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CRIMINALISATION OF MEDICAL ERRORS: A DEBATE BETWEEN ETHICS AND PENAL LAW

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ABSTRACT

The criminalisation of medical errors has surfaced as one of the most debated topics in modern medical jurisprudence. While the fundamental purpose of criminal law is to penalise socially harmful actions carried out with culpable mental states, the primary goal of medical practice is to safeguard life through ethical, skilled, and compassionate care. The convergence of these two areas ethical medical responsibilities and penal consequences which raises the intricate issues regarding negligence, professional autonomy, patient safety, and the chilling effect on clinical decision-making. In India, this matter has gained increased significance in light of judicial trends that fluctuate between imposing criminal liability on negligent practitioners and acknowledging the necessity to shield them from baseless prosecution. This article thoroughly investigates the conceptual, ethical, and legal aspects of criminalising medical errors, reviews landmark case law, contrasts global approaches, and assesses whether criminal penalties genuinely improve accountability or simply erode medical ethics and the practice of medicine. The study concludes with a well-rounded policy perspective aimed at reconciling patient rights, professional protection, and societal expectations.

Key Words: Medical errors, Negligence, Criminal penalties, Accountability.

A. Introduction

The criminalization of medical errors is one of the most debated issues in modern medical law. As healthcare systems globally become more intricate, public demands for safety and accountability have grown stronger. Adverse outcomes in medical treatment often unavoidable despite reasonable care are increasingly interpreted as claims of criminal negligence. In India, the practice of filing First Information Reports (FIRs) under **Section 304A of the Indian Penal Code ("IPC") / Section-106(1) of Bharatiya Nyaya Sanhita (BNS)** has become prevalent whenever a patient dies during treatment, irrespective of the presence of gross negligence evidence. This trend prompts significant inquiries regarding the appropriate limits between criminal law, medical ethics, and civil liability.

Criminal law seeks to penalize actions that society considers blameworthy and hazardous, necessitating some degree of culpability such as intention, knowledge, or recklessness. Conversely, medical practice is governed by ethical principles beneficence, non-maleficence, autonomy, and justice that assume uncertainty, human fallibility, and complex risk-benefit assessments. Therefore, the fundamental conflict arises from the disparity between the punitive essence of criminal law and the ethically informed yet inherently uncertain nature of clinical decision-making.

Although Indian courts especially the Supreme Court in **Jacob Mathew v. State of Punjab** have sought to protect doctors from baseless criminal charges, the reality is that medical

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professionals frequently encounter arrest, custodial questioning, and lengthy trials, even in instances involving simple errors of judgment.[1269] In contrast, jurisdictions like the United Kingdom, United States, Canada, and Australia restrict criminal liability for medical negligence to severe cases that involve gross deviations from standard care, reckless disregard for patient safety, or actions that verge on criminal recklessness.

This article provides a critical analysis of the ethical, legal, and policy issues associated with the criminalization of medical errors. It explores the interpretation of the doctrine of criminal negligence within medical settings, assesses judicial trends, reviews international perspectives, and suggests reforms aimed at balancing patient rights with the safeguarding of the medical profession.

B. Conceptual Framework: Understanding Medical Errors and Criminal Liability

Any substantial discourse regarding criminalization should commence with a clear differentiation between medical error, civil negligence, and criminal negligence. Although non-experts frequently perceive these notions as interchangeable, the distinctions hold considerable doctrinal importance.

1. Medical Error

A medical error is defined as an unintended action, omission, or deviation from established practices that may or may not lead to harm. Medical errors encompass misdiagnosis, medication mistakes, procedural errors, communication failures, and systemic issues. Crucially, not every mistake equates to negligence. The Institute of Medicine famously remarked that "to err is human," highlighting that in intricate systems, even skilled professionals can inadvertently commit errors. From an ethical standpoint, errors necessitate transparency, disclosure, and institutional learning. However, the threat of criminal prosecution compels physicians to hide mistakes, fearing that truthful reporting might be used against them. This conflict is central to the ongoing discussion about medical safety.

2. Civil Negligence

Civil negligence occurs when a physician fails to uphold the duty of care owed to a patient, leading to injury. The benchmark used is that of a "reasonable, competent medical professional" in comparable situations.[1270] The main aim of civil liability is to provide compensation rather than punishment. In the case of **Indian Medical Association v. V.P. Shantha**, the Supreme Court acknowledged healthcare as a "service" under the Consumer Protection Act, thus offering a civil remedy.[1271]

Civil negligence takes into account human error and does not necessitate evidence of a guilty mental state. It emphasizes whether suitable care was delivered, rather than focusing on criminal culpability.

