director, Bank of Baroda, 1995 (2) SCC 150.

[8] Nizam Institute of Medical Sciences v. Prasanth S. Dhananka and Others, 2009 (2) CPJ 61 (SC).

attendant for 30 years after the commission's award date; Rs 2,000 per month for 30 years would need to be capitalized. It allotted Rs.7.2 lakh under this heading.[9]
The Supreme Court granted Rs. 4000.00 per month for 30 years or Rs. 14,400,000.00, in contrast to his claim of Rs. 49 lacs for nursing care, etc., which was based on a nurse's salary of Rs.43750.00 for 600 months. For 30 years it provided Rs. 3000.00 a month for physiotherapy and other expenses, for a total of Rs. 10,80,000.00. A lump sum of. 25 lac was granted by the court under each of these headings, for a total of Rs. 50 lac, taking into account the necessity for ongoing medical assistance requiring costly medications and other supplies as well as the loss of future earnings. The applicant received ten lakh rupees from the Supreme Court as compensation for his pain and sufferings. A total of one crore and five thousand rupees were given out.
The Supreme Court decided that it would be safe to utilize the multiplier technique, which uses a suitable number of year's purchase, to determine compensation in the event that the family breadwinner passed away.[10]

PHYSICIANS LIABILITIES FOR MEDICAL NEGLIGENCE

Professional or medical negligence refers to the unethical behaviour of physicians while they are performing jobs. Negligence to the community is being caused by the intrinsic commercialization of certain branches of the medical and surgical professions. A properly certified medical professional, such as a doctor, is permitted to practice medicine, surgery, and dentistry by registering with the state's medical council. If a doctor is found guilty for any professional misconduct it can be brought before the appropriate State Medical Council or Medical Council of India, the State Medical Council has the authority to warn, refuse to register, or remove from registration the doctor's name. The relevant Medical Council have the power to order the permanent or temporary removal of a licensed practitioner's name from the register or to impose any sanctions deemed necessary in the event that the practitioner is found guilty of serious professional misconduct. Until a

[9] Id
[10] Global Motors Service Ltd. v. R.M.K. Veluswamy, AIR 1962 SC 65

medical professional has had a chance to be heard in person or through an advocate, no action can be taken against him.

The Supreme Court decided in favour of the plaintiff in the landmark case of Indian Medical Association v. V.P. Shantha and others.[11]The concept of medical negligence has resolved the legal dispute over the application of the Consumer Protection Act to healthcare providers, hospitals, nursing homes, including government hospitals, and non-profit organizations. Services rendered in a non-government hospital or nursing homes where no fees are charged to all patients are not covered under this Act.

Two competing Bolam test applications are frequently included in medical negligence claim. Three safety rules for healthcare providers were established in Bolam v. Friern Hospital Management: [12]

- The doctor must possess appropriate knowledge and skill in the area which he practices medicine.
- The doctor must use reasonable skill and diligence while treating a patient.
- The compensation must not be given on the basis of a slight negligence; the negligence must be directly related to the harm the complainant suffered.

Laxman Balkrishna Joshi [13]asserts that "the practitioner must exercise a reasonable amount of care and reasonable amount of competence and knowledge to his work." Depending on the particulars of each situation, the law does not require the highest or lowest level of care and skill. The doctor must either take action or not take action; they have no choice in the matter of criminal punishment.

LAW OF TORT

In the earlier eras, medical malpractice was considered a crime rather than a tort. For example, the earliest known text addressing medical malpractice is the code of Hammurabi, which was composed in Babylonia about 20 centuries before the start of the Christian period. If a doctor operated on a man to treat terrible wound

[11]Indian Medical Association v. V.P Shantha, AIR 1996 SC 550
[12]Bolam v. Friern Hospital Mgmt. Comm., [1957] 2 All E.R. 118
[13]Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole, AIR 1969 SC 128 para 11

and the person died as a result of the procedure, the doctor's hands were to be cut off. Other contemporaneous civilizations in the past also imposed harsh punishments of similar nature. Medical Malpractices was considered as a crime against the state or the public, for which the state acting as the people's agent, establish measures to punish the offender. Protecting and defending the interests of the public by penalizing the defender is the main objective of criminal justice system. Almost invariably, victims in criminal proceedings were not given any monetary benefits. But when common law evolved in England, the importance of this circumstance changed dramatically. Medical Malpractices has been viewed as a tort than a crime from the thirteenth century onwards. In contrast to criminal law, tort law focuses primarily on compensating injured patients or their families rather than bringing charges against the medical professional who caused the injury. In 1838, Chief Justice Tyndall stated that "Every person who joins a learned profession agrees to bring to the execution of that profession a fair degree of care and competence." This was in reference to the question whether a medical malpractice claim required a sufficient level of skill and care.[14]

The position on medical malpractice in civil law is particularly important since it addresses many different aspects on its own. Even if doctors provide free service, the courts have ruled that this idea is nonetheless significant under tort or civil law.[15] On the other side one could argue that tort law begins when the consumer protection Act ends.

