Legal House Law Journal
ISSN : …….. Volume I Issue I (2024), PP ….-....

BALANCING LEGAL ACCOUNTABILITY AND CLINICAL AUTONOMY: ANALYZING THE IMPACT OF THE BHARATIYA NYAYA SANHITA, 2023 ON MEDICAL NEGLIGENCE IN INDIA

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ABSTRACT

The evolution of medical negligence law in India, especially following the Consumer Protection Act of 1986 and the landmark Indian Medical Association vs. V.P. Shantha case, underscores the balance between patient rights and the accountability of medical practitioners. These legal frameworks enabled patients to seek redress for medical negligence, highlighting the importance of ethical and professional standards in healthcare. However, recent trends, including increased violence against medical professionals, reveal systemic issues such as overcrowded hospitals and insufficient communication. The introduction of the Bharatiya Nyaya Sanhita (BNS) in 2023, particularly Section 106(1), marks a significant shift by broadening the scope of criminal liability for negligence without distinguishing between simple and gross negligence. This could lead to heightened legal vulnerability for doctors, potentially fostering defensive medicine and impacting the doctor-patient relationship. The BNS's clear statutory language aims to standardize judicial decisions. Yet, it challenges the established "gross negligence" standard from the Jacob Mathew case, necessitating new guidelines to balance accountability with the practical realities of medical practice. Ensuring this balance will be crucial to protect both patients and healthcare providers, promoting a healthcare system that upholds high standards of care while fostering mutual respect and understanding. As the medical and legal communities adapt to these changes, continuous dialogue and careful adjustment will be essential to mitigate unintended consequences and achieve the intended goals of the new legal framework.

INTRODUCTION

According to William Osler, a renowned physician, a competent doctor focuses on treating the sickness. In contrast, an exceptional doctor prioritizes the well-being of the patient who is afflicted with the condition. This distinction underscores the importance of a patient-centered approach in medical practice, where the holistic well-being of the patient is paramount. However, in India, the increasing prevalence of violence against physicians and other medical professionals highlights a fundamental challenge - a lack of inter-professional understanding and respect among various stakeholders within the healthcare system. In 1986, the Consumer Protection Act was enacted in India, marking

a significant milestone in the rights of consumers, including patients, against the malpractice and negligence of service providers. One of the landmark judgments that shaped the landscape of medical negligence in India was the case of the ***"Indian Medical Association vs. V.P. Shantha and Ors."[1]*** This judgment by the Supreme Court of India held that the services rendered by a medical practitioner fall under the ambit of 'service' as defined in Section 2(1) (o) of the Consumer Protection Act, 1986, with certain exceptions. This ruling was pivotal as it opened the doors for patients to seek legal recourse and financial compensation for the negligence of their treating physicians. Prior to this, the legal framework governing medical negligence was less clear, and patients often faced significant hurdles in proving malpractice and securing compensation. The judgment not only empowered patients but also underscored the accountability of medical practitioners, thereby aiming to enhance the overall quality of healthcare services in the country.[2]

The Consumer Protection Act of 1986 was a revolutionary piece of legislation aimed at protecting the rights of consumers and ensuring fair trade practices. Section 2(1) (o) of the Act defines 'service' as any description of service made available to potential users, excluding services rendered free of charge or under a contract of personal service. Initially, there was ambiguity regarding whether medical services fell under the purview of this Act, given the unique nature of healthcare services, which often involve life-and-death situations and require highly specialized knowledge and skills. The landmark case of Indian Medical Association vs. V.P. Shantha and Ors. Addressed this ambiguity. The Supreme Court ruled that medical services would be covered under the Act, provided they were not rendered free of charge or under a personal service contract. This meant that patients who paid for medical services, either directly or through insurance, could file complaints against medical practitioners for negligence or deficiency in service.

The case of the ***Indian Medical Association[3]*** was a watershed moment in the Indian legal landscape concerning medical negligence. The Supreme Court's judgment in this case was instrumental in defining the scope of medical services under the Consumer Protection Act. The court held that services rendered to patients by medical practitioners (except those rendered free of charge or under a personal service contract) come within the ambit of 'service' as defined in the Act. This judgment had far-reaching implications. It provided patients with a legal framework to seek redressal for grievances against medical practitioners for negligence or deficiency in service. This was a significant shift from the previous scenario, where patients had limited avenues for legal recourse and often faced challenges in proving medical negligence due to the technical and specialized nature of the medical evidence required.