3. Criminal Negligence

Criminal negligence necessitates a considerably elevated standard gross negligence or a reckless disregard for human life.[1272] According to IPC Section- 304A, the prosecution is required to prove that the physician acted with such a lack of regard for safety that it constituted a crime against society.

The Supreme Court, through a succession of rulings, has underscored:

- A mere mis-judgment does not equate to criminal negligence;[1273]
- Basic negligence is inadequate;
- Criminality emerges only when the behaviour is so egregious that it surpasses civil wrongdoing.

In the case of **Suresh Gupta v. Govt. of NCT of Delhi**, the Court determined that a death resulting from an unintentional surgical mistake, even if negligent, does not inherently qualify as

[1269] Jacob Mathew v. State of Punjab, (2005) 6 S.C.C. 1 (India)

[1270] Laxman Balkrishna Joshi v. Trimbak Bapu Godbole, A.I.R. 1969 S.C. 128 (India) (laying down the "reasonable doctor" standard).
[1271] Indian Medical Ass'n v. V.P. Shantha, (1995) 6 S.C.C. 651 (India).
[1272] Kurban Hussein Mohamedali Rangawalla v. State of Maharashtra, A.I.R. 1965 S.C. 1616 (India).
[1273] Dr. S.K. Jhunjhunwala v. State of NCT of Delhi, (2019) 8 S.C.C. 501 (India) (reaffirming that mere error of judgment is not criminal).

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criminal negligence unless the negligence is "gross or of a very high degree."[1274]

C. Ethical Dimensions of Criminalising Medical Errors

Medical ethics is based on a distinct philosophical framework compared to penal law. The enforcement of criminal liability for medical mistakes threatens to undermine the ethical principles that are essential to the practice of medicine.

1. The Duty of Non-Maleficence and the Unavoidable Risk of Harm

The principle of "Do no harm" represents a fundamental ethical duty. Nevertheless, it is important to recognize that harm cannot always be completely avoided in the realm of medical care. Intricate surgeries, high-risk therapies, and urgent interventions naturally carry the risk of complications.

By insisting on nearly flawless results, criminal law fosters the misconception that all harm can be averted, which stands in stark contrast to the truths of medical science. This discrepancy places healthcare professionals in a challenging predicament required to uphold ethical standards while being apprehensive about legal repercussions for complications that are beyond their control.

2. Chilling Effect on Clinical Judgment

The apprehension of facing criminal charges compels physicians to engage in defensive medicine, a trend that has been extensively recorded across various jurisdictions globally.

Physicians may:

- refrain from undertaking high-risk procedures,
- decline to treat critical patients,
- conduct unnecessary tests,
- unjustifiably transfer responsibilities,
- place legal safety above medical judgment.

This situation raises ethical concerns as a defensive atmosphere diverts the physician's attention from prioritizing the patient's welfare to focusing on self-preservation. In India, there have been documented cases of anaesthesiologist turning down emergency situations without prior CT scans or specialists avoiding high-risk patients due to the fear of legal repercussions.

3. Impact on Error Reporting and Patient Safety

A functional healthcare system relies on the processes of error reporting, analysis, and institutional learning. The act of criminalisation undermines these processes by encouraging concealment. Ethical standards necessitate transparency, whereas criminal law fosters incentives for silence.

Countries that experience lower levels of criminalisation like the UK and Australia have cultivated strong patient-safety cultures that emphasize transparency and learning. In contrast, India frequently witnesses the concealment of adverse events, which is partly attributed to the fear of legal consequences.

4. The Ethical Conflict Between Transparency and Self-Preservation

Medical ethics requires that healthcare professionals maintain honesty with their patients, disclose any adverse events, and accept accountability for their errors. Nevertheless, when these admissions may serve as evidence of criminal liability, physicians find themselves in a moral quandary: Should they adhere to their ethical responsibilities or safeguard their legal interests?

This conflict undermines trust, promotes secrecy, and obstructs systemic advancements.

5. Erosion of the Patient–Doctor Relationship

Practices based on fear undermine the therapeutic alliance that should be established on trust. When physicians fear criminal prosecution for genuine mistakes, their communication becomes defensive, documentation becomes overly legalistic, and

[1274] Dr. Suresh Gupta v. Gov't of NCT of Delhi, (2004) 6 S.C.C. 422 (India).

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the relational component of care is weakened. Patients may also start to perceive physicians not as caregivers but rather as potential defendants. This leads to a reciprocal distrust that negatively impacts the delivery of healthcare.