According to the tort law, patients who feel that a doctor's or clinic's services do not qualify the "services" as defined by the Consumer protection Act may sue the doctor or establishment. In cases of medical malpractice, the patient bears the burden of proof, or the onus, to prove that his injuries were caused due to the hospitals or doctor's medical malpractices.

The transfusion of blood from the incorrect blood group, leaving a mop in the patient's abdomen following surgery, removing organs without the patient's

[14] Jyoti Dogra Sood, Responsibility of Doctors for Rash or Negligent Act, 46 J. Indian L. Inst. 588 (2004).
[15] Smreeti Prakash, A Comparative Analysis of Various Indian Legal Systems Regarding Medical Negligence, Legal Service India, https://www.legalserviceindia.com/medicolegal/mlegal.htm.(Last Visited on June 6, 2025)

consent, and providing the wrong medication that cause harm are all examples of medical malpractices.[16]

Professionals who provide medical advice and care implicitly affirm that they possess the knowledge and abilities needed to do so, that they are able to choose the care, to administer that treatment and able to decide whether to accept or not to accept a case. This type of commitment made by a medical professional is referred as an implied undertaking.

A number of requirements must be fulfilled before any consideration of responsibility can be made. The accused must have committed an act of omission or commission, and this must have been in violation of the accused duty, and this breach of duty must have resulted in damage to the injured party if these criterion are fulfilled then the accused is found guilty. By citing the most recent medical scientific facts and offering a competent medical opinion, the complainant must support the accusations made against the doctor.[17] In order to distinguish between carelessness under civil and criminal rules, the question of degree has always been crucial.[18]

INDIAN PENAL CODE, 1860

Until recently, the country's official criminal code was the Indian Penal Code (IPC). It provides the nation with a thorough legal framework for dealing with criminal acts. This indicates that it lists the definitions of different offenses and prescribes penalties. The Indian Penal Code having inherited from the British India.[19] The Indian Penal Code, 1860 contains provisions that can impose criminal liability, although they are general in nature and do not specifically address medical liability. In the case of medical malpractice resulting in a patient's death are dealt under section 304A of the Indian Penal Code, which addresses the death

[16] Talha Abdul Rahman, Medical Negligence and Doctor's Liability, 2 Ind. J. Med. Ethics 60, 60-61 (2005).
[17] Supra note 13
[18] Sylvine, Medical Negligence and Law in India – An Analysis, iplederes (July 18, 2016), https://blog.ipleaders.in/medical-negligence-law-india-analysis/. (Last Visited on June 6, 2025)
[19] Satvik N. Pai et al., The New Bharatiya Nyaya Sanhita Laws: Progress or Pitfall for Doctors?, 16 Cureus (Sept. 22, 2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC11495828/. (Last Visited on June 6, 2025)

caused by any rash or negligent act and can result in imprisonment for up to two years.

In the Santra case,[20] the Supreme Court pointed out that while the amount of damages incurred determines culpability under civil law, the amount and degree of carelessness are factors in determining guilt for criminal offenses under criminal law. However, a number of elements must be demonstrated in order to determine criminal responsibility in any particular case, such as the offender's character, the seriousness of the offence, and the motive for the offence.

In the Poonam Verma v. Ashwin Patel[21] the Supreme Court distinguished between recklessness, rashness, and carelessness. A person who inadvertently violates a positive responsibility by neglecting to perform an action that is expected of them is considered negligent. A reckless person is aware of the consequences of their acts, but they are misguided in thinking that they won't happen because of their actions. Criminal prosecution should not be applied to any behaviour that does not fit into the categories of intentional misconduct and recklessness.

