



## DECRIMINALISING MEDICAL NEGLIGENCE - GS II MAINS

**Q.** Medical negligence stays a massive challenge in India, with patients regularly dealing with demanding situations in looking for justice and compensation. Does it need to be treated as a criminal offence? Critically analyse (15 marks, 250 words)

**News:** *Decriminalising medical negligence: views from both sides of the bed*

### What's in the news?

- On 7th October this year, Babita Rai, a 42-year-old government school teacher in Jamshedpur, Jharkhand, was admitted to the Tata Motors Hospital in the same city. Because of a 6 cm ovarian cyst she was scheduled for a hysterectomy and an oophorectomy (surgical removal of the uterus and ovaries respectively), two days later. According to her brother Rajesh, Rai felt a swelling on the left side of her stomach after the surgery. Four days later, on 13 October, Rai was dead from septic shock, Rajesh added.

### Key takeaways:

- Family of Babita Rai seeks justice for her death due to alleged medical negligence; Home Minister Amit Shah announces doctors' exemption from criminal prosecution.

### Bharatiya Nyaya (Second) Sanhita (BNSS):

- In the Bharatiya Nyaya (Second) Sanhita (BNSS), (the rulebook set to replace the Indian Penal Code), doctors will now be exempted from “criminal prosecution” in alleged medical negligence cases when a patient dies.
  - However, under other sections of BNSS, doctors will continue to face a two-year imprisonment and/or a fine if convicted.
- The Indian Medical Association (IMA) has long argued that medical negligence should not be considered a crime.

### Medical Negligence:

- The failure to act in accordance with the standards of established medical guidelines at the time.

### Provisions associated with Medical Negligence:

- IPC: Section 304A of the Indian Penal Code (Old) – “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.”



## **IMA Recommendation:**

- BNSS should make a clear distinction between medical “negligence” and medical “accident”.
- “Negligence” would refer to a “reckless”, “conscious and voluntary disregard of the need to use reasonable care” on part of the doctor.
- “Accident” would involve sudden and unexpected deaths of patients under medical care without conscious intention to harm on the part of the doctor.

## **Need for Decriminalisation:**

### **1. Coercion:**

- Criminal prosecution of doctors has become a form of harassment and doctors are mortally afraid of the criminal law.
- IMA reported around 98,000 deaths per year due to medical negligence in contrast with 52 lakh medical negligence cases filed against doctors.

### **2. Crisis of Conscience:**

- The fear of criminal prosecution influences the decision a doctor makes in critical moments, with the doctor choosing safe over necessary.

### **3. Commitment to Duty:**

- Exemption of doctors from criminal prosecution will provide the nation better results in patient care.
- Over 75% of doctors and paramedics face violence as per IMA.

### **4. Unforeseen Complications:**

- Accidents, though unfortunate, can happen even with the best intentions and due diligence.
- Unforeseen complications during surgery, adverse reactions to medication, or equipment malfunction are some examples.

## **Concerns with respect to Decriminalisation Provision:**

### **1. Accountability and Justice:**

- Absence of criminal prosecution for the wrongdoing doctor will impinge on the patient's justice and accountability. Example: Organ Trade etc.

### **2. Informed Consent:**

- Innovative AI based treatments require a deep understanding of the procedure before providing informed consent. This can be enforced through legislation.

### **3. Privacy of the Patient:**

- Having legislation will help improve the framework for ensuring medical privacy.

### **4. Discriminatory:**

- Might lead to an increase in cases of deaths by medical negligence among women, queer, and transgender persons, and those who live in rural areas.

### **5. Unequal Power:**



- Owing to the “power imbalance” in the doctor-patient relationship, an act of negligence on the part of the doctor calls not for a lower punishment but a higher one.

## 6. Misuse:

- Blanket exemption of doctors from criminal prosecution for negligence might lead to an increase in medical malpractice.

## 7. Non-Participatory:

- Patient advocacy groups have not been given the voice they deserve before deciding.

## 8. Faith in Legal System:

- In the absence of a legal recourse for medical negligence, victims may lose faith in the legal system and resort to violent attacks on doctors.

## WAY FORWARD:

### 1. Nationwide Dialogue:

- The IMA plans to engage in discussions with the government and public to advocate for their position.

### 2. Need for Comprehensive Data:

- Critics like Geet suggest conducting a nationwide survey to understand the scope of medical negligence and inform policy decisions.

### 3. Legal Recourse for Patients:

- Ensuring that patients have access to legal recourse and justice is crucial to maintaining trust in the healthcare system and preventing violence against doctors.

Medical negligence stays a massive challenge in India, with patients regularly dealing with demanding situations in looking for justice and compensation. While felony frameworks exist, ensuring effective implementation and elevating attention are critical steps closer to shielding affected person rights and ensuring quality healthcare for all.