D. Judicial Position in India

India's judiciary has significantly influenced the parameters of criminal liability for medical practitioners. In contrast to jurisdictions that have legislative frameworks clearly differentiating between civil and criminal medical negligence, Indian courts have primarily formulated the doctrine through case law. The Supreme Court, acknowledging the risk of misuse of criminal provisions, has consistently sought to maintain a balance between the rights of patients and the necessity of safeguarding doctors from undue harassment.

1. The Threshold of "Gross Negligence" in *Jacob Mathew*

The pivotal moment in Indian legal history is marked by the significant case of Jacob Mathew v. State of Punjab.[1275] The Court clearly stated that medical practitioners can only be held criminally accountable when their negligence is deemed "gross" or shows a "reckless disregard for human life." The Court further observed that a mere error in judgment, no matter how regrettable, does not constitute a criminal act.

Importantly, the Court required that prior to initiating prosecution against a physician, an independent and qualified medical opinion must be secured to ascertain whether gross negligence is likely. This measure was designed to avert baseless FIRs and arrests, which were becoming more frequent.

The ruling underscored that criminal proceedings should not "run amok" in situations involving medical professionals, as such actions would obstruct the provision of healthcare services and create apprehension among doctors.

2. Reinforcement in *Martin D'Souza v. Mohd. Ishfaq*

In the case of Martin D'Souza v. Mohd. Ishfaq, the Supreme Court emphasized that criminal charges should not be filed solely due to the failure of a treatment.[1276] Furthermore, it reiterated the necessity of obtaining expert medical opinion prior to taking action against a physician.

While this instruction was subsequently clarified as not obligatory for civil matters under the Consumer Protection Act, it continues to hold authoritative status in the context of criminal prosecutions.[1277]

3. The Standard of a Reasonably Competent Professional

Indian courts place significant reliance on the Bolam Test, originally established in the English case Bolam v. Friern Hospital Management Committee. This test asserts that a physician is not considered negligent if they have acted in accordance with a practice deemed acceptable by a responsible group of medical professionals.[1278]

The Supreme Court, in the case of **Kusum Sharma v. Batra Hospital**, reiterated this principle, emphasizing that courts should refrain from replacing the judgment of medical experts with their own and must exercise caution in criminal cases related to medical negligence.[1279]

4. Post-*Jacob Mathew* Developments: Persistent Problems

Despite the presence of robust judicial guidelines, lower courts and law enforcement agencies frequently continue to:

- register FIRs without the input of experts,
- prematurely arrest medical practitioners,

[1275] Jacob Mathew v. State of Punjab, (2005) 6 S.C.C. 1 (India).

[1276] Martin D'Souza v. Mohd. Ishfaq, (2009) 3 S.C.C. 1 (India).
[1277] V. Kishan Rao v. Nikhil Super Speciality Hospital, (2010) 5 S.C.C. 513 (India).
[1278] Bolam v. Friern Hospital Mgmt. Comm., (1957) 1 W.L.R. 582 (U.K.).
[1279] Kusum Sharma v. Batra Hosp., (2010) 3 S.C.C. 480 (India).

- treat medical errors as if they are automatically criminal acts.

In the case of **Dr. S.K. Jhunjhunwala v. State of NCT of Delhi,** the Supreme Court once more expressed concern that physicians were being unjustly involved in criminal proceedings for standard complications or risks associated with medical procedures.[1280] The Court dismissed the criminal case, asserting that even negligence does not suffice unless it escalates to gross negligence.

The ongoing nature of these problems highlights a disconnect between judicial declarations and actual enforcement practices, thus underscoring the necessity for more robust procedural protections.

E. Arguments Supporting and Against Criminalisation of Medical Errors

While medical organizations frequently resist the criminalization of mistakes, there exist strong arguments supporting it mainly based on public safety, deterrence, and accountability. Notwithstanding these justifications, considerable academic research and professional organizations, such as the Medical Council of India and the Indian Medical Association, have persistently cautioned against the over-criminalization of healthcare practitioners.