The Consumer Protection Act of 1986, which included medical services, led to a shift in accountability and legal scrutiny of medical practitioners. This increased scrutiny empowered patients but also created heightened vigilance among healthcare providers. Medical practitioners became more aware of the legal implications of their actions and the importance of adhering to established standards of care and protocols. However, this increased scrutiny sometimes resulted in defensive medicine, leading to unnecessary tests and procedures to protect themselves from potential litigation and financial liability.

The Supreme Court's judgment provided financial compensation for patients who suffered due to medical negligence, providing relief to patients and their families. This provision served multiple purposes, acting as a deterrent for negligent practices and

providing a form of justice and closure for affected patients and their families. The accountability enforced by the Consumer Protection Act and the subsequent Supreme Court ruling aimed to enhance the overall quality of healthcare services in India. By holding medical practitioners accountable, the legal framework encouraged adherence to best practices, continuous professional development, and meticulous record-keeping, contributing to improved standards of care and patient safety.[4]

However, the increasing violence against medical professionals in India remains a pressing concern. This violence is often a manifestation of frustration and dissatisfaction, exacerbated by systemic issues such as overcrowded hospitals, long waiting times, and a perceived lack of empathy and communication from healthcare providers. Addressing this challenge requires a multifaceted approach, including legal protections for medical professionals, improvements in healthcare infrastructure, enhanced communication and empathy in patient care, and fostering a culture of mutual respect and understanding between patients and healthcare providers.[5]

WHAT IS NEGLIGENCE?

The term "negligence" may be understood in a variety of ways, depending on the prevailing circumstances. It is possible to divide medical negligence into two primary categories: carelessness in the context of tort law and negligence in the context of criminal law. It is common practice in India to place events of death that are the consequence of criminal negligence within the jurisdiction of Section 304A of the IPC. Sections 336, 337, and 338 of the IPC are relevant in cases when a patient is harmed but not killed as a consequence of the injury that was inflicted. The IPC 1860 has a provision called Section 304A that regulates the circumstances surrounding the death of a person as a consequence of their reckless or thoughtless actions.[6]

It reads "*304A. Causing death by negligence – Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years or with a fine, or with both.*"

Death by negligence is a kind of manslaughter that does not include any premeditation or planning and happens as a consequence of the accused's careless actions rather than any premeditation or planning. When it comes to the concept of criminal negligence, it is relevant when a physician exhibits a clear disregard for the life of the patient, which is what defines mens rea, which is another term for criminal intent. Along with unlawful conduct, also known as the actus reus, this is one of the key factors that must be present in order to establish any criminal allegations that have been made against a person.[7]

A doctor "treating" and "curing" a patient would lack *men's rea,* but a grossly negligent doctor would possess *men's rea* as per the ratio laid down by the Supreme Court (SC) of India in the Jacob Mathew Case in paragraph 12 which reads as follows "*12. The essential ingredient of mens rea cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence. In R. v. Lawrence**[8]** , Lord Diplock spoke in a Bench of five, and the other Law Lords agreed with him. He reiterated his opinion in R. v. Caldwell 1981(1) All ER 961 (HL) and dealt with the concept of recklessness as constituting mens rea in criminal law.*"

In the case of Suresh Gupta,[9] the patient died away while undergoing surgery to address his nasal deformity. The reason for this was that it was alleged that a cuffed endotracheal tube was not present throughout the procedure. The Supreme Court overturned the criminal proceedings against the doctor in its appeal, and the court said that in order to hold a doctor criminally culpable, it is necessary to demonstrate a higher level of misbehavior, namely a greater degree of immorality and purposeful wrongdoing if the doctor is to be held accountable for their actions. After that, a panel consisting of two judges, who had initially presided over the appeal that Dr. Jacob Mathew had filed against the state of Punjab, made a disagreement with this viewpoint.

JACOB MATHEW CASE

In this landmark decision, the court has effectively defined the legal rules that govern medical negligence in India. This is a key finding in the realm of medical negligence. Both Dr. Jacob Mathew and Dr. Allen Joseph, who are both highly trained medical professionals, were subjected to the adverse effects that the government apparatus brought, respectively. The patient, Jiwan Lal Sharma, was diagnosed with a sort of cancer that was in its latter stages, and the court was notified of this fact. The patient finally passed away as a result of the illness, which was allegedly brought on by the physician's usage of oxygen cylinders that were empty while the patient was experiencing shortness of breath.

An official accusation under Section 304A has been made against the defendant by the trial court. It was decided that the Sessions and High Court would not interfere with the verdict that was indicated before. The matter was eventually brought to a panel of two experienced justices of the Supreme Court for deliberation at some point in time. In the matter of ***"Dr. Suresh Gupta v. Government of the National Capital Territory of Delhi and Others,"***[10] the appellant relied on a recent decision made by a two-judge bench of the Supreme Court. The bench that was presiding over this appeal questioned whether or not the viewpoint that was offered in the instance of Dr. Suresh Gupta was accurate. The Bench, in a ruling that was issued on September 9, 2004, expressed the view that the matter ought to be investigated by a panel consisting of three judges respectively. A hearing was held on the subject in front of a panel of three judges, one of which being Justice Lahoti, who was serving as the Chief Justice of India at the time.[11]

As per the referring order dated September 9, 2004, the division bench assigned two reasons for their disagreement with the view taken in Dr. Suresh Gupta's case. The three-judge bench in Jacob Mathew Case formulated two questions to be answered: -

"(*i) Is there a difference in civil and criminal law on the concept of negligence? and (ii) whether a different standard is applicable for recording a finding of negligence when a professional, in particular, a doctor, is to be held guilty of negligence?"*

Thus, the case reached a three-judge bench that finally delivered their verdict on August 5, 2005, and said, "*In view of the principles laid down hereinabove and the preceding discussion, we agree with the principles of law laid down in Dr. Suresh Gupta's case****[12]****and re-affirm the same.*"

This landmark decision brought an end to the controversy surrounding the prosecution of medical professionals under the IPC, namely Section 304A. When it comes to medical negligence, the "BOLAM" rule is the underlying principle that underlies the investigation. In the case of Bolam v. Friern Hospital Management Committee, Justice McNair established this finding as the precedent.

"*A man need not possess the highest expert skill at the risk of being found negligent. It is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.*"

Within the context of the Jacob Mathew case, the court concluded that Bolam's rule is relevant and ought to be used when circumstances involving professional negligence are being considered. The court determined that the criminal procedures that were being brought against the two doctors were not legitimate during the process of examining the Jacob Mathew cases. There are several differences between carelessness in criminal law and negligence in civil law, which are explained below.

The degree of negligence

In Jacob Mathew, it has been held that *"Showing a simple lack of care, which would constitute a civil liability, is not enough; for purposes of the criminal law, there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established."*

In a great number of instances involving criminal negligence, the idea of a "higher degree of negligence" has been established as a precedent. Among the examples that we have looked at are Dr. Nameeta Agarwal against the State of Uttar Pradesh and Dr. Ashok Ladha versus the State of Madhya Pradesh. In all of these cases, the court found that "gross" negligence was not present based on the circumstances of the case.

When a complaint is brought against a physician under Section 304A of the IPC, the court specifies specific requirements that must be followed. These standards were established in the Jacob Mathew case. The following is a list of these requirements:

Suppose the complainant does not submit initial evidence to the court in the form of a credible opinion from another competent doctor to support the claim of recklessness or negligence by the accused doctor. In that case, the court will not take into consideration the private complaint.

The investigating officer should seek an impartial and trustworthy medical opinion before taking any action against the physician who is being accused of committing a reckless or negligent act or omission. The best option would be to get this opinion from a government-employed physician who specializes in the relevant area of medicine wherever possible. Through the use of Bolam's test, this physician ought to be able to evaluate the data that were acquired throughout the inquiry objectively.

It is not possible to seize a doctor regularly just on the basis of the charge that has been made against them unless it is determined that the arrest of a doctor who is suspected of recklessness or negligence is important for the progression of the investigation or the collecting of evidence.

The types of proof

In the ***"Syad Akbar v. State of Karnataka,"*** it was said:
"*...there is a marked difference as to the effect of evidence, namely, the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient. Still, in criminal proceedings…… the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based on an error of judgment...*"

Difference in professional opinion

P.B. Desai, who was a cancer patient who was in the latter stages of the illness and had little prospect of recovery, filed a lawsuit against the state of Maharashtra. In this case, there was a divergence in the strategy that the doctor in charge of the patient's treatment took. At the same time as the doctors in the United States of America suggested taking a cautious approach, the physician in India, with the patient's consent, decided to take a more active approach by doing an exploratory laparotomy. In response to the unsatisfactory outcome of the surgery, a criminal case was filed against the physician; nevertheless, the lawsuit was ultimately dropped.
The court observed that. "*54…. The two experts in the medical field may differ in their decision to undertake the surgical operation. But for the sake of life, which, anyway, was struggling to live is the respect to doctors in their position to operate the patient or not…. the appellant took the bold decision, namely, that surgical operation was worth taking a risk, as even otherwise, the condition of the patient was deplorable. The appellant has even given his justification and rationale for adopting this course of action...*"

The impact of the new Penal Code in India, the Bharatiya Nyaya Sanhita (BNS), 2023.

