

# Liability Perspectives on Medical Negligence in India

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## INTRODUCTION

When a building collapses, the civil engineer isn't questioned. When a student does not pass an exam, it is the failure of the student and not the teacher. Politicians, who decide the fate of millions, are generously given a second chance, and a third and a fourth. But why is it expected of the doctors to never make a mistake? In this article, we will be discussing the little known but significant relationship between the disciplines of medicine and law.

### The Case of Archana Sharma

As recent as 29.03.2022, Dr. Archana Sharma of the Dausa district of Rajasthan had committed suicide after writing a note that read, "My death may prove my innocence. DON'T HARASS INNOCENT DOCTORS. Please."<sup>1</sup> She had committed suicide due to an FIR that was filed against her under Section 302 of the Indian Penal Code relating to murder. The FIR was filed in relation to the death of a patient of Dr. Archana Sharma who was a pregnant woman. The patient had passed away owing to Postpartum hemorrhage (PPH, a known common complication<sup>2</sup>) at the doctor's hospital.

The issue of the suicide of Dr. Archana Sharma was brought up in the parliament by three Lok Sabha. One of them was Shri. D. N. V. Senthilkumar of the Dravida Munnetra Kazhagam. The parliamentarian is an MBBS graduate. He had stated that such incidents could disturb the doctor-patient ratio in the country. He also added that there was "a need to distinguish between medical negligence and medical complications".<sup>3</sup>

Thus, it is patent that an inter-disciplinary approach to law and medicine is pressing, especially at the contemporary times. It is extremely essential for all lawyers, doctors and citizens to know the legal provisions relating to the field of medicine which will be further discussed.

### Legal provisions relating to medicine

Though the legal aspect to the practice of medicine is not often spoken about, there exists multiple areas where both disciplines intersect each other. The legal provisions available in India with regards to medicine are discussed below.

<sup>1</sup>INDIA TODAY, <https://www.indiatoday.in/india/story/booked-murder-rajasthan-doctor-dies-suicide-leaves-note-stop-harassing-doctors-1931681-2022-03-31> (last visited May 14, 2022).

<sup>2</sup>NATIONAL LIBRARY OF MEDICINE, <https://www.ncbi.nlm.nih.gov/books/NBK499988/> (last visited May 14, 2022).

<sup>3</sup>HINDUSTAN TIMES, <https://www.hindustantimes.com/cities/jaipur-news/rajasthan-doctor-s-suicide-bjp-leader-among-two-arrested-101648716297410.html> (last visited May 14, 2022).

Section 336 of the Indian Penal Code states that,

*“336. Act endangering life or personal safety of others.—Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.”<sup>4</sup>*

This includes individuals who imperil human life and safety but ultimately do not cause hurt.

Section 337 of the aforementioned code focuses on individuals who cause hurt. It states the following.

*“337. Causing hurt by act endangering life or personal safety of others.—Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.”<sup>5</sup>*

Section 338 of the said code, deals with those who cause grievous hurt. It reads as follows.

*“338. Causing grievous hurt by act endangering life or personal safety of others.—Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.”<sup>6</sup>*

Section 304 A of the Indian Penal Code deals with instances where the individual causes death. It is stated below.

*“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 fine, or with both.”<sup>7</sup>*

Sections 269-271, 274-276, 287, 312-314, 315-316 and 318 of the Indian Penal Code also deal with circumstances wherein a doctor could be legally prosecuted but it is vital to highlight that only excessive negligence attracts criminal culpability.<sup>8</sup>

Moreover, several statutes have been enforced to regulate the duties of medical practitioners and aid them in performing their obligations without any fear.

The Medical Termination of Pregnancy (MTP) Act, 1971 provides for the termination of certain pregnancies by registered medical practitioners, as well as matters related to or incidental to such terminations.<sup>9</sup> The Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act was passed on

<sup>4</sup>Indian Penal Code, 1860, §336, No.45, Acts of Parliament, 1860 (India).

<sup>5</sup>Indian Penal Code, 1860, §337, No.45, Acts of Parliament, 1860 (India).

<sup>6</sup>Indian Penal Code, 1860, §338, No.45, Acts of Parliament, 1860 (India).

<sup>7</sup>Indian Penal Code, 1860, §304, No.45, Acts of Parliament, 1860 (India).

<sup>8</sup>YOUTUBE, <https://www.youtube.com/watch?v=S-Ew27gvunA> (last visited May 14, 2022).

<sup>9</sup>MINISTRY OF HEALTH & FAMILY WELFARE, [https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-](https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act1971#:~:text=The%20Medical%20Termination%20of%20Pregnancy%20Act%2C%201971&text=An%20Act%20to%20p)

[act1971#:~:text=The%20Medical%20Termination%20of%20Pregnancy%20Act%2C%201971&text=An%20Act%20to%20p](https://main.mohfw.gov.in/acts-rules-and-standards-health-sector/acts/mtp-act1971#:~:text=The%20Medical%20Termination%20of%20Pregnancy%20Act%2C%201971&text=An%20Act%20to%20p) provide%20for,connected%20therewith%20or%20incidental%20thereto (last visited May 14, 2022).

September 20, 1994, with the goal of prohibiting prenatal diagnostic techniques for determining the fetus's gender, which could lead to female feticide.<sup>10</sup> The transplantation of human organs and tissues act, 1994 was necessary to regulate the removal, storage, and transplantation of human organs or tissues, or both, for medicinal purposes, as well as to prohibit commercial deals in human organs or tissues, or both.<sup>11</sup>

### Case laws

Though medical law is not a dominant area of law, it is common knowledge that the Hon'ble Courts deal with several cases that deal with medical professionals and their practice. Some of them are elucidated in this section.

