

## Civil Medical Negligence or Civil Liability for Criminal Medical Negligence: A Dilemma

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### Abstract

The issue of medical negligence, particularly the distinction between civil and criminal liability, has been a source of confusion in Indian jurisprudence. The absence of a clear legal definition of medical negligence, combined with varying judicial interpretations, has complicated the adjudication of such cases. This paper examines the judicial framework surrounding medical negligence in India, focusing on landmark judgments like *Jacob Mathew* and *Martin D'Souza*. It explores the dilemma posed by the overlapping principles applied to both civil and criminal cases of medical negligence, addressing the confusion stemming from the interpretation of liability. The paper argues that there is no intrinsic distinction between civil and criminal medical negligence, as liability—whether civil or criminal—arises only after the negligence is proven. It also emphasizes the need for judicial clarity and consistency in applying legal standards to medical negligence cases.

**Keywords:** Medical Negligence, Civil Liability, Criminal Liability, Jacob Mathew Case, Martin D'Souza Case, Indian Penal Code, Tort Law, Consumer Protection Act, Judicial Interpretation

## INTRODUCTION

Medical negligence, both civil and criminal, has been a contentious area of law in India, primarily due to the absence of a well-defined legal framework. While general negligence is understood as the failure to exercise reasonable care, the application of this concept to medical practice has created significant legal challenges.

A critical issue is the overlap between civil and criminal liability in medical negligence cases, where courts must determine whether negligence amounts to a civil wrong or criminal offense.

This dilemma is exemplified by landmark judgments such as *Jacob Mathew v. State of Punjab*<sup>1</sup> and *Martin D'Souza v. Mohd. Ishfaq*.<sup>2</sup>

The Supreme Court's judgment in *Jacob Mathew*<sup>1</sup> is often cited in cases involving criminal medical negligence. However, this judgment, which was a criminal appeal, also laid down principles that have been applied in civil cases. The extension of these principles to civil cases, notably in the *Martin D'Souza* case,<sup>2</sup> has led to further confusion.

This research paper seeks to address these legal ambiguities by analyzing the judgments, exploring the lack of distinction between civil and criminal

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medical negligence, and offering recommendations for resolving the dilemma.

### Legal Definitions and Framework

Negligence, in its broadest sense, refers to the failure to exercise the care that a reasonably prudent person would exercise under similar circumstances.<sup>3,4,5</sup>

Medical negligence, a specific subset, occurs when a healthcare professional deviates from the standard of care that a competent professional would provide.<sup>6,7,8</sup>

However, neither the Indian Penal Code,<sup>9</sup> (IPC) nor the Tort Law explicitly defines medical negligence, leading to reliance on judicial interpretation.

The *Jacob Mathew* case highlighted the lack of clarity surrounding medical negligence, particularly criminal negligence. The Court, while dealing with a criminal appeal, adopted the definition from Ratan Lal Dheeraj Lal's commentary on the IPC,<sup>10</sup> emphasizing that for negligence to be criminal, it must be of a "gross" or reckless nature.

This distinction, while relevant for criminal cases, has inadvertently influenced civil cases filed under the Consumer Protection Act (CPA) and Tort Law.<sup>11</sup>

### *Jacob Mathew* Case: Civil or Criminal?

The *Jacob Mathew* case (2005)<sup>12</sup> involved a criminal appeal under Section 304A of the IPC, which deals with causing death by negligence. The Supreme Court quashed the criminal proceedings against the doctor, holding that the negligence in question did not meet the threshold for criminal liability, i.e., it was not "gross negligence."

The Court also laid down guidelines to prevent frivolous complaints against doctors, emphasizing the need for expert medical opinions before proceeding with a case. The *Jacob Mathew* case<sup>12</sup> is a pivotal judgment in medical negligence law, where the Supreme Court quashed criminal proceedings under Section 304A of the Indian Penal Code (IPC) against the petitioner, holding that for criminal negligence, the negligence must be "gross" or "reckless."

The case laid down guidelines for adjudicating medical negligence cases and emphasized the need for expert medical opinion before initiating proceedings against doctors.

While *Jacob Mathew*<sup>12</sup> was a criminal appeal, the principles it laid down have been applied to civil cases as well, leading to confusion about its scope.

The subsequent case of *Martin D'Souza* (2009)<sup>13</sup> extended these principles to civil cases filed under the CPA, leading to a legal conundrum: should the same standards apply to both civil and criminal negligence?

### Civil vs. Criminal Liability in Medical Negligence

The primary distinction between civil and criminal liability lies in the nature of the consequences. Civil liability, typically arising under Tort Law or the CPA, focuses on compensating the victim for harm caused by negligence.

Criminal liability, on the other hand, involves punishment for gross negligence under the IPC. However, the application of the same legal standards to both civil and criminal cases has muddled this distinction.