The BNS, 2023, represents a pivotal transformation in India's legal landscape, fundamentally altering the framework of the IPC of 1860. Among the significant changes is Section 106(1) of the BNS, which directly addresses acts of negligence causing death, including those by medical practitioners. This section's implications for the judicial treatment of medical negligence are profound, potentially nullifying established legal precedents such as the Supreme Court's ruling in the Jacob Mathew

case, which required gross negligence for penal action against doctors. This essay will elaborate on the implications of Section 106(1) of the BNS, the shift from the term "gross negligence," and the broader impacts on the medical profession and judicial system.

Section 106(1) of the BNS states: *"Whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing a medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine."* This provision introduces a dual-tier punishment system: a general maximum imprisonment term of five years for any rash or negligent act causing death and a reduced maximum term of two years specifically for medical practitioners performing a medical procedure. The distinction in punishment reflects an understanding of the unique pressures and risks inherent in medical practice, but it also raises questions about the standard of negligence applicable to doctors.[13]

The BNS notably omits the term "gross" when referring to negligence by medical practitioners. This omission contrasts sharply with the precedent set by the Supreme Court in the Jacob Mathew case, where the Court inserted the requirement of "gross negligence" into Section 304A of the IPC when dealing with medical negligence. The Court held that for a medical professional to be held criminally liable under Section 304A, the negligence must be "gross" or of a very high degree. The Jacob Mathew ruling aimed to protect medical professionals from criminal liability for simple mistakes or errors in judgment that are a part of medical practice. By requiring gross negligence, the Court ensured that only acts of extreme carelessness or recklessness, significantly deviating from the standard of care, would attract criminal penalties.[14]

In contrast, the BNS's formulation of Section 106(1) does not distinguish between degrees of negligence. It simply mentions "any rash or negligent act not amounting to culpable homicide," thereby broadening the scope of what constitutes penalizable negligence. This broader definition could subject medical practitioners to criminal liability for a wider range of negligent acts, potentially including those that would have been deemed insufficiently serious under the "gross negligence" standard.

The implications for the medical profession are significant. Medical practitioners may face greater legal vulnerability under the BNS. The absence of the "gross negligence" qualifier means that even less severe acts of negligence could result in criminal charges. This could lead to an increase in prosecutions against doctors, fostering a climate of fear and defensiveness in medical practice. The risk of criminal liability for a broader range of negligent acts may encourage defensive medicine, where doctors take excessive precautions to avoid legal repercussions. While this might reduce instances of negligence, it could also lead to unnecessary tests and procedures, increasing healthcare costs and potentially causing harm to patients through over-treatment.

The potential for legal consequences might deter doctors from making necessary but risky decisions that could benefit patients. Medical practice often involves making difficult choices under uncertain conditions, and the fear of legal action could impair a doctor's ability to exercise professional judgment. The trust between doctors and patients could be eroded if patients perceive doctors as being overly cautious or if doctors become less open and communicative due to legal concerns. The therapeutic relationship, crucial for effective medical care, could suffer as a result.

The judicial and legal implications are also considerable. The BNS's clear statutory language regarding negligence could lead to more consistent judicial decisions. The explicit provisions might reduce the reliance on judicial interpretation, providing clearer guidelines for both prosecutors and defense attorneys. However, with a potentially broader scope for criminal negligence cases, the judiciary might experience an increase in medical negligence trials. This could strain judicial resources, necessitating more specialized knowledge and perhaps the creation of dedicated judicial mechanisms to handle such cases efficiently.

Legal practitioners and courts will need to reevaluate precedents like the Jacob Mathew case in light of the BNS. The new code effectively overrides the "gross negligence" requirement set by the Supreme Court, which will necessitate a shift in legal arguments and judicial reasoning. While the BNS aims to ensure accountability, it must balance this with the realities of medical practice. The reduced maximum sentence for medical practitioners acknowledges the complexities and inherent risks of the profession. However, without a "gross negligence" standard, the code may inadvertently penalize doctors for lower degrees of negligence, which could be counterproductive.[15]