Therefore, unless it can be demonstrated that a doctor was careless or incompetent and that their actions were so reprehensible for their patient's life and safety that they constituted a crime against the state, they cannot be held responsible for the patient's death.[22]

DEFENCES AVAILABLE TO DOCTORS

Under section 80 and 88 of the Indian Penal Code, doctors who have been accused of criminal culpability may raise a number of defence. Under section 80, anything done by accident or misfortune, without any criminal purpose or knowledge, in the course of carrying out a lawful act in a lawful way by lawful means, with appropriate care and caution, is not considered an offence. According to section 88, if someone acts in good faith for the benefit of another and the patient's verbal

[20] State of Haryana v. Smt Santra, AIR 2000 5 SCC 182 .
[21] Poonam Verma v Ashwin patel (1996) 4 S.C.C. 332
[22] R v. Adomako, (1994) 3 All ER 79.

or tacit consent, and does not intend to do harm even when there is a risk of doing so, they cannot be charged with an offence.[23]

THE BURDEN OF EVIDENCE

The person filing the complaint often bears the burden of demonstrating the carelessness and the liability of doctors. When a doctor is accused of medical misconduct, the burden of proof is higher than it would be required under normal circumstances. In the cases of medical malpractice, it is the patient's responsibility to prove that the claim against the practitioner is legitimate.

It was decided that the complaint had a direct burden of proving carelessness and the ensuring service defect in the Calcutta Medical Research Institute v. Bimalesh Chatterjee case.[24]It was decided that negligence had to be demonstrated rather than presumed in the Kanhaiya Kumar Singh v. Park Medical & Research Centre Case.[25] Even with meticulous adherence to all medical regulations, a skilled practitioner may nevertheless make a mistake. When something goes wrong during treatment or diagnosis a doctor is not held responsible for malpractice or medical deficiency if she/ he has acted in accordance practice accepted as proper by a reasonable body of medical professionals skilled in that particular art, even if she/he has not followed the practice accepted as proper by the reasonable body of medical professionals skilled in that particular art, according to a number of recent rulings by the Supreme Court and the National Consumer Dispute Redressal Commission. The chance of an accident leading to death during various medical and surgical treatments and procedures cannot be completely ruled out. It is assumed that a patient is willing to assume such a risk because of the doctor-patient relationship and the mutual trust that results.

Both the plaintiff and the defendant frequently seek the opinion of medical experts while handling medical malpractice cases. The Indian Evidence Act, 1872, Section 45, specifically provides that when a court is required to render a decision on a

[23] Agrawal, Amit, Medical Negligence: Indian Legal Perspective, 1 Ann. Indian Acad. Neurol. S9, S9–S14 (2016)
[24] Calcutta Med. Research Inst. v. Bimalesh Chatterjee, I (1999) CPJ 13 (NCDRC).
[25] Kanhaiya Kumar Singh v. Park Medicare & Research Centre, III (1999) CPJ 9 (NCDRC).

scientific matter, the opinion of an individual with specialised expertise in that subject is considered relevant. It is important to note that a relevant opinion does not necessarily mean that the viewpoint is conclusive and there are several instances of expert opinions that were disregarded for a number of reasons in law reports. In order for the court, which is not an expert, to make its own observations of the pertinent evidence and arguments, the expert's actual role is to present to the court all pertinent evidence along with the reasoning behind his particular conclusion.[26] Experts just offer their opinions, and when weighed against the rest of the evidence, those that are intelligible, persuasive and tested[27] become important factors in deciding the case's outcome.

The person who has been harmed will submit a first complaint with the local police authority against the guilty party or individuals. The Criminal Procedure Code of 1973, allows the individual who was wronged to make a criminal complaint when a fair period of time has gone by without any action.

Many criticisms have been made against India's medical litigation laws, some of which are specifically directed at the law. The first and most crucial idea is the burden of proof. The burden of proof rests with the plaintiff. As a result, the law will require additional evidence to substantiate a patient's charge of medical malpractice. In this case, it becomes extremely difficult for the average person or patient to determine the exact type of harm and the link between the injury and the doctor's conduct. The burden of proof in this case transfers to the plaintiff, and as medicine is an unpredictable field where anything can happen in a human body at any time, the patient cannot prove the doctor's carelessness beyond a reasonable doubt.

CRIMINAL MEDICAL LIABILITY UNDER SECTION 304A OF IPC

In regards to charging registered medical professionals with gross negligence in the course of their practice under section 304A of the Indian Penal Code, the Supreme Court has given four conflicting rulings since 1998.