- Criminal law plays a crucial role in deterring and penalizing reckless or grossly negligent behaviour. When medical professionals to perform procedures while under the influence, neglect patients during surgical operations, carry out unlawful abortions, execute tasks beyond their expertise, criminal prosecution serves as a significant tool for ensuring accountability. A notable example is the case of **Dr. Harish Kumar Khurana v. Joginder Singh,** where the Court noted that criminal liability would be established if the actions are so reckless or negligent that they jeopardize a patient's life beyond acceptable thresholds.[1281]
- Advocates contend that the imposition of criminal penalties encourages safer practices. The underlying theory suggests that the fear of punishment serves to deter gross negligence, thus enhancing the overall standards of care. From the standpoint of patient rights, a solely civil law framework may prove insufficient, especially in situations where the families lack the financial means for protracted civil litigation, compensation does not adequately reflect the gravity of the misconduct, there is widespread public indignation following severe medical errors. In this context, criminal law is viewed as essential to emphasize the seriousness of the violation and to uphold societal expectations.
- A key point is the intrinsic unpredictability of medical results. Human biology exhibits significant variability, and even routine treatments involve risks. Complications can occur in surgeries, anaesthesia, obstetrics, and emergency care, even when proper protocols are followed. Making adverse outcomes a criminal offense sets unrealistic standards of perfection. As noted by the Supreme Court in Jacob Mathew, the profession requires "skill and judgment" but does not assure success.[1282]
- The apprehension of facing criminal charges may lead physicians to adopt defensive medical practices, where their choices are influenced more by legal concerns than by the well-being of their patients. Instances of this behaviour include: excessive diagnostic procedures (such as CT scans, MRIs, and angiographies), unwarranted referrals, reluctance to take on high-risk patients,

[1280] Dr. S.K. Jhunjhunwala v. State of NCT of Delhi, (2019) 8 S.C.C. 501 (India).

[1281] Dr. Harish Kumar Khurana v. Joginder Singh, (2021) 10 S.C.C. 291 (India)

[1282] Jacob Mathew, (2005) 6 S.C.C. at 21

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favouring safer yet medically substandard treatment alternatives, and evasion of emergency or trauma care.

- A research study published in JAMA indicated that more than 90% of high-risk specialists in the United States participated in defensive medicine practices due to the fear of legal action.[1283] A similar pattern is beginning to surface in India, where physicians are shying away from intricate surgeries or urgent interventions, thereby compromising patient access to necessary care.
- The majority of police officers do not receive adequate training in medical science. Consequently: FIRs are frequently submitted in a mechanical manner, non-experts analyse medical records, procedural arrests take place too early, and intricate medical issues are regarded as straightforward criminal offenses. This disparity between the complexity of medical cases and the simplistic nature of investigative procedures results in unjust prosecutions, as highlighted by Kusum Sharma and Jhunjhunwala.

F. Comparative and Global Approaches to Criminalisation of Medical Errors

A comparative examination of international legal systems indicates a widespread hesitance to apply criminal law in situations involving medical errors, unless there are cases of severe recklessness or intentional wrongdoing. These legal frameworks emphasize patient safety, professional accountability, and civil restitution rather than criminal sanctions.

1. United Kingdom

In the United Kingdom, while medical professionals can theoretically face prosecution for gross negligence manslaughter, courts exercise this doctrine with considerable caution. This standard was established in R v. Adomako, where the House of Lords determined that criminal liability is only applicable when negligence is so egregious that it constitutes a crime warranting punishment.[1284]

UK courts underscore:

- the seriousness of the breach,

- the risk of death involved,

- the degree of deviation from standard practice.

Prosecutions are infrequent, and regulatory organizations such as the General Medical Council (GMC) tend to favour disciplinary measures over criminal proceedings. In light of controversies surrounding the prosecution of junior doctors, the UK has progressed further towards a 'just culture', promoting the reporting of errors without the apprehension of criminal repercussions.[1285]

2. United States

The United States predominantly refrains from criminally prosecuting medical negligence. Medical malpractice is mainly regarded as a civil offense, resolved through compensation mechanisms supported by insurance. Criminal liability is only applied in instances where:

- doctors operate while intoxicated,
- knowingly alter medical records,
- conduct procedures that fall outside any recognized standard of care.

In the case of People v. Einaugler, an unusual criminal conviction was upheld due to the doctor's conscious disregard for patient safety.[1286] Nevertheless, such instances remain rare. Academics contend that the US framework promotes innovation, transparency, and patient safety by shielding ordinary medical mistakes from criminal sanctions.[1287]

3. Canada and Australia

Canada and Australia implement a system-oriented strategy regarding medical errors. To establish criminal negligence, there must be

[1283] David M. Studdert et al., Defensive Medicine Among High-Risk Specialists in a Volatile Malpractice Environment, 293 JAMA 2609 (2005).

[1284] R v. Adomako, [1995] 1 A.C. 171 (H.L.) (U.K.)
[1285] Gen. Med. Council, Promoting a Just Culture (2018).
[1286] People v. Einaugler, 618 N.E.2d 377 (N.Y. 1993).
[1287] Michelle M. Mello et al., Medical Malpractice—Myths and Realities, 348 NEW ENG. J. MED. 1951 (2003).