In the case of *Jacob Mathew vs State of Punjab*<sup>12</sup>, the son of Jiwan Lal, a cancer patient of the CMC Hospital in Ludhiana filed charges against the doctor who had displayed disinterest in treating the patient. The charges were filed after Jiwan Lal passed away in the hospital due to unavailability of oxygen.<sup>13</sup> When the Hon'ble Apex Court dealt with the case on appeal, the following guidelines for the prosecution of medical professionals were enumerated.

*“A private complaint may not be entertained unless the complainant has produced prima facie evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in Government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion in regard to the facts collected in the investigation. A doctor accused of rashness or negligence may not be arrested in a routine manner simply because a charge has been leveled against him unless his arrest is necessary for furthering the investigation or for collecting evidence or unless the investigation officer feels satisfied that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld”<sup>14</sup>*

The Hon'ble bench justified the aforementioned criteria by stating that the investigating officer and the private complainant will not always have understanding of medical science and that rash complaints will occur. This may lead to dire consequences for the professionals and their reputation may be destroyed beyond a point of resurrection.

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<sup>10</sup>NATIONAL LIBRARY OF MEDICINE, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3498638/> (last visited May 14, 2022).

<sup>11</sup>The transplantation of human organs and tissues act, 1994, §1, No.42, Acts of Parliament, 1994 (India).

<sup>12</sup>Jacob Mathew v. State of Punjab, (AIR2005SC3180).

<sup>13</sup>LAWLEX, <https://lawlex.org/lex-bulletin/case-summary-jacob-mathew-vs-state-of-punjab/24430> (last visited May 14, 2022).

<sup>14</sup> NATIONAL LIBRARY OF MEDICINE, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3579074/> (last visited May 14, 2022).

In the case of *Prabhat Kumar Singh vs State of Bihar and Ors.*<sup>15</sup>, the complainant filed a medical negligence complaint under sections 304, 316/34 of the Indian Penal Code, 1860<sup>16</sup> and the Hon'ble Supreme Court held that “*In a case of medical negligence, the mens rea as the intent is not required.*”

However, it shall not be mistaken that the Indian judiciary turns a blind eye to the gross negligence committed by medical professionals. In the case of *Dr. Kunal Saha vs Dr. Sukumar Mukherjee and Ors.*<sup>17</sup>, the Hon'ble Supreme Court held “the respondent-medical professionals are guilty of gross negligence that led to the death of the appellant's spouse”.<sup>18</sup>

Moreover, the aforementioned case cited the Hon'ble Apex Court's earlier judgment in *Martin F. D' Souza vs Mohd. Ishfaq*<sup>19</sup>. In this case, the following precautions were enlisted to be taken by doctors and hospitals.

- a. *Current practices, infrastructure, paramedical and other staff, hygiene and sterility should be observed strictly.*
- b. *No prescription should ordinarily be given without actual examination. The tendency to give prescription over the telephone, except in an acute emergency, should be avoided.*
- c. *A doctor should not merely go by the version of the patient regarding his symptoms, but should also make his own analysis including tests and investigations where necessary.*
- d. *A doctor should not experiment unless necessary and even then he should ordinarily get a written consent from the patient.*
- e. *An expert should be consulted in case of any doubt.*<sup>20</sup>

## Conclusion

It is indisputable that medical malpractice is a huge human concern that affects families from all walks of life.<sup>21</sup> This article strives to shed light on the lesser known plight of the medical professionals who despite being on the just side of things, have been exploited for various causes. It is irrefutable that the world needs doctors, not to cure the incurable but to save those that can be cured. When the curable are not cured owing to negligence, it is essential to prosecute the medical professionals. However, it is pertinent to note how it is equally essential for the law to protect the doctors from unjustified aggression.

<sup>15</sup>Prabhat Kumar Singh v. State of Bihar and Ors (REFERENCE: SLP(CrI) 2395-2306 of 2021).

<sup>16</sup>LAWYERS CLUB INDIA, <https://www.lawyersclubindia.com/judiciary/prabhat-kumar-singh-vs-state-of-bihar-2021-mens-rea-as-intent-not-required-in-medical-negligence-5411.asp> (last visited May 14, 2022).

<sup>17</sup>Dr. Kunal Saha v. Dr. Sukumar Mukherjee and Ors., ((2009) 9 SCC 221).

<sup>18</sup>INDIAN KANOON, <https://indiankanoon.org/doc/22051430/> (last visited May 14, 2022).

<sup>19</sup>Martin F. D' Souza v. Mohd. Ishfaq, (AIR 2009 SC 2049).

<sup>20</sup>INDIAN KANOON, <https://indiankanoon.org/doc/1092676/> (last visited May 14, 2022).

<sup>21</sup>RESEARCH GATE,

[https://www.researchgate.net/publication/282778586\\_The\\_Kunal\\_Saha\\_Case\\_Accountability\\_Of\\_Medical\\_Practitioners\\_And\\_Medical\\_Institutions\\_In\\_India](https://www.researchgate.net/publication/282778586_The_Kunal_Saha_Case_Accountability_Of_Medical_Practitioners_And_Medical_Institutions_In_India) (last visited May 14, 2022).