[26] Titli v. Alfred Robert Jones, AIR 1934 All 273.
[27] Ramesh Chandra v. Regency Hospital Limited, (2009) 9 SCC 709.

A panel of Supreme Court decided in Mohanan v. Prabha G. Nair[28] that the high court erred in dismissing a civil action at an early stage when the plaintiff's expert testimony was necessary to establish guilt. Additionally, it concluded that the appellant was not given a fair opportunity to disclose facts to the magistrate and that the only way to assess a healthcare professional's carelessness was to look at the expert testimony and any available evidence.

As a result, the Supreme Court issued a new order in Dr. Suresh Gupta v. Government of NCT of Delhi overturning its earlier ruling in Mohanan's case. According to an appellate court, a doctor or surgeon must demonstrate gross negligence or recklessness, rather than just a lack of the required care, attention and skill, in order for section 304A of the Indian Penal Code to establish criminal liability against them. After this ruling, a judge declared on September 9,2004, that the Suresh Gupta case's verdict was unconstitutionally severe. According to their findings, the adjectives "gross, reckless, competent, and indifference did not fit the definition of medical liability under section 304A of IPC. They thus sent the case back to the lower court so that a larger group of judges could give it more consideration. A panel of judges consisting of five members is still considering this referral.

Meanwhile, a three-member Supreme Court panel rendered a decision in August, 2005 in the case of Jacob Mathew v. State of Punjab.[29]

The Supreme Court upheld the legal precepts established in the Suresh Gupta Case in this instance. The Supreme Court elaborated the standards for establishing culpability in this decision, which addressed the criminal liability of a medical professional. The previously disregarded distinction between the concept of carelessness in civil law and criminal law was also emphasized.

[28] Mohanan v. Prabha G Nair, 8 (2004) 3 SCC 391.
[29] Jacob Mathew v. State of Punjab & Anr., (2005) 6 S.C.C. 1

In summarizing its findings, the Supreme Court stated that:

- According to criminal law, it must be proven that the accused did or failed to do anything that no reasonable medical professional in his or her usual senses and wisdom would have done or failed to do under the circumstances in order to prosecute a medical professional for carelessness. According to the standard of care, the accused doctor's risk should have been sufficient that the injury that transpired was most likely imminent.
- Res ipsa loquitur is a rule of evidence that is helpful in determining the burden of proof in cases involving carelessness and operates in the field of civil law, especially in the context of torts. It isn't a legal theory. In the domain of criminal law alone, the theory cannot be applied to assign the blame for carelessness.
- Section 304A of the Indian Penal Code does not mention the word gross, although it is widely known that in criminal law, negligence or recklessness must be so severe as to qualify as gross in order to be so deemed. Section 304A of the Indian Penal Code uses the phrase rash or negligent conduct, which must be understood as qualifying the statement with the word grossly.
- The criteria for evaluating carelessness and negligence set down in Bolam's case[30] is still applicable in India.
- Criminal and Civil law have varied definitions of what constitutes carelessness. What is deemed carelessness in criminal law may not be the same as what is deemed careless in civil law. For neglect to be regarded as an offence, the element of mens rea must be present. A very high level of carelessness, or flagrant or extremely is required for an act to constitute a criminal medical liability.
- Either a professional does not the required skill that he claims to possess, or he does not execute the skill with reasonable competence in the specific situation, are the two grounds on which a professional may be judged negligent. No matter what the circumstances, the standard that would be applied to determine whether the person accused of carelessness would be that of an ordinary competent person utilizing ordinary competence in that profession. For a professional to practice at

[30] Bolam v. Friern Hospital Mgmt. Comm., [1957] 2 All E.R. 118.

the highest level, he must possess the highest level of skill or talents in his discipline.

After the Supreme Court's ruling in the Jacob Mathew Case, it was believed that doctors could not be sued for carelessness or negligence. In State of Punjab v. Shiv Ram, the Supreme Court stated that the burden of proof is always on the side of the prosecution or the claimant, regardless of whether the case is criminal prosecution or tort claim. This was a postscript to Jacob Mathew case. In a specific case, a doctor might undoubtedly be asked to justify their actions based on the evidence presented by the claimant or the prosecution. The caution that was advised in Jacob Mathew case regarding holding future doctors accountable for medical misconduct does not change the position.