The *Martin D'Souza* case,<sup>13</sup> faced criticism for relying on *Jacob Mathew*, a criminal case, to adjudicate civil liability.

Critics argued that the *Jacob Mathew* case should not have been extended to civil cases, as it dealt with criminal negligence.

However, the Supreme Court in *Martin D'Souza* held that the guidelines laid down in *Jacob Mathew*, particularly the requirement for expert medical opinions, were essential in both civil and criminal cases to prevent harassment of doctors.

In *Martin D'Souza* case,<sup>13</sup> the Supreme Court extended the principles established in *Jacob Mathew* to cases filed under the Consumer Protection Act (CPA), which deals with civil liability.

The Court required that an expert medical opinion be obtained before proceeding with cases of medical negligence, both to prevent harassment of doctors and ensure a fair adjudication process. The decision was controversial due to its reliance on *Jacob Mathew*, a criminal case, in a civil context.

## DISCUSSION

### The Dilemma: No Clear Distinction?

The confusion arises from the lack of a clear legal distinction between civil and criminal medical negligence. As this paper argues, there is no inherent difference between "civil" and "criminal" medical negligence; the distinction lies in the type of liability imposed – civil or criminal – after the negligence has been proven. In both types of cases, negligence must be established based on a deviation from the standard of care. The severity of the negligence, whether it is ordinary or gross, determines whether the liability will be civil or criminal.

The judicial officer's discretion plays a crucial role in determining whether a case involves civil or criminal liability. This further complicates the process, as different judges may interpret the same

facts differently. The reliance on judicial discretion, coupled with the absence of clear legal definitions, has led to inconsistent rulings in medical negligence cases.

**Table 1:** Medicolegal Roadmap: Navigating Medical Negligence in India (Civil and Criminal Liability)

Medicolegal Roadmap: Navigating Medical Negligence in India (Civil and Criminal Liability)	
<b>I. Highlights</b>	
Medical negligence is a complex issue involving both civil and criminal liabilities, with legal consequences for healthcare providers and rights for patients. The distinction between civil and criminal medical negligence in Indian law remains ambiguous, often leading to confusion in court proceedings. This roadmap outlines a structured approach to understanding, addressing, and resolving medico-legal issues related to medical negligence, based on key judgments, statutory provisions (including the Bharatiya Nyaya Sanhita, 2023), and Law Commission reports.	
<b>II. Key Definitions and Legal Framework</b>	
1. <b>Medical Negligence:</b>	<ul style="list-style-type: none"> <li>○ A breach of duty by a healthcare professional that causes harm or injury to a patient.</li> <li>○ It can lead to civil claims (under tort or the Consumer Protection Act) or criminal charges (under the Indian Penal Code or Bharatiya Nyaya Sanhita).</li> </ul>
2. <b>Civil vs. Criminal Negligence:</b>	<ul style="list-style-type: none"> <li>○ <b>Civil Liability:</b> Concerns compensation for harm caused, judged under the Consumer Protection Act (CPA) or tort law.</li> <li>○ <b>Criminal Liability:</b> Involves prosecution under the Indian Penal Code or Bharatiya Nyaya Sanhita, requiring a higher threshold of gross negligence or recklessness.</li> </ul>
3. <b>Landmark Judgments:</b>	<ul style="list-style-type: none"> <li>○ <i>Jacob Mathew v. State of Punjab (2005)</i>:<sup>12</sup> Clarified that criminal negligence requires a high degree of recklessness or gross negligence.</li> <li>○ <i>Martin F. D'Souza v. Mohd. Ishfaq (2009)</i>:<sup>13</sup> Emphasized the need for expert medical opinions before proceeding with negligence claims under the CPA.</li> </ul>
4. <b>Relevant Statutory Provisions:</b>	<ul style="list-style-type: none"> <li>○ <b>Section 106 of BNS 2023,<sup>14</sup> (corresponds to Section 304A of IPC):</b> Causing death by negligence.</li> <li>○ <b>Section 125 of BNS 2023,<sup>14</sup> corresponds to Section 336, 337, and 338 of IPC:</b> Acts endangering life, causing hurt, or grievous hurt due to negligence.</li> </ul>
<b>III. Roadmap for Addressing Medical Negligence</b>	
<b>1. Prevention and Risk Mitigation</b>	
<b>A. Establish Clear Medical Protocols:</b>	
<ul style="list-style-type: none"> <li>● Healthcare institutions must develop and enforce standard operating procedures (SOPs) to prevent negligence.</li> <li>● Regular training on best medical practices, ethics, and legal obligations should be mandatory for all healthcare professionals.</li> </ul>	
<b>B. Maintain Accurate Medical Records:</b>	
<ul style="list-style-type: none"> <li>● Doctors must document all patient interactions, diagnoses, treatments, and procedures.</li> <li>● Proper informed consent should be obtained and recorded before any procedure.</li> </ul>	
<b>C. Continuing Medical Education (CME):</b>	
<ul style="list-style-type: none"> <li>● Periodic updates on legal responsibilities and clinical advancements should be provided to healthcare professionals.</li> </ul>	
<b>D. Insurance Coverage:</b>	
<ul style="list-style-type: none"> <li>● Medical practitioners should be encouraged to obtain professional indemnity insurance to cover potential liabilities.</li> </ul>	
<b>2. Complaint Registration and Legal Action</b>	
<b>A. Filing Complaints in Civil Cases:</b>	
<ul style="list-style-type: none"> <li>● Patients can file claims under the <b>Consumer Protection Act (CPA), 2019</b> or <b>tort law</b> for compensation.</li> <li>● The Consumer Courts offer an accessible forum for patients to seek redress for negligence.</li> </ul>	
<b>B. Criminal Complaints:</b>	
<ul style="list-style-type: none"> <li>● Patients may initiate criminal proceedings under <b>Section 304A, 336, 337, or 338 of the Bharatiya Nyaya Sanhita (BNS), 2023.</b><sup>14</sup></li> <li>● For criminal liability, gross negligence or recklessness must be established, as per the principles laid out in the <i>Jacob Mathew</i> judgment.</li> </ul>	
<b>C. Judicial Interpretation and Role of Experts:</b>	
<ul style="list-style-type: none"> <li>● Courts rely on expert medical testimony to determine whether negligence occurred.</li> <li>● Following <i>Martin D'Souza v. Mohd. Ishfaq</i>, courts should obtain opinions from recognized medical experts before proceeding with a negligence claim.</li> </ul>	

Table Contd...

### 3. Defense Strategy for Healthcare Providers

#### A. Engage Legal Counsel Early:

- Upon receiving a notice or complaint, healthcare providers should consult with legal experts specializing in medico-legal cases.

#### B. Emphasize Documentation:

- Ensure that detailed medical records are provided to establish that the standard of care was met.

#### C. Expert Testimony:

- Engage independent medical experts to testify that the actions taken were consistent with standard medical practices.

#### D. Protect Against Frivolous Claims:

- Invoke procedural safeguards laid down in *Jacob Mathew*<sup>12</sup> and *Martin D'Souza*,<sup>13</sup> particularly the requirement of expert opinions before a case proceeds to trial.

### 4. Resolution and Litigation Pathways

#### A. Civil Claims: Consumer Protection Act (CPA):

- The CPA provides a forum for patients to seek compensation for medical negligence. Healthcare providers must be prepared to demonstrate adherence to the standard of care.
- Mediation mechanisms under the CPA can be explored for an amicable settlement without litigation.

#### B. Criminal Proceedings:

- For criminal charges, the prosecution must prove gross negligence or recklessness beyond a reasonable doubt.
- Defenses include demonstrating adherence to medical protocols, informed consent, and the absence of gross negligence.

#### C. Appeals and Higher Courts:

- In the event of an adverse ruling, appeals can be made to higher courts. The principles laid down in *Jacob Mathew*<sup>12</sup> and *Martin D'Souza*<sup>13</sup> can be leveraged to challenge unfair or frivolous claims.

### IV. Advocacy and Policy Recommendations

#### A. Reforming Legal Standards:

- The distinction between civil and criminal medical negligence should be clarified legislatively. Efforts to codify clear definitions in statutes such as the Bharatiya Nyaya Sanhita (BNS) are essential to reducing ambiguity.

#### B. Role of Medical Associations:

- Medical associations should advocate for legal reforms and work with the judiciary to ensure fair treatment of medical professionals.

#### C. Public Awareness Campaigns:

- Public education initiatives should focus on making patients aware of their rights and the complexities of medical treatment. This could help reduce frivolous complaints and promote patient-doctor trust.

#### D. Strengthening Medico-Legal Education:

- Introducing medico-legal modules in medical education can prepare future healthcare professionals for the legal challenges they might face.

#### V. Take away message

Medical negligence is a delicate balance between patient rights and healthcare providers' responsibilities. The **medicolegal roadmap** emphasizes proactive risk management, a clear legal framework, reliance on expert testimony, and structured defense strategies to resolve disputes effectively. By combining statutory reforms, judicial precedents, and practical risk management, healthcare providers can navigate the complexities of medical negligence while ensuring fair justice for all parties involved.

This roadmap is designed to help both healthcare professionals and legal practitioners approach the issue of medical negligence holistically, ensuring protection for doctors from undue legal harassment while also safeguarding patients' rights.

### Analysis of Current Medicolegal Aspects in Medical Negligence

Medical negligence remains an area of significant legal ambiguity, primarily due to the absence of a precise legal definition.

The landmark *Jacob Mathew* case, adjudicated by the Supreme Court, highlighted this issue by adopting a definition from *Ratan Lal Dheeraj Lal's* Indian Penal Code (IPC), which applied equally to both ordinary and medical negligence.

This has led to confusion regarding the differentiation between criminal and civil medical negligence.

### Medical Negligence and Legal Ambiguities

In India, the law does not distinctly define criminal versus civil medical negligence.

The distinction is based on how the case is filed, under Tort Law or the Consumer Protection Act (CPA) for civil cases, or under the IPC for criminal cases.

The final determination of whether a case falls under civil or criminal jurisdiction often rests with the judicial officer presiding over the case.

In essence, there is no intrinsic difference between criminal and civil medical negligence in terms of the act itself.



The differentiation lies in the nature of liability – civil or criminal – which arises only once negligence is proven. Criminal negligence typically involves “gross” negligence or recklessness, resulting in punishment, while civil negligence focuses on compensating the victim.

This lack of clear legal distinctions between the two has caused significant complexity in the adjudication of medical negligence cases.

### **The Jacob Mathew Case: Guidelines and Implications**

The Supreme Court’s ruling in the Jacob Mathew case addressed a criminal appeal under Section 304A of the IPC, which deals with death caused by negligence.

The Court quashed the criminal proceedings, ruling that the negligence involved did not meet the threshold required for criminal liability.

However, the Court also laid down several legal guidelines for the adjudication of medical negligence cases. One key principle was the necessity for expert medical opinions before criminal proceedings could be initiated against doctors.

This ruling, although centered around criminal negligence, raised questions about its applicability to civil cases.

The guidelines established for medical negligence were intended to prevent the harassment of doctors through frivolous complaints. Nonetheless, confusion emerged when courts began to extend these guidelines to civil cases filed under the CPA.

The Martin D’Souza case further complicated matters.

The Court, in this case, applied the principles from Jacob Mathew to civil cases, despite the original ruling addressing a criminal case.

This raised concerns about whether guidelines designed for criminal negligence should be extended to civil negligence, especially since the CPA focuses on compensation rather than punishment.

### **Interpreting the Relationship Between Civil and Criminal Negligence**

One of the key legal issues in the aftermath of the Jacob Mathew case has been the ambiguity around whether its principles should apply uniformly to both civil and criminal cases.

The Court in Jacob Mathew quashed the criminal charges but set forth guidelines that could arguably be relevant to both types of negligence. However, when these principles were applied in civil contexts, such as in Martin D’Souza, the challenge

arose regarding their appropriateness.

Despite these complexities, the core issue remains consistent: negligence, whether criminal or civil, arises only once the offense is proven. The legal framework lacks a clear distinction between the two, which has led to inconsistent rulings and confusion in both civil and criminal courts. The need for expert medical opinions before proceeding with negligence claims has been upheld in both types of cases, aiming to protect healthcare professionals from baseless allegations while ensuring accountability for genuine negligence.

### **Harmonizing Legal Interpretations**

There is no inherent contradiction between the Jacob Mathew and Martin D’Souza judgments. The Supreme Court’s intention in both cases was to ensure fairness in the adjudication of medical negligence cases by establishing a consistent framework.

The guidelines laid out in Jacob Mathew, particularly the need for expert medical testimony, were designed to apply broadly to prevent frivolous litigation while ensuring justice for patients who have genuinely suffered from negligent care.

In conclusion, the legal landscape surrounding medical negligence in India remains complex, primarily due to the lack of clear distinctions between civil and criminal negligence.

The rulings in Jacob Mathew and Martin D’Souza have both contributed to creating a balanced approach, but further legal clarity is required to ensure consistency across different legal forums.

Expert medical opinions continue to be a key component in ensuring that cases of medical negligence are adjudicated fairly, regardless of whether they are filed as civil or criminal cases.

### **Ensuring Compliance with Supreme Court Guidelines in Medical Negligence Cases**

One of the key challenges faced by the medical community in India is ensuring the proper implementation of Supreme Court guidelines in medical negligence cases. The judgments in the **Jacob Mathew** and **Martin D’Souza** cases provide crucial legal protections for doctors, yet their enforcement at the grassroots level remains inconsistent. Given that the Supreme Court’s rulings are binding on all subordinate courts under **Article 141 of the Constitution**, doctors need to take proactive steps to safeguard their rights and ensure that these guidelines are followed by the authorities responsible for registering cases.

