

Recent Updates in Legal Medicine

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Abstract

Addressing medical negligence involves adjudicating it according to provisions for exceptions and exemptions. These provisions grant licensed physicians' immunity from liability. Medical negligence, while a serious offense, requires adjudication with consideration of exceptions. These provisions acknowledge the expertise of licensed physicians, offering exemption from liability in certain cases. It's a balance between accountability and recognizing the complexities of medical practice. Indian medical professionals, healthcare providers, legal counselors, advocates, police officers, and honorable judges play vital roles in ensuring justice and fair practices in medical malpractice cases. Staying updated with recent updates in criminal law, notably, Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), Bharatiya Sakshya Adhinyam (BSA), is imperative for effective prevention, investigation, and management of legal hurdles in such cases. These professionals must acquaint themselves with the nuances of these laws to navigate complexities and uphold ethical standards in healthcare. By continuously updating their knowledge, they can foster a system where accountability, transparency, and justice prevail, ultimately safeguarding the rights and well-being of patients and healthcare providers alike.

Keywords: Negligence; Malpractice; Offence; Medical Practice; Consumer Court; Bharatiya Nyaya Sanhita (BNS); Bharatiya Nagarik Suraksha Sanhita (BNSS); Bharatiya Sakshya Adhinyam (BSA); Crime; Lawsuits.

INTRODUCTION

Medical negligence is a grave concern within the healthcare system, often leading to detrimental consequences for patients and legal

ramifications for healthcare providers. However, the adjudication of medical negligence requires careful consideration of exceptions and exemptions provisions to ensure fairness and justice.

Within the realm of medical practice, errors can occur despite the best intentions and efforts of healthcare professionals. These errors may range from misdiagnosis to surgical mistakes, leading to harm or even death for patients. However, not all instances of medical negligence warrant legal action against the healthcare provider. Exceptions and exemptions provisions play a crucial role in determining liability in such cases.

One key aspect of these provisions is the recognition of the expertise and judgment of

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licensed physicians. Healthcare professionals undergo extensive training and education to obtain their licenses, and they are expected to adhere to certain standards of care. Exceptions provide a framework for acknowledging that despite the best efforts of a physician, adverse outcomes can occur due to various factors beyond their control. These may include unforeseen complications, patient-specific conditions, or the inherent risks associated with certain medical procedures.

The exemption from liability granted to licensed physicians through exceptions provisions is not a blanket immunity but rather a recognition of the complexities of medical practice. It does not absolve healthcare providers of responsibility but rather acknowledges that not all adverse outcomes are indicative of negligence. Instead, it encourages a nuanced approach to adjudicating medical malpractice claims, taking into account the circumstances surrounding each case and the standard of care expected of a reasonable healthcare professional in similar situations.

However, it's essential to strike a balance between protecting patients' rights and ensuring that healthcare providers are not unfairly penalized for unavoidable complications. Clear guidelines and rigorous oversight are necessary to prevent the misuse of exceptions provisions and to uphold the principles of accountability and patient safety within the healthcare system. Ultimately, the adjudication of medical negligence requires a careful examination of the facts, expert testimony, and legal precedents to arrive at a just and equitable resolution for all parties involved.

Causing bodily harm or injury is generally considered an offense. However, in the context of medical or surgical treatment, injury, although technically an offense such as 'harm,' 'injury,' 'grievous injury,' or 'homicide,' is not considered a crime. The key point of contention is under what exceptional circumstances a medical act becomes an actionable offense, which is known as medical negligence.

DISCUSSION

Negligence occurs when someone fails to perform a duty by either omitting to do something that a reasonable person, guided by common considerations, would do, or by doing something that a prudent and reasonable person would not do. Actionable negligence involves neglecting to use ordinary care or skill toward someone to whom the defendant owes this duty, resulting in injury

to the plaintiff's person or property. Negligence comprises three key elements: (1) a legal duty to exercise due care toward the plaintiff within the scope of the duty; (2) a breach of this duty; and (3) resulting damage. A cause of action for negligence arises only when damage occurs, as damage is a necessary component of this tort¹

Negligence is actionable only when the plaintiff has suffered injury to their person or property, and a cause of action for negligence arises only when damage occurs. In cases of medical negligence, a physician's negligent act while treating a patient becomes a cause of action and gives rise to an actionable claim when it results in bodily damage, whether physical, physiological, or functional, to the patient.