THE THREE NEW CRIMINAL LAWS

Amit Shah, the Home Minister, presented bills in the Lok Sabha on August 11,2023. The bill was a suggestion to replace the Indian Penal Code, 1860, Indian Evidence Act, 1872, Code of Criminal Procedure,1973 and to name as Bharatiya Nyaya Sanhita, Bharatiya Sakshya Adhiniyam, Bharatiya Nagarik Suraksha Sanhita. A Parliamentary standing committee has been recommended to consider the proposed legislation for further discussion.[31] On December 20th and 21st, 2023 the parliament ratified the proposal and on December 25th, 2023 the president endorsed it.

The Indian Parliament has passed new criminal laws to address the inadequacies in the previous legislation and to adapt to the evolving demands of the criminal justice system. Making these laws more pertinent to the demands of contemporary society and providing appropriate mechanisms for impending issues were the two main objectives. Through improved legal definitions, these statutes represent current knowledge and concerns. In order to create a more effective and accessible legal process, they have also shortened the procedures. The other goal is strengthening provisions for the protection and assistance of crime victims. In contrast to the British Raj's excessive focus on upholding law and order, safeguarding properties as key installations of the then government and preventing

[31] Manoj Kumar Singh, A Comparative Study of Bhartiya Nyaya Sanhita 2023 with Indian Penal Code 1860: Modernization or Mere Replacement?, J. Indian Legal Stud. 45, 112-34 (2023).

sedition, these laws also provided the necessary measures for addressing crime related to technology and digital age. The President of India Hon. Draupadi Murmu, stated during a speech to the joint session of parliament on June 27, 2024, that "Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, Bharatiya Sakshya Adhiniyam, 2023 will speed up the judicial process. The three new criminal laws came into force on 1st July, 2024 which is granting justice instead of punishment, which was the mindset during the British regime.[32] The fact that the Indian prisons house the greatest number of under trials in the world proves the inadequacy of the old criminal laws. The National Crime Records Bureau (NCRB) reports that 67.2% of prisoners in Indian prisons are classified as under trials. The new criminal laws seek to illustrate the shift from punitive to restorative justice. The new criminal laws were a clear need and necessity for the nation in all of these ways.[33]

A COMPARATIVE ANALYSIS OF INDIAN PENAL CODE AND BHARTIYA NYAYA SANHITA 2023

The IPC comprises of 511 sections and only 358 sections in BNS. Furthermore, while 19 IPC sections eliminated, 31 new offenses are implemented by the BNS. The maximum sentence for 33 offenses has raised up and fines for 83 offenses increased. In addition, the minimum necessary punishment was applied to 23 offenses and community service was introduced as a substitute form of punishment for six minor offenses. Additionally, the BNS fills the gaps in the IPC by emphasizing victim's rights and rehabilitation. Its goal is to increase sensitivity in order to protect the rights and freedoms of women and other gender minorities. BNS plans to provide a fair approach to punishments, making sure that they are appropriate for the offence and incorporate corrective actions. In order to reduce the strain on the legal system, the BNS also emphasizes other conflict resolution procedures, including conciliation and mediation.[34]The BNS addresses another significant area where the IPC has been judged to be deficient: it is in accordance

[32] Rahul K. Gawadei & Sarika K. Karanjule, Replacement of Old Criminal Laws by New: A Reformative Step to Boost Criminal Justice System of India, Int'l J. Law Mgmt. & Humanities, vol. 7, iss. 6, 2105-13 (2024).
[33] Vijeta Shrivastava, Independence from Colonial Vestige and Overhaul of Indian Criminal Justice System through Three New Laws, 33 Contemp. Soc. Sci. 174 (2024).
[34] Aayush Pareek, A Comparative Evaluation: Bhartiya Nyaya Sanhita 2023 in Opposition to Indian Penal Code 1860, Int'l J. L. Mgmt. & Humanities, 1123, 1122-34 (2024)

with international human rights norms, guaranteeing the preservation of both individual and universal rights.[35]