To mitigate this, it may be necessary to develop detailed guidelines and standards for what constitutes "negligent" versus "grossly negligent" behavior in medical practice. Professional medical bodies and legal experts could collaborate to create frameworks that protect patients while also providing fair protection to medical professionals. The introduction of Section 106(1) of the Bharatiya Nyaya Sanhita, 2023, signifies a major shift in the legal treatment of medical negligence in India. By omitting the "gross negligence" requirement, the BNS broadens the scope of criminal liability for medical practitioners. This change reflects a commitment to accountability but also poses significant challenges for the medical profession. Balancing the need for patient protection with the realities of medical practice will be crucial in the implementation of this new legal framework. As the judiciary and medical community adapt to these changes, ongoing dialogue and adjustment will be essential to ensure that the BNS achieves its goals without unintended negative consequences.[16]

CONCLUSION

The introduction of the BNS 2023 represents a pivotal moment in the evolution of medical negligence law in India. This new legal framework aims to standardize judicial decisions regarding medical negligence, shifting the landscape significantly from the precedents set by the landmark Jacob Mathew case. As we have seen, the Jacob Mathew case established the necessity of proving "gross negligence" for criminal liability, protecting medical practitioners from the consequences of simple errors or judgments made in the complex, high-stakes environment of medical practice. However, the BNS's omission of this "gross negligence" qualifier broadens the scope of criminal liability, potentially increasing the legal vulnerability of medical professionals.

The broadening of criminal liability under Section 106(1) of the BNS could lead to a rise in defensive medicine, where doctors order additional, often unnecessary, tests and procedures to safeguard themselves from potential litigation. While this might reduce instances of negligence, it could also escalate healthcare costs and expose patients to

the risks of over-treatment. Furthermore, the fear of legal repercussions might deter doctors from making bold, necessary decisions that could benefit patients, undermining the professional judgment critical to effective medical care.

This shift could also erode the trust between doctors and patients. If doctors become overly cautious or less communicative due to fear of litigation, the therapeutic relationship—an essential component of effective medical care—could suffer. Patients might perceive their doctors as more concerned with legal protection than with providing the best possible care, potentially diminishing the quality of the doctor-patient relationship.

The BNS's clear statutory language could lead to more consistent judicial decisions, reducing the reliance on judicial interpretation that previously characterized medical negligence cases. However, this clarity comes at the cost of potentially increasing the volume of medical negligence trials, which could strain judicial resources. To handle this effectively, there may be a need for specialized judicial mechanisms or training for judges and legal practitioners in the nuances of medical practice and negligence.

Legal practitioners will need to reassess precedents such as the Jacob Mathew case, as the BNS effectively overrides the "gross negligence" requirement established by the Supreme Court. This shift necessitates a reevaluation of legal arguments and judicial reasoning, balancing the need for accountability with the practical realities faced by medical professionals.

The implementation of the BNS requires a nuanced approach to ensure that it protects patients without unduly penalizing medical practitioners for honest mistakes. This balance can be achieved through the development of detailed guidelines and standards that distinguish between "negligent" and "grossly negligent" behavior in medical practice. Collaboration between professional medical bodies and legal experts will be crucial in creating frameworks that uphold patient safety while providing fair protection to doctors.

Moreover, the medical community and judiciary must engage in continuous dialogue to adapt to these changes. This dialogue should aim to mitigate unintended consequences, ensuring that the BNS achieves its intended goals of enhancing accountability and improving healthcare quality without fostering an environment of fear among medical practitioners.

The BNS's introduction also highlights the need to address systemic issues within the Indian healthcare system, such as overcrowded hospitals, long waiting times, and insufficient communication between healthcare providers and patients. These issues often contribute to the violence against medical professionals and the dissatisfaction that fuels litigation. Improving healthcare infrastructure, enhancing communication and empathy in patient care, and fostering a culture of mutual respect and understanding between patients and healthcare providers are essential steps in creating a supportive environment for both patients and medical practitioners.

As India adapts to the new legal framework established by the BNS, it is imperative to monitor its impact on medical practice and patient care continuously. This monitoring will help identify any adverse effects early and allow for timely adjustments. The goal should be to create a healthcare system that upholds high standards of care, protects patient rights, and supports medical practitioners in their crucial role of providing healthcare.

The Bharatiya Nyaya Sanhita, 2023, represents a significant shift in the legal treatment of medical negligence in India. By broadening the scope of criminal liability, it

underscores the importance of accountability in healthcare while also posing challenges for medical practitioners. Balancing these elements through detailed guidelines, continuous dialogue, and addressing systemic issues will be crucial to ensuring that the BNS enhances patient safety and healthcare quality without unintended negative consequences. As the medical and legal communities navigate these changes, their collaborative efforts will be essential in fostering a healthcare environment that respects and protects both patients and healthcare providers.

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