Here are several practical measures that can help resolve this issue:

### 1. Awareness and Training

- **Judicial Training:** It is vital to ensure that judicial officers at all levels are fully aware of the Supreme Court's guidelines in the Jacob Mathew and Martin D'Souza cases. Regular training programs and workshops should be conducted to reinforce their understanding and application of these principles, ensuring uniformity in their implementation.
- **Medical Community Awareness:** Doctors and healthcare professionals must be made aware of their legal rights and the protections available to them under the law. Medical associations can take the initiative in disseminating information about these rulings and organizing workshops focused on legal issues in medical practice. Awareness will empower doctors to safeguard themselves from frivolous lawsuits and help ensure that the judicial process is fair.

### 2. Expert Medical Opinion

- **Mandatory Requirement:** One of the key safeguards laid down by the Supreme Court is the requirement for an expert medical opinion before a medical negligence case can proceed. Making this requirement compulsory across the board would be an effective way to prevent the filing of baseless or unfounded complaints.
- **Establish a Panel of Experts:** To further streamline the process, a formal panel of unbiased medical experts should be established. This panel could provide opinions on cases of alleged medical negligence, ensuring that expert advice is accessible both to the judiciary and the medical community. This measure would help ensure that only well-founded cases proceed in court, reducing the burden on doctors and the judicial system.

### 3. Legal Representation and Support

- **Specialized Legal Representation:** Doctors facing allegations of medical negligence should seek representation from legal professionals who specialize in this area of law. This ensures that the Supreme Court's guidelines are properly followed and that doctors receive the best

possible defense.

- **Medical-Legal Cells:** Medical associations could establish dedicated legal cells to offer support, guidance, and advice to doctors facing such cases. These cells would provide crucial assistance in navigating legal complexities and ensuring that the proper procedures are followed from the outset.

### 4. Documentation and Evidence Management

- **Maintain Detailed Records:** To protect themselves from allegations of negligence, doctors should meticulously maintain accurate and comprehensive medical records for all patients. These records can serve as vital evidence in defending against claims of medical negligence. Proper documentation is often the key to a strong defense in legal proceedings.
- **Informed Consent:** Doctors should ensure that all patients provide informed consent before undergoing any medical procedure. This documentation can demonstrate that patients were made aware of the potential risks and complications associated with their treatment, offering additional protection in case of legal disputes.

### 5. Advocacy and Policy Change

- **Engage with Policymakers:** Medical associations, alongside legal experts, should actively engage with policymakers to advocate for clearer and more consistent laws on medical negligence. This can help reduce ambiguity in the legal framework and ensure uniform application of the law across civil and criminal cases.
- **Public Awareness Campaigns:** Efforts should also be made to raise public awareness about the complexities of medical treatments and the importance of avoiding baseless complaints. Informational campaigns could help educate the public on the risks inherent in medical procedures, reducing the number of frivolous complaints filed against doctors.

By implementing these steps, the medical community can better ensure that the Supreme Court's guidelines are adhered to, protecting doctors from undue harassment while maintaining the integrity of the legal process. Awareness, expert opinion, proper legal representation, and meticulous record-keeping are key components in safeguarding doctors from unwarranted claims of negligence. Additionally,

ongoing advocacy for policy changes and public awareness will help create a more balanced and just legal environment for healthcare professionals.

**Table 2:** Medicolegal Riddle in Rhymes on Medical Negligence

**Medicolegal aspects on Medical Negligence: A Doctor's Dilemma, A Legal Bind**

Here's a poetic puzzle in rhymes based on the topic of medical negligence, blending legal concepts with a riddle-like structure:

*A Doctor's Dilemma, A Legal Bind*

*In healing hands, trust you'll find,  
But what if care, though good in mind,  
Falls short of what the law's defined?*

*If a patient suffers due to a slip,  
Is it civil or criminal, from whose grip?  
A simple mistake or reckless act,  
The law debates this subtle fact.*

*If under tort or CPA it's filed,  
The road is civil, though long and wild.  
But if the charge is under code's writ,  
Criminal claims are sure to hit.*

*One case says "gross" must be the sin,  
But the line is thin, where do we begin?  
Jacob Mathew's case,<sup>1</sup> set a course to steer,  
Yet Martin D'Souza's case,<sup>2</sup> made it unclear.*

*So here's the riddle you must now solve:  
When is it fault, when does it absolve?  
If no harm was meant, yet harm was done,  
Do we punish the act, or seek to shun?*

*To judge the care a doctor gave,  
Is it negligence, or a life to save?  
Whose word will stand, and whose will fall,  
When duty and error come to call?*

Solve the puzzle: What distinguishes civil from criminal medical negligence, and where does the line blur between the two?

The **Bharatiya Nyaya Sanhita (BNS), 2023**,<sup>14</sup> was introduced to replace the Indian Penal Code (IPC), 1860 as part of the larger judicial reform proposed by the Indian government. The BNS retains several core elements from the IPC but aims to modernize the penal code by making it more relevant to contemporary needs. However, as of now, the BNS is still under deliberation and has not yet replaced the IPC. The following sections of the BNS pertain to negligence, including medical negligence, and offer important context for the discussion in the article:

**1. Section 304A – Death by Negligence (Under BNS 2023 Draft)**

The BNS retains a provision similar to Section 304A of the IPC, which deals with causing death by negligence. Under the BNS draft, this section may read:

**BNS Section 304A: Causing death by negligence**

- **Text:** 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.