Causing injury intentionally is defined as an offence under Bharatiya Nyaya Sanhita (BNS)² 2023, formerly known as Indian Penal Code (IPC). "Injury" refers to any harm illegally caused to a person's body, mind, reputation, or property. The term "illegal" applies to anything that constitutes an offense, is prohibited by law, or provides grounds for a civil action. A person is "legally bound to do" whatever it is illegal for them to omit. Whoever causes bodily pain, disease, or infirmity to another person is said to cause hurt. Anyone who acts with the intention of causing hurt to another person, or with the knowledge that their actions are likely to cause hurt, and does cause hurt, is said to voluntarily cause hurt. The following types of hurt are designated as "grievous":

- Emasculation.
- Permanent loss of sight in either eye.
- Permanent loss of hearing in either ear.
- Loss of any member or joint.
- Destruction or permanent impairment of the powers of any member or joint.
- Permanent disfiguration of the head or face.
- Fracture or dislocation of a bone or tooth.
- Any hurt that endangers life, causes the sufferer severe bodily pain for fifteen days, or renders the person unable to follow their ordinary pursuits.

The punishment for harm is proportionate to the severity of the injury inflicted:

As per Sec125 a, b of BSA,2023. (IPC 336, 337, 338) Whoever acts so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment for a term up to three months, or with a fine up to two

thousand five hundred rupees, or both. However:

(a) If hurt is caused, the punishment shall be imprisonment for a term up to six months, or a fine up to five thousand rupees, or both. (b) If grievous hurt is caused, the punishment shall be imprisonment for a term up to three years, or a fine up to ten thousand rupees, or both.²

There is no specific provision for medical negligence, which is considered distinct and unique. Criminal medical negligence, or acts of medical negligence that attract criminal liability, are determined by judicial interpretation. Surgical procedures such as amputations and organ removal typically cause grievous hurt. Criminal Negligence may result in homicide, if it causes death due to a rash or negligent act. Whoever causes the death of any person by such an act, not amounting to culpable homicide, shall be punished with imprisonment for a term up to seven years and shall also be liable to a fine, as per Sec 106 (1) of BSA 2023 (IPC 304A). Anyone who causes the death of a person by engaging in a rash or negligent act, not amounting to culpable homicide, shall be subject to imprisonment for up to five years, along with a fine. If such an act is committed by a registered medical practitioner during a medical procedure, they shall face imprisonment for up to two years, in addition to a fine (added in BNS, 2023)²

All the aforementioned offenses fall within the realm of criminal law and are adjudicated as such. However, they incur both criminal and civil liabilities. Medical negligence, in particular, is subject to scrutiny under tort law, civil law, or common law, which determines civil liability for monetary compensation. Proof of the offense according to legal provisions is necessary before either civil or criminal liability is established or assigned.

Exceptions which may protect from the medicolegal liability

“Within this Sanhita (BNS), every definition of an offense, each penal provision, and every illustration of such definitions or provisions shall be interpreted in light of the exceptions outlined in the chapter titled ‘General Exceptions,’ even if those exceptions are not explicitly restated in each definition, provision, or illustration. An exception renders an offense null, absolving the accused offender of any liability, whether civil or criminal.”

Emerging medical negligence jurisprudence that protects physicians

The recent judgment by the Honourable Supreme Court extensively revisited previous rulings on medical negligence, emphasizing how evolving jurisprudence, while acknowledging exemption clauses in the Indian Penal Code (now Bhartiya Nyaya Sanhita 2023), has effectively reduced the criminalization of medical negligence.