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evidence of a wanton or reckless disregard for life, a standard that is seldom achieved in everyday medical practice.[1288]

- Both nations highlight:
- institutional accountability,
- hospital safety audits,
- mandatory reporting with legal safeguards,
- professional discipline instead of criminal penalties.

Additionally, Australia's Civil Liability Acts impose further limitations on negligence claims, ensuring that criminal law is considered only as a final option.[1289]

4. Lessons for India

The comparative analysis indicates that heightened criminalization does not enhance patient safety. Conversely, regions that promote transparency, learning, and accountability via civil and regulatory frameworks attain superior healthcare results. India's growing dependence on criminal law is at odds with these developments and highlights the necessity for reform.

G. Policy Analysis: Reconciling Ethics and Penal Law

The discussion surrounding the criminalization of medical errors does not revolve around selecting between the rights of patients and the protection of doctors; rather, it focuses on establishing a legal framework that equitably addresses the needs of both parties.

1. Codifying the Distinction Between Error, Negligence, and Gross Negligence:

Indian criminal law does not provide clear statutory guidance regarding medical negligence. As a result, courts depend on judicial interpretation, which frequently does not lead to consistent enforcement.

- A legislative amendment or executive directive could:
- define what constitutes a medical error,
- differentiate between civil negligence and criminal negligence,
- establish the standard for "gross negligence." Implementing these changes would minimize arbitrary prosecutions and offer legal clarity to healthcare professionals.[1290]

2. Mandatory Independent Medical Board Review:

In accordance with Jacob Mathew, it is essential to obtain expert opinion prior to initiating legal action against a physician. Nevertheless, this protective measure is not consistently enforced.

Proposed reforms should include:

- Evaluation by a medical board recognized by the government,
- A written, reasoned opinion,
- A ban on arresting individuals without expert approval, except in exceptional circumstances. These measures are in harmony with the ethical principles of fairness and due process.[1291]

3. Strengthening Civil Compensation Mechanisms

Individuals affected frequently turn to criminal law as a result of delays and shortcomings in civil remedies. The establishment of: expedited medical negligence tribunals, organized compensation frameworks, no-fault compensation systems for specific injuries, would alleviate the impetus to criminalize medical mistakes.[1292]

4. Encouraging Error Disclosure and Whistleblower Protection

Legal protection ought to be provided to physicians who:

- reveal mistakes in good faith,
- collaborate with institutional safety assessments,
- engage in remedial actions.

This form of immunity promotes ethical transparency and encourages learning across

[1288] R v. J.F., [2008] 3 S.C.R. 215 (Can.).
[1289] Civil Liability Act 2002 (N.S.W.) (Austl.).
[1290] Law Comm'n of India, 201st Report on Emergency Medical Care to Victims of Accidents (2006).
[1291] Jacob Mathew v. State of Punjab, (2005) 6 S.C.C. 1, 31 (India).
[1292] World Health Org., No-Fault Compensation Schemes for Medical Injury (2010).

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the system instead of a focus on punitive measures.[1293]

5. Medical Ethics Education and Institutional Accountability

Medical education programs should prioritize:

- ethical decision-making,
- patient communication,
- legal responsibilities.

At the same time, healthcare institutions must be responsible for: understaffing, insufficient equipment, overly long working hours, systemic failures. It is ethically inappropriate and legally unjust to penalize individual physicians while overlooking the negligence of institutions.[1294]

H. Conclusion

The criminalisation of medical errors exists at a challenging crossroads of ethics, law, and public policy. While society rightly demands accountability for conduct that is grossly negligent or reckless, criminal law is not a suitable tool for addressing ordinary medical errors that stem from complexity, uncertainty, and systemic limitations. Indian jurisprudence, especially as established in Jacob Mathew v. State of Punjab, has rightly acknowledged that criminal liability should be limited to instances of gross negligence. Nevertheless, inconsistent enforcement and mechanical prosecutions continue to weaken this principle. The excessive criminalisation of medical errors undermines medical ethics by discouraging transparency, fostering defensive medicine, and damaging the patient–doctor relationship.

Experiences from the UK, US, Canada, and Australia illustrate that improvements in patient safety are achieved not through the fear of punishment but through fostering cultures of learning, disclosure, and accountability. India must progress towards a framework that enhances civil remedies, enforces professional discipline, and reserves criminal law for the most rare and egregious cases.

In conclusion, justice in cases of medical negligence does not lie in turning healers into criminals, but rather in creating a system that acknowledges human fallibility, safeguards patient rights, and maintains the ethical foundations of medicine.

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