MEDICAL LIABILITY UNDER SECTION 106, BNS

One of the most significant recent events in Indian legal history is the reform of the country's criminal code through the passage of the Bharatiya Nyaya Sanhita, 2023 (BNS). Section 106 is one of the many new laws that has generated debate, particularly in the medical community. This section discusses criminal responsibility for culpable homicide that results from careless or reckless actions but does not qualify as murder. It also makes a distinction for registered medical professionals. While the earlier legal scheme under Section 304A of the Indian Penal Code, 1860 (IPC) had uniform punishment for negligent homicide, Section 106 of the BNS reserves a distinct, reduced punishment for doctors conducting medical interventions. The relevance of this exception is not just in its immediate legal implications, but also in its symbolic recognition of the intricacy and risk-intensive nature of medicine. The integration of Section 106 in the BNS accordingly directly affects the criminal liability system for medical negligence, and this requires an exhaustive analysis of its form, interpretation, and effects on the provision of healthcare. Two distinct situations are addressed by Section 106 of the BNS: general carelessness and conduct by licensed medical professionals. It reads as follows: Anyone who kills another person by a careless or reckless act that does not qualify as culpable homicide faces up to five years in prison and a fine. If a registered medical professional commits such an act while performing medical treatment, they face up to two years in various forms of imprisonment and a fine. Two distinct situations are addressed by Section 106 of the BNS: general carelessness and conduct by licensed medical professionals. It reads as follows: Anyone who kills another person by a careless or reckless act that does not qualify as culpable homicide faces up to five years in prison and a fine. If a registered medical professional commits such an act while performing medical treatment, they face up to two years in various forms of imprisonment and a fine. [36]According

[35] Shreya Gupta, Legal Reforms in the Indian Penal Code: An Analysis of the Bhartiya Nyaya Sanhita 2023, Indian L.J. 40, 87-101 (2024).
[36] Bharatiya Nyaya Sanhitha, 2023, Sec 106

to the explanation provided in this section a "registered medical practitioner" is a person whose name is included in either the National Medical Register or a State Medical Register and who possesses medical credentials recognized by the National Medical Commission Act, 2019.

COMPARISON BETWEEN SECTION 304 A IPC AND SECTION 106 BNS

Under the previous legal system, Section 304A IPC stipulated that anyone who caused death through a careless or reckless act that did not amount to culpable homicide faced a two-year prison sentence, a fine, or both.[37] Such a clause failed to differentiate between general negligence and that which occurs in the specialized field of medicine. This approach changes as a result of BNS passing. A specific clause for doctors restricts punishment to two years if the crime occurs during a medical procedure, even if Section 106 has increased the default penalty for negligent homicide to a maximum of five years.

The following comparative table illustrates the key differences:

Aspect	Section 304 A IPC, (1860)	Section 106, BNS (2023)
Scope	Rash or negligent act causing death	Same
General Punishment	Up to two years imprisonment, or fine, or both	Up to five years imprisonment and fine
Registered Medical Practitioners	No distinction	Up to two years imprisonment and fine

[37] Indian Penal Code, Sec 304 A

CONCLUSION

In this chapter, the Indian legislative framework that oversees medico-legal litigation has been thoroughly examined. The analysis has been divided into two main areas: criminal and civil responsibility. Medical negligence remedies are primarily sought under the Consumer Protection Act of 2019 and tort law principles. Because of the aforementioned Act's definition of patients as "consumers," there is now a robust system in place to handle complaints against healthcare organizations and medical personnel, giving aggrieved patients access to justice on a larger scale. However, there has also been a rise in lawsuits against doctors, which has caused defensive medicine to spread. Although professional accountability, deterrent, and compensation are at the core of the civil liability framework, it typically lacks procedural uniformity and specialized forums for resolving technically complex medical disputes.

The chapter covered the change from Section 304A of the Indian Penal Code to Section 106 of the Bharatiya Nyaya Sanhita, 2023, with regard to criminal cases. With the creation of a distinct provision for registered medical practitioners, the change constitutes a substantial legal revision. A maximum term of five years is imposed for general acts of reckless or careless behavior that result in death under Section 106, while doctors performing medical procedures may get a lower sentence of up to two years. The unique and often dangerous character of medical profession is acknowledged by this distinction.

Despite the existence of such statutory provisions, judicial interpretation has largely shaped the substantive evolution of Indian medical law rather than legislative action. In order to shield medical professionals from overzealous prosecution, seminal rulings like Jacob Mathew v. State of Punjab established the threshold of "gross negligence" for criminal liability, while Indian Medical Association v. V.P. Shantha expanded the definition of "service" to include medical treatment under consumer law.

These decisions have bridged essential legislative lacunae, created doctrinal certainty, and given direction to civil as well as criminal liability in medical situations. Finally, although statutory law gives the fundamental structural framework to medico-legal litigation, it is the Indian judiciary that has contributed most towards creating, interpreting, and evolving the principles of medical law in India.