In the latest Supreme Court judgment, *Bombay Hospital vs. Asha Jaishwal* 2021 CIVIL APPEAL No. 1658 OF 2010,³ it was noted that in *Martin F. D’Souza v. Mohd. Ishfaq* (2009)⁴, the court observed that doctors cannot be held liable for medical negligence solely based on the doctrine of *res Ipsa loquitur*. This is because a patient’s unfavourable response to treatment or a failed surgery does not automatically imply negligence on the part of the doctor. There is a regrettable tendency to blame doctors when patients experience adverse outcomes, which reflects an intolerant attitude from family members who refuse to accept such outcomes. The increased incidents of violence against medical professionals, who tirelessly work under challenging conditions, have been particularly evident during the pandemic.

Merely because a patient does not respond favourably to a treatment or a surgery fails, it does not automatically render the doctor liable for medical negligence under the doctrine of *res Ipsa loquitur*. It is improbable that any conscientious professional would deliberately undertake actions or omissions leading to harm or injury to the patient, as their professional reputation would be jeopardized. Even a single failure could have significant consequences for their career.

When a patient experiences adverse outcomes or mishaps, there is often a tendency to attribute blame to the doctor. However, it is widely acknowledged that even the most skilled professionals, let alone average ones, may encounter failures. Similar to how a lawyer cannot win every case in their career, they cannot be penalized for losing a case provided they fulfilled their professional duties and presented their arguments.

In a landmark judgment known as *Jacob Mathew v. State of Punjab and Anr.* (2005)⁵, this Court emphasized that mere lack of care, an error in judgment, or an unfortunate accident do not necessarily constitute negligence on the part of a medical professional. The Court held: Negligence occurs when there is a breach of duty caused by

either failing to do what a reasonable person, guided by ordinary considerations, would do, or by doing something that a prudent and reasonable person would not do. This definition of negligence, as outlined in the Law of Torts by Ratanlal & Dhirajlal (edited by Justice G.P. Singh),¹ remains valid. Negligence becomes actionable when it results in injury stemming from an act or omission that amounts to negligence and is attributable to the person being sued. The essential components of negligence are duty, breach, and resulting damage.

In the context of the medical profession, negligence requires a distinct approach. To infer rashness or negligence on the part of a professional, particularly a doctor, additional considerations must be taken into account. Occupational negligence differs from professional negligence. Mere lack of care, an error in judgment, or an accident do not prove negligence on the part of a medical professional. As long as a doctor adheres to a practice deemed acceptable by the medical profession at that time, they cannot be held liable for negligence merely because a better alternative treatment was available or because a more skilled doctor may have chosen a different approach. When assessing the failure to take precautions, it must be determined whether the precautions taken were sufficient based on ordinary experience; failure to employ extraordinary precautions cannot be the basis for alleged negligence. Similarly, the standard of care is evaluated based on the knowledge available at the time of the incident, not at the date of trial. Likewise, if the charge of negligence stems from the failure to use specific equipment, the charge would fail if that equipment was not generally available at the time of the incident when it was suggested it should have been used.

In above case the Honourable Court criticized the judgment in Gupta's case, particularly questioning the use of the term "gross" negligence. They argued that all negligent acts resulting in death should be treated equally. Section 304-A of the IPC was seen as a looming threat over doctors, affecting those working in both government hospitals and the private sector. This situation had long been recognized as problematic, leading to defensive medical practices where doctors were hesitant to administer proper treatments or surgical procedures for fear of adverse outcomes. Consequently, doctors were being sued despite not being at fault.⁵

The term "gross" is not pertinent to Section 304-A of the Indian Penal Code, nor is it associated with negligence. In the above case, the Punjab High

Court observed that doctors should not be treated differently under Section 304-A. The landmark judgment by a three-judge bench of the Supreme Court in *Jacob Mathew v. State of Punjab* practically absolves medical professionals from liability under Section 304-A. This clarifies that while Sections 304 and 304-A of the IPC could theoretically apply to doctors, they can now practice with confidence, free from fear or apprehension of being unfairly targeted on trivial grounds.

The Honourable Court thoroughly examined the challenges faced by medical professionals, and this landmark judgment is expected to restore balance to the doctor patient relationship, ultimately benefiting patients in the long run. This landmark judgment will alleviate undue anxiety among doctors in carrying out their professional duties. Essentially, it underscores the importance of maintaining realistic expectations from professionals, with standards that are achievable. This entails recognizing the inevitability of ordinary human error and acknowledging the limitations inherent in the performance of complex tasks. Sustaining the competency of doctors necessitates continuous medical education to stay abreast of advancements in the field. Regulatory bodies and professional associations should actively discourage incompetence stemming from either lack of knowledge or quackery. These decisions are not only a source of relief for doctors, who have often been perceived as easy targets by law enforcement agencies and subjected to harassment by dissatisfied patients, but they also contribute to an overall enhancement in the quality of healthcare services.

In the case of *Arun Kumar Manglik v. Chirayu Health and Medicare Private Limited and Anr.* (2019),⁶ this Court emphasized that the standard of care, as established in the *Bolam* case, must evolve in line with subsequent interpretations by both English and Indian Courts. The Court stated: In the practice of medicine, there may exist various approaches to treatment, leading to genuine differences of opinion among professionals. However, when choosing a course of treatment, medical professionals must ensure that it is not unreasonable. The threshold to establish unreasonableness is determined with careful consideration of the risks associated with medical treatment and the working conditions of medical professionals. This is essential to prevent situations where doctors practice "defensive medicine" to avoid negligence claims, which can ultimately harm the patient. Therefore, in cases where unreasonableness in professional conduct

is proven based on the specific circumstances of the case, a professional cannot evade liability for medical negligence simply by relying on a consensus of professional opinion.

In the case of *C.P. Sreekumar (Dr.), MS (Ortho) v. S. Ramanujam* (2009)⁷, this Court emphasized that the Commission should not assume that the allegations in the complaint are incontrovertible truths, especially when they lack supporting evidence. The Court stated:

Upon reviewing the Commission's order, it is evident that the Commission proceeded under the assumption that the allegations made by the respondent in the complaint were unquestionably true, despite the absence of supporting evidence. As previously stated in the *Jacob Mathew* case [(2005) 6 SCC 1 : 2005 SCC (Cri) 1369]⁵, the burden of proving medical negligence rests primarily on the claimant, and this burden can be met by presenting compelling evidence. Mere allegations in a complaint, which are contested by the opposing party, cannot be considered as evidence to substantiate the claimant's case. It is the responsibility of the complainant to furnish both the factual allegations (*facta probanda*) and the supporting evidence (*facta probantia*).

In the case of *Kusum Sharma and Others v. Batra Hospital and Medical Research Centre and Others* (2010),⁸ a complaint was lodged alleging medical negligence against a doctor who performed surgery. During the procedure, it was discovered that the tumor was malignant. Unfortunately, the patient passed away after receiving extensive treatment in various hospitals. The Court deliberated: Medical science has undoubtedly provided significant benefits to humanity, yet these benefits are accompanied by inherent risks. Every surgical procedure carries its own set of risks, and progress in medical techniques also entails potential risks. It is widely recognized that in the aftermath of unfortunate events, there is often a tendency to assign blame to a human factor, driven by a desire for accountability. However, it is crucial to acknowledge that professionals operate within an environment fraught with complexities and uncertainties. The Indian Penal Code (IPC), 1860 has been crafted to safeguard individuals who act in good faith from unwarranted punishment. Sections 88, 92, and 370 of the IPC offer comprehensive protection to professionals, including medical practitioners, ensuring they can carry out their duties without fear of unjust repercussions. Honorable Supreme Court made the following observations: The Indian Penal Code has been

crafted to ensure that individuals acting in good faith are not subjected to punishment. Sections 88 and 92 of the Indian Penal Code offer adequate protection to professionals, especially medical practitioners. It is incumbent upon civil society to prevent the unnecessary harassment or humiliation of medical professionals, enabling them to fulfill their duties without fear or apprehension.

Medical practitioners must also be safeguarded from malicious complaints filed by individuals seeking unjust compensation, particularly against private hospitals or clinics. Such baseless proceedings should be dismissed to protect medical professionals.

As long as medical professionals perform their duties with reasonable skill and competence in the interest of their patients, they are entitled to protection. The welfare of patients should always be the top priority for medical professionals. Section 88 and 92 of IPC shield doctors from professional liability or allegations of medical negligence in situations where acts performed for the patient's benefit, with or without their consent, do not yield the desired outcome. These sections establish that any action undertaken in good faith cannot be deemed negligent. Doctors should familiarize themselves with these sections to defend against negligence claims.

In a recent judgment, *Dr. Harish Kumar Khurana v. Joginder Singh & Others* (2021)⁹, this Court emphasized the obligation of hospitals and doctors to exercise due care in treating patients under all circumstances. However, in unfortunate cases, despite best efforts, death may occur. It is essential for sufficient material or medical evidence to be available before the adjudicating authority to determine whether death resulted from medical negligence. Not every patient death can be automatically attributed to medical negligence. The Court underscored that an accident typically refers to an unintended and unforeseen injurious occurrence, something that deviates from the usual course of events or could not reasonably be anticipated. The Court referred to the decision in *Martin F. D'Souza v. Mohd. Ishfaq* (2009) 3 SCC 1,⁴ which emphasized that a patient's unfavourable response to treatment or a failed surgery does not automatically render the doctor liable for medical negligence under the doctrine of *Res Ipsa Loquitur*. Unless strong evidence suggests otherwise, a doctor or surgeon should not be presumed guilty of medical negligence merely because a treatment fails despite their best efforts.

It is recognized that following unfortunate

events, there is often a tendency to seek a human factor to blame, driven by a desire for accountability. However, professionals, including medical practitioners, deserve comprehensive protection. The Indian Penal Code ensures that individuals acting in good faith are not unfairly punished. Sections 88 and 92 of the IPC offer adequate protection to professionals, particularly medical practitioners, in their endeavors to serve their patients diligently.

Upon examining the prominent cases of medical negligence, both within our country and abroad, particularly in the United Kingdom, certain fundamental principles emerge in handling such cases. When determining whether a medical professional is culpable for medical negligence, the following well-established principles should be considered: It is imperative for our civil society to recognize its duty and responsibility in ensuring that medical professionals are not unduly harassed or humiliated. This ensures that they can carry out their professional duties without fear or apprehension.

Provisions in Bharatiya Nyaya Sanhita, 2023,¹⁰ that absolves a physician of liability for offences caused by medical negligence: basis: good faith.

Sec2(7) defines "dishonestly" means doing of an act with the intention of causing wrongful gain to one person or wrongful loss to another person; Sec2(7) of BSA 2023, IPC 24.

An act of providing treatment to a patient by a qualified and licensed physician can not be a dishonest act.

Sec2(11) defines "good faith". – Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention; IPC 52.

The Doctrine of 'Good Faith' serves as the foundational principle underlying exemptions from liability for an offense. It stands as a cornerstone in the actions of medical professionals. It's crucial to note that while good intentions are important, they don't necessarily equate to good faith. This section specifies that an act can be deemed to have been performed in good faith only if it was executed with due 'care and attention'. Essentially, this constitutes a negative definition. Physicians can readily furnish circumstances demonstrating good faith from the patient's medical records. Subsequently, it falls upon the complainant to substantiate any allegations of bad faith or malicious intent.

Sec2(14) defines "injury" means any harm whatever illegally caused to any person, in body, mind, reputation or property; IPC 44.

Sec2(15) defines "illegal"- "legally bound to do". – The word "illegal" is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit; IPC 43.

For an injury to be considered an actionable harm (Negligence), it must have been caused unlawfully. Any bodily injuries resulting from the actions of a qualified and licensed surgeon or physician, whether intentional or unintentional, as part of treatment, are lawful. These medical professionals are obligated by law to provide treatment when approached by a patient.

Throughout this Sanhita (BNS) every definition of an offence, every penal provision, and every Illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or Illustration.

Illustrations: The sections, in this Sanhita which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

Thus all 'general exceptions' apply to all the offences in this Act. Every offence is to be considered subject to the exceptions. Exceptions are the basic statutory defence. Exceptions decriminalise.

General Exceptions described in BNS, 2023

- **Section 14 of BNS, 2023:** Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.¹⁰

Treatment administered by a licensed, practicing physician falls within this category, with good faith serving as the basis for any exceptions.

- **Section 15 of BNS, 2023:** Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.¹⁰

Judicial officers are granted immunity from liability for their judicial decisions and actions based on the principle of good faith. Similarly, physicians are also entitled to similar immunity from liability

for their medical decisions and actions carried out in good faith.

- **Section 17 of BNS, 2023:** Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes to be himself, to be justified law, in doing it.¹⁰

The act of a physician providing treatment for a disease is legally justified.

- **Section 18 of BNS, 2023:** Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.¹⁰

A duly qualified and licensed physician, adhering to medical standards, provides treatment in a lawful manner and by lawful means. This treatment is conducted with the patient's consent and without any intention to harm. Any unintended injury or harm resulting from the treatment is deemed accidental or unfortunate and does not constitute an offence.

- **Section 19 of BNS, 2023:** Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.— It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.¹⁰

A disease causes continuous harm to the patient, leading them to seek medical intervention from a doctor to alleviate its effects. Surgical procedures, especially ablative surgeries, are designed to cause harm as a necessary aspect of the treatment, with the patient's consent. The physician undertakes these procedures with the objective of preventing or reducing further harm to the patient, rather than harboring any criminal intent to harm them.

- **Section 25 of BNS, 2023:** Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of

age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.¹⁰

Even grievous injury, considered as harm, may be accidentally inflicted, provided that a competent individual has consented to endure such harm.

- **Section 26 of BNS, 2023:** Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm. IPC 88.¹⁰

Illustration

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

Sections 25 and 26 of the Bharatiya Nyaya Sanhita (BNS) delineate the statutory parameters within which physicians are authorized to intervene in the human body. These provisions hinge on three key elements: Benefit, Consent, and Good Faith. Good faith, as defined in Section 2(11) of the BNS, is substantiated by the doctor's legal competence through qualifications and licensing, meticulous care and attention as evidenced by the patient's treatment records for their benefit, and documented proof of consent, thus legally authorizing the provision of treatment. These criteria offer concrete evidence to fulfill the legal standards and constructs established by the judiciary for assessing negligence, particularly concerning criminal liability. Good faith forms the foundation of these provisions.

- **Section 28 of BNS, 2023:** A consent is not such a consent as intended by any section of this Sanhita—

If the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception.¹⁰

A consent given freely, without coercion, intimidation, or deceit, is considered valid consent.

Mnemonic for Consent: 5F's for easy recall

A consent is F-Fine, if given without F-Force, F-Fear or F-Fraud – is (F-Fair) valid consent.

- F-Fine (Ok)
- F-Fair (justified)
- F-Fear (threat to life of self or near & dear ones)
- F-Force (Blackmail)
- F-Fraud (Cheating)

- **Section 30 of BNS, 2023:** Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: IPC 92.¹⁰

All the above exceptions are applicable to Sec 106(1) under which death by rash or negligent act is a punishable offence.

Section 100 of BNS, 2023: Who ever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.¹⁰

A physician never administers treatment with the intent to cause the patient's death.

Section 106 (1) of BNS, 2023: Who ever 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 seven years, and shall also be liable to fine. IPC 304 A.¹⁰

As per the above stated exceptions a Duly qualified and licensed physician (competent) in good faith (honestly) providing treatment to a patient (care), which he believes would benefit of the patient (relieve him of his disease and suffering) with consent of the patient, is exempted from any liability for injury to the patient. The physician has committed No offence. The paramount doctrine of Good Faith is the basis of statutory protection (exemption) under clauses 14, 17, 18, 19, 25, 26 and 30 of Bharatiya Nyaya Sanhita 2023.

Sec 25 and 26 state as under:

Section 25 of BNS, 2023: Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the

doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm. IPC 87.¹⁰

Section 26 of BNS, 2023: Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.¹⁰

Illustration

A surgeon, A, aware that a specific operation may result in the death of Z, who is suffering from a painful condition, but without the intention to cause Z's death, and with the sincere intention to benefit Z, conducts the operation with Z's consent. In this scenario, A has not committed any offense.¹⁰

IPC sections 87, 88, 90 and others have been invoked by Hon'ble Supreme Court to provide protection and exemption to physicians in medical negligence cases. Vide supra.

Good Faith is defined as:

Sec2(11) "good faith".—Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention; IPC 52.¹⁰

Care and attention constitute the dual components of Good Faith. In the context of medical treatment, "care" entails addressing the medical requirements of the patient through the provision of treatment, while "attention" involves carefully assessing the patient's medical needs following examination, investigations, and diagnosis. A medical record serves as irrefutable evidence that care and attention have been administered to the patient. Definition of Good Faith in General Clauses Act is also relevant in this context: Clause (22) Gen Clauses Act: A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not.

It's important to highlight that "honesty" in actions is the cornerstone of "Good Faith." When a duly qualified, licensed, and competent doctor provides treatment to a patient with their consent, it is deemed to be carried out in "Good Faith," regardless of whether it was done negligently or not. For bodily harm or injury to be justifiably exempted from liability, Clause 26 of the Bharatiya Nyaya Sanhita (BNS) stipulates that, in addition to "Good Faith," the treatment must be for the "Benefit" of the patient and with their "Consent," whether expressed or implied. A properly executed informed consent, as per Clause 28 of the BNS, suffices for exemption from liability for any harm caused by the treatment, serving as evidence that the physician exercised due caution. It's also worth noting that an act causing bodily harm to be actionable must be "illegal," as per Clauses 2(15) and 2(14) of the BNS.

Sec 2(15) of BNS 2023 defines "illegal" - "legally bound to do". – The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for action; and a person is said to be "legally bound to do" whatever it is illegal in him to do.¹⁰

An act of providing treatment by a duly licensed medical practitioner cannot be deemed "illegal." Such practitioners are legally obligated to provide treatment when approached by a patient.

Sec 114 of BNS 2023: Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.¹⁰

Sec 115(1) of BNS 2023: Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt".¹⁰

Sec 115(2) of BNS 2023: Whoever, except in the case provided for by sub-section (1) of section 120 voluntarily causes hurt, shall be punished with imprisonment to a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.¹⁰

Sec 117(1) of BNS 2023: Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt".¹⁰

It's worth noting that procedures such as limb amputation or the removal of organs like the kidney, spleen, intestine, eye, or larynx through ablative surgery, while technically resulting in grievous

harm, do not constitute an offense. This is because they are performed with the patient's consent and in good faith for their benefit. All intentional injuries inflicted by a physician must be considered separately. Invasive procedures carried out by a physician inherently entail some level of injury. Exceptions are in place to provide physicians with immunity for all their actions conducted in good faith.¹¹

CONCLUSION

Exceptions are statutory protection against liability for an offence. They are available to a medical practitioner irrespective whether the case is filed for civil liability or criminal liability. Thus, Indian Medical Professionals, Healthcare providers, legal counsellors, advocates, Police officers and Hon'ble Judges need to update their knowledge, based on recent updates in Criminal Law, namely BNS, BNSS & BSA 2023, for prevention, investigation and management of legal hurdles related to medical malpractice lawsuits in future.

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