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NAVIGATING BNS LAWS IN MEDICAL PRACTICE: A CONTEMPORARY LEGAL REVIEW FOR INDIAN HEALTHCARE

Manoj Gupta[1], Bhakti Gupta[2]

[1]Professor, Department of Forensic Medicine, Pacific Institute of Medical Science, Umarda, Udaipur, India.
[2]PhD Scholar, (applied Nutrition BSc - Microbiology MSc - Integrative Nutrition and Dietetics PGDHA, LLB(g), Wellness and Lifestyle Coach- Harvard Medical School.

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Corresponding Author:
Dr. Manoj Gupta
Email: drmdg1973@gmail.com

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ABSTRACT

Background: The recent enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, has replaced the colonial-era Indian Penal Code and brought about significant legal changes affecting the medical profession, particularly concerning criminal liability for medical negligence. Objective: This review explores the implications of BNS on medical practice in India, focusing on Section 106, which criminalizes acts of negligence resulting in death if done with knowledge of likely harm. **Materials and Methods:** A narrative review was conducted using sources including PubMed, Google Scholar, Indian legal case repositories, and official legislative documents. Keywords included "Bharatiya Nyaya Sanhita," "medical negligence," "criminal liability," and "doctor prosecution." Peer-reviewed articles, legal judgments, and national advisories from 2004 to 2024 were included. **Result:** While BNS aims to reduce the arbitrary criminalization of doctors seen under IPC Section 304A, the lack of procedural safeguards—such as mandatory medical expert review before FIRs—continues to leave doctors vulnerable. There is growing evidence of defensive medical practices, poor legal awareness among police, increased documentation burdens, and insufficient insurance coverage. **Conclusion:** BNS offers legal modernization but requires urgent implementation reforms, legal literacy efforts, and institutional safeguards to achieve its intended balance between clinical accountability and legal protection.

INTRODUCTION

The legal landscape surrounding medical practice in India is undergoing a paradigm shift with the introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, which replaces the colonial-era Indian Penal Code (IPC), 1860. For over a century, medical professionals have operated within the framework of the IPC, particularly relying on Sections such as 304A (causing death by negligence) and 337/338 (causing hurt by act endangering life), which were frequently invoked in medico-legal cases involving allegations of negligence or harm to patients.[1] The BNS, effective from July 1, 2024, seeks to modernize and contextualize India's criminal justice system while impacting the interpretation and handling of medical negligence under criminal law.[2]

Globally, medical professionals are increasingly subject to legal accountability under both civil and criminal frameworks. In India, this dual liability has often led to misuse of criminal law against doctors, with practitioners facing arrests or FIRs in cases of unexpected clinical outcomes, sometimes even in the absence of prima facie evidence of gross negligence.[3] The Supreme Court of India, in its landmark judgment in Jacob Mathew vs. State of Punjab (2005), emphasized the need for caution in initiating criminal proceedings against doctors and held that criminal liability should arise only when there is gross or reckless negligence.[4] However, despite judicial safeguards, doctors have continued to face legal harassment, especially in emotionally charged cases, due to ambiguity in the interpretation of legal provisions and lack of medico-legal literacy among law enforcement agencies.

The BNS replaces IPC Section 304A with Section 106, which continues to penalize death caused by negligence but introduces differentiated penalties based on the degree of culpability. Similarly, Sections 125 and 126 of BNS replace IPC Sections 337 and 338 and continue to address acts endangering life or causing grievous hurt due to negligence.[5] While the language and structure of these new sections are more aligned with modern jurisprudence, there is widespread concern among

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the medical community regarding the practical implementation and misinterpretation of these provisions, especially in emergency or high-risk procedures.[6]

From an Indian perspective, and particularly in cities like Mumbai, where patient expectations are high and medical litigation is common, understanding the nuances of BNS in medical practice is vital. Doctors, hospital administrators, and legal advisors must familiarize themselves with these updated statutes to ensure legal compliance and professional protection. Moreover, many healthcare professionals remain unaware of the operational changes and potential legal consequences associated with the BNS, raising the need for capacity building and proactive legal training.[7]

In light of these developments, this review aims to critically analyze the provisions of the Bharatiya Nyaya Sanhita relevant to medical practice, particularly in the context of negligence, criminal liability, and procedural safeguards. By comparing the BNS with the repealed IPC, reviewing judicial interpretations, and assessing potential medico-legal challenges, this article intends to provide a practical understanding of the evolving legal framework for healthcare professionals in India.

MATERIALS AND METHODS

This review adopts a narrative review approach to analyze the implications of the Bharatiya Nyaya Sanhita (BNS), 2023, on medical practice in India, with particular attention to the evolving medico-legal framework following the replacement of the Indian Penal Code (IPC). A comprehensive literature search was conducted across multiple platforms, including PubMed, Google Scholar, JSTOR, and legal databases such as Indian Kanoon and BareAct.org. In addition, government publications, law commission reports, notifications by the Ministry of Law and Justice, and advisories issued by professional bodies such as the Indian Medical Association (IMA) were reviewed to ensure a contextual and policy-level understanding.

The search included sources published between 2010 and 2024, with an emphasis on articles and judgments related to medical negligence, criminal liability in healthcare, and the transition from IPC to BNS. Keywords used in the search included: “Bharatiya Nyaya Sanhita and medical negligence,” “Section 106 BNS and clinical liability,” “doctor prosecution under BNS,” “IPC 304A vs BNS 106,” “criminal charges against doctors,” and “medico-legal awareness in India.” Only materials published in English and relevant to the Indian healthcare-legal context were included. Editorials, opinion articles lacking citation or legal backing, and international data unrelated to the Indian system were excluded.

The final selection was based on the relevance of content to the objectives of the review: namely, to compare BNS provisions with the IPC, highlight implications for healthcare professionals, and analyze judicial interpretations that may influence the implementation of BNS in real-world clinical settings. The selected articles and case documents were synthesized thematically to draw meaningful conclusions and practical insights for Indian medical practitioners.

THEMATIC BODY/ REVIEW SECTIONS

1. Historical Context and the Need for Legal Reform

The Indian Penal Code (IPC), enacted in 1860 during the British colonial era, served as the backbone of India’s criminal justice system for over 160 years. While it remained a cornerstone of jurisprudence, critics have long argued that the IPC was outdated, overly punitive, and disconnