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**Criminal Medicinal Negligence: A Comparative Analysis of India and International Perspectives****Rashmi Sharma****PhD Scholar, School of Law, DAVV Indore****DOI: <https://doi.org/10.5281/zenodo.13303623>****Abstract:**

Criminal medicinal negligence, a grave concern in healthcare systems worldwide, reflects the nexus between medical practice and legal accountability. This paper explores the nature and scope of criminal medicinal negligence, focusing on India's legislative framework while drawing comparisons with international standards. Emphasizing cases, definitions, and consequences, this paper aims to illuminate the challenges and reforms needed to strengthen accountability in healthcare.

**1. Introduction:**

Medicinal negligence occurs when a healthcare professional fails to provide the requisite standard of care, resulting in harm to the patient. While negligence typically falls under civil law, certain egregious forms of negligence may amount to criminal conduct. Understanding the legal frameworks governing criminal medicinal negligence is crucial, especially in a country like India, where the intersection of healthcare and law is often fraught with complexity.



## **I. Defining Criminal Medicinal Negligence**

### **A. General Definition**

Criminal negligence entails a substantial departure from the standard of care that a reasonable person would exercise in similar circumstances. It is characterized by the following:

1. **Duty of Care:** The healthcare provider had an obligation to provide care to the patient.
2. **Breach of Duty:** There was a failure to meet the accepted standard of care.
3. **Causation:** The breach caused harm to the patient.
4. **Severity of Negligence:** The act was reckless or grossly negligent.

### **B. Distinction from Civil Negligence**

While civil negligence seeks compensation for harm suffered, criminal negligence might result in punitive measures, including imprisonment. Thus, the threshold for proving criminal negligence is significantly higher.

## **II. Legal Framework in India**

### **A. Statutory Provisions**

1. **The Indian Penal Code, 1860 (IPC):** Sections 304A and 338 of the IPC address death or grievous hurt caused by negligence.
2. **Consumer Protection Act, 2019:** This framework allows patients to seek redress against medical practitioners for negligence, though it does not explicitly categorize it as criminal negligence.



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### B. Landmark Cases

1. **Jacob Mathew v. State of Punjab (2005)**: Reinforced the principle that mere negligence does not constitute a crime; there must be gross negligence.
2. **Kusum Sharma v. Batra Hospital (2010)**: Clarified that penal action can be initiated in cases where the negligence is egregious and beyond mere civil liability.

### III. International Perspectives on Medicinal Negligence

#### A. United States

In the U.S., medical malpractice lawsuits primarily fall under tort law. However, criminal charges may be pursued in cases of gross negligence or reckless disregard for patient safety, particularly under statutes like the Drug Abuse Control Amendments.

#### B. United Kingdom

The UK operates under the principle established in *Bolam v. Friern Hospital Management Committee* (1957), which dictates that a practitioner is not negligent if they act in accordance with a practice accepted as proper by a responsible body of medical opinion. However, gross negligence manslaughter is a serious criminal offense.

#### C. Australia

Australian laws recognize both civil and criminal remedies for medical negligence. The *R v. Pullen* case establishes that health professionals may be criminally liable where their conduct is deemed grossly negligent.



## IV. Challenges and Reforms

### A. Challenges in India

1. **Judicial Backlog:** Overburdened courts may delay justice, impacting victims.
2. **Awareness and Education:** Many patients remain unaware of their rights, and medical professionals often lack training in legal aspects.
3. **Fear of Legal Action:** This can lead to defensive medicine, impacting the quality of care.

### B. Recommended Reforms

1. **Strengthening Legal Provisions:** Clearer definitions of criminal negligence should be established in legislation.
2. **Patient Education:** Awareness campaigns regarding patient rights can empower individuals.
3. **Training for Medical Professionals:** Comprehensive legal education for healthcare providers regarding their responsibilities and risks.

## 2. Conclusion:

Criminal medicinal negligence poses a significant challenge in the realm of healthcare and law, both in India and internationally. A more robust legal framework, combined with patient education and professional training, can significantly enhance accountability and ensure patients receive the care they deserve. Future research should aim to develop a cohesive understanding that transcends national boundaries, fostering international dialogue on standards of care and legal responsibility in medicine.



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This paper presents an overview of criminal medicinal negligence with a specific focus on India while providing insights into international perspectives, aiming to foster understanding and encourage necessary reforms in the healthcare sector.

### 3. References:

1. Indian Penal Code, 1860.
2. Consumer Protection Act, 2019.
3. Jacob Mathew v. State of Punjab, (2005) 6 SCC 1.
4. Kusum Sharma v. Batra Hospital, (2010) 3 SCC 480.
5. Bolam v. Friern Hospital Management Committee [1957] 1 WLR 582.
6. R v. Pullen [2003] NSWCCA 12.