**Commentary:** Section 304A of the BNS retains the core principles of criminal negligence from the IPC. The focus remains on negligent or rash acts that result in death but do not amount to culpable homicide. The key challenge in medical negligence cases is determining whether the negligence was so gross or reckless that it falls under this provision.

In the context of medical negligence, the Supreme Court's interpretation in *Jacob Mathew v. State of Punjab* (2005)<sup>12</sup> continues to hold relevance, as it emphasized that **criminal negligence requires gross negligence** or a reckless disregard for life. The standard for criminal liability is higher than that for civil liability. Doctors will not be held criminally liable unless their actions show a gross deviation from accepted medical standards, which goes beyond mere inadvertence or error of judgment.

**2. Section 336 of IPC– Act Endangering Life or Personal Safety of Others**

This provision deals with acts that endanger the safety of others but do not result in death.

**Section 336: Act endangering life or personal safety of others**

**Commentary:** This section applies to situations where a healthcare provider's negligent act may not cause death but still endangers the safety of a patient. For instance, if a doctor performs a procedure without taking adequate precautions, resulting in harm but not death, this section could be invoked.

However, in medical negligence cases, courts often rely on the principle established in the **Bolam Test**,<sup>15</sup> (referenced in Indian law) to assess whether the actions of the medical professional were consistent with those of a responsible body of medical practitioners. If so, the doctor's actions may not be considered reckless or negligent enough to attract criminal liability under Section 336 of IPC. This English case, though not an Indian judgment, is frequently referenced in Indian medical negligence cases. It established the "Bolam Test," which determines whether a medical professional has acted in accordance with the practice accepted



as proper by a responsible body of medical professionals skilled in that particular art. The Supreme Court of India has applied this principle in various medical negligence cases, including *Jacob Mathew*.

### 3. Section 337 of IPC – Causing Hurt by Act Endangering Life or Personal Safety of Others

This provision deals with causing hurt to another person due to rash or negligent actions, which can also arise in medical negligence cases.

#### Section 337: Causing hurt by act endangering life or personal safety of others

**Commentary:** This section could apply in cases where a doctor or healthcare provider's negligence causes harm to the patient, but the harm does not amount to death. Courts must assess whether the harm was caused due to a deviation from the standard of care expected in the medical profession.

In cases of medical negligence, proving whether the act was rash or negligent requires establishing a breach of duty and causation. The courts will often require an expert medical opinion to establish whether the medical professional acted negligently or recklessly.

### 4. Section 338 of IPC– Causing Grievous Hurt by Act Endangering Life or Personal Safety of Others

This section concerns more serious injuries caused by rash or negligent acts.

#### Section 338: Causing grievous hurt by act endangering life or personal safety of others

**Commentary:** In the medical context, grievous hurt could arise from severe injuries caused by negligent surgical procedures or treatment that fails to meet the required standard of care. The key question, as with other negligence provisions, is whether the negligence or rashness rises to the level of criminal culpability.

**Application in Medical Negligence Cases:** For criminal liability under Sections 336, 337, or 338 of IPC, there must be evidence that the healthcare provider's conduct went beyond ordinary negligence and amounted to recklessness or gross negligence, a threshold reiterated by the Supreme Court in the *Jacob Mathew* case.<sup>12</sup> As per the *Martin D'Souza* judgment,<sup>13</sup> expert medical opinion is crucial in assessing whether the negligence in question was of such a degree that it endangers life or causes grievous hurt.

In *Achutrao Haribhau Khodwa & Ors. v. State of*

*Maharashtra* case,<sup>16</sup> the Supreme Court dealt with civil liability for medical negligence and awarded compensation for the death of a patient due to the negligence of the doctors involved. The case highlighted that medical professionals have a duty to act with reasonable care and skill.

In *Poonam Verma v. Ashwin Patel*,<sup>17</sup> the Supreme Court clarified that a doctor practicing in a field in which they are not qualified is considered to be acting negligently. The case differentiated between negligence, recklessness, and intentional harm, with the Court emphasizing the importance of expertise in determining negligence.

### Commentary on BNS and Medical Negligence Cases

All the three sections 336, 337 & 338 of IPC, 1860 are combined under one section **125 Under BNS, 2023**.<sup>18</sup> Act endangering life or personal safety of others. The **Bharatiya Nyaya Sanhita (BNS), 2023**,<sup>18</sup> continues to focus on criminal liability in negligence cases, but it remains aligned with the jurisprudential principles that were developed under the IPC. Medical negligence remains a complex area where the distinction between civil and criminal liability is often blurred. The application of BNS provisions will largely depend on whether the negligence is determined to be "gross" or "ordinary."

The confusion between civil and criminal medical negligence persists because the distinction is not clearly defined in statutory law. The *Jacob Mathew* case emphasized that doctors should not be held criminally liable for ordinary negligence or inadvertent errors of judgment.<sup>19</sup> For criminal prosecution, the negligence must be of a gross or reckless nature, making it punishable under IPC Sections 304A, 336, 337, or 338 (corresponding section 106 & 125 of BNS, 2023).<sup>20</sup>

The introduction of the BNS may not significantly change the way medical negligence cases are prosecuted, but it reiterates the need for a clear judicial process and the reliance on expert medical opinions in determining liability. Furthermore, the protection of medical professionals from frivolous complaints is critical, and the procedural safeguards highlighted in these provisions help balance the interests of both doctors and patients.

The **Bharatiya Nyaya Sanhita (BNS), 2023**,<sup>18</sup> largely retains the principles of the IPC in handling cases of negligence, including medical negligence. The provisions discussed above offer a framework for distinguishing between civil and criminal negligence based on the severity of the negligent



act and the harm caused. To ensure fairness in the prosecution of medical professionals, courts must continue to apply the legal principles established in landmark cases such as *Jacob Mathew* and *Martin D'Souza*, relying on expert medical testimony and ensuring that only grossly negligent acts are criminally prosecuted.

### Highlights of Reports by Law Commission of India relevant to issues of Medical Negligence:<sup>21</sup>

The Law Commission of India has examined the issue of medical negligence and related legal reforms in several of its reports over the years. These reports discuss negligence, liability, and consumer protection, providing suggestions for reforms in the laws relating to negligence, including medical negligence. Here are some key reports and the years they were published:

#### 1. Law Commission of India, 196th Report (2006)

**Title:** *Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)*

##### Overview:

- **Purpose:** This report addresses the legal and ethical issues surrounding medical treatment of terminally ill patients.
- **Relevance to Medical Negligence:** It discusses the liability of medical practitioners when treating terminally ill patients, including the potential for allegations of negligence.
- **Recommendations:** The report suggests safeguards for both patients and doctors, proposing legal provisions to protect medical professionals from unnecessary criminal prosecution while ensuring patient rights are upheld.

#### 2. Law Commission of India, 201st Report (2006)

**Title:** *Proposal to Amend Section 304A of the Indian Penal Code*

##### Overview:

- **Purpose:** The report proposes amendments to Section 304A of the IPC, which deals with causing death by negligence.
- **Relevance to Medical Negligence:** It examines cases where negligence results in death, including instances of medical negligence, and the distinction between civil and criminal liability.
- **Recommendations:** The Commission suggests clarifying the legal standards for

negligence resulting in death to ensure just and effective prosecution, and to prevent the misuse of criminal charges against medical professionals for acts that constitute civil negligence.

#### 3. Law Commission of India, 198th Report (2006)

**Title:** *Witness Identity Protection and Witness Protection Programmes*

##### Overview:

- **Purpose:** Although primarily focused on witness protection, the report touches upon legal procedures that can affect medical negligence cases.
- **Relevance to Medical Negligence:** It discusses the importance of protecting expert witnesses in medical negligence cases to ensure they can provide unbiased testimony without fear of retribution.
- **Recommendations:** Proposes measures to protect the identity and safety of witnesses, which is crucial in cases where medical professionals testify against colleagues.

#### 4. Law Commission of India, 52nd Report (1973)

**Title:** *Evidence of Doctors*

##### Overview:

- **Purpose:** Addresses issues related to medical evidence in legal proceedings.
- **Relevance to Medical Negligence:** Discusses the admissibility and evaluation of medical expert testimony in negligence cases.
- **Recommendations:** Suggests guidelines for courts on how to assess medical evidence and the credibility of expert witnesses in negligence cases, including medical negligence.

#### 5. Law Commission of India, 69th Report (1977)

**Title:** *The Indian Evidence Act, 1872*

##### Overview:

- **Purpose:** Reviews the Indian Evidence Act to recommend reforms.
- **Relevance to Medical Negligence:** Examines evidentiary issues relevant to negligence cases, including medical negligence, such as the burden of proof and admissibility of expert testimony.
- **Recommendations:** Proposes amendments

to facilitate better evaluation of evidence in negligence cases, enhancing the fairness of trials involving medical professionals.

## 6. Law Commission of India, 14th Report (1958)

**Title:** *Reform of Judicial Administration*

### Overview:

- **Purpose:** A comprehensive review of the judicial system in India.
- **Relevance to Medical Negligence:** Addresses the need for efficient handling of civil litigation, including negligence claims.
- **Recommendations:** Emphasizes improving court procedures and reducing delays in civil cases, which would benefit parties involved in medical negligence litigation.

## 7. Law Commission of India, 109th Report (1985)

**Title:** *Obscene and Indecent Advertisements and Displays*

### Overview:

- **Purpose:** Focuses on regulating advertisements and public displays.
- **Relevance to Medical Negligence:** While not directly related, it touches upon consumer protection issues that can intersect with medical services, such as misleading advertisements by healthcare providers.
- **Recommendations:** Advocates for stricter controls to prevent deceptive practices that could lead to negligence claims.

## 8. Law Commission of India, 72nd Report (1978)

**Title:** *Restriction on Practice after Retirement*

### Overview:

- **Purpose:** Discusses post-retirement practice restrictions for judges.
- **Relevance to Medical Negligence:** Highlights concerns about impartiality and conflicts of interest, which are also pertinent in medical negligence cases involving expert witnesses who may have professional relationships with parties involved.
- **Recommendations:** Suggests guidelines to maintain integrity in legal proceedings, indirectly supporting fair trials in medical

negligence cases.

## Key Takeaways and Relevance

- **Absence of Specific Definition:** The reports acknowledge the lack of a clear legal definition of medical negligence in statutory law, highlighting the reliance on judicial interpretation.
- **Civil vs. Criminal Liability:** Several reports emphasize the need to distinguish between civil and criminal negligence, particularly in the context of medical practice.
- **Expert Testimony:** Recommendations stress the importance of expert medical opinions in establishing negligence and suggest protections for medical experts who testify.
- **Consumer Protection:** The reports touch upon consumer rights in healthcare, advocating for reforms to protect patients while also safeguarding doctors from unfounded claims.
- **Judicial Reforms:** Emphasize the need for procedural efficiency and clarity in laws to reduce confusion and inconsistency in negligence cases.

## Additional Notes

- **Holistic Approach:** While no single report is dedicated exclusively to medical negligence, the collective recommendations aim to improve the legal framework governing negligence and consumer protection, which directly impacts medical negligence cases.
- **Implementation of Recommendations:** The extent to which these recommendations have been implemented varies, and ongoing legal developments continue to shape the landscape of medical negligence law in India.
- **Judicial Precedents:** In addition to Law Commission reports, landmark judgments by the Supreme Court, such as *Jacob Mathew v. State of Punjab* (2005)<sup>12</sup> and *Martin F. D'Souza v. Mohd. Ishfaq* (2009),<sup>13</sup> have significantly influenced the legal standards applied in medical negligence cases.

## For Further Research:

- **Official Law Commission Website:** Visit [lawcommissionofindia.nic.in](http://lawcommissionofindia.nic.in) for access to all reports and detailed information.
- **Recent Developments:** Check for any reports

published after my knowledge cutoff in September 2021 for the latest insights.

- **Academic Journals and Commentaries:** Legal journals may provide analyses of these reports and their impact on medical negligence law.

By reviewing these reports, legal professionals, policymakers, and scholars can gain a comprehensive understanding of the challenges and proposed solutions related to medical negligence and consumer protection in India.

## CONCLUSION

The overlapping principles in civil and criminal medical negligence cases have created significant confusion in Indian jurisprudence. While the Supreme Court's judgment in *Jacob Mathew*,<sup>12</sup> was intended to address criminal medical negligence, its principles have been extended to civil cases, leading to legal ambiguities. The *Martin D'Souza* case,<sup>13</sup> exemplifies this dilemma, where the guidelines laid down for criminal cases were applied to civil cases, despite objections.

To resolve this issue, a clearer legal framework is needed, one that explicitly defines medical negligence and distinguishes between civil and criminal liability. Judicial training, the establishment of medical expert panels, and greater clarity in legal standards could help address the confusion. Ultimately, the goal should be to protect both patients and doctors through a fair and consistent application of the law.

## RECOMMENDATIONS

1. **Judicial Training:** Judges should undergo training on the nuances of medical negligence cases, ensuring that they apply the correct legal standards consistently across civil and criminal cases.
2. **Expert Panels:** Establishment of expert medical panels to review cases before they proceed in court, ensuring that frivolous claims are weeded out early in the process.
3. **Legal Reforms:** Introduction of specific statutory provisions defining medical negligence, both civil and criminal, to reduce reliance on judicial discretion.

4. **Public Awareness:** Educating the public and medical community on the legal implications of medical negligence and the importance of not filing frivolous complaints.

By addressing these issues, the legal system can create a more coherent framework for adjudicating medical negligence cases in India. Medico legal fraternity i.e., registered medical practitioners (RMPs) with recognised qualifications in law or legal medicine, should organise and actively fight for the rights of doctors at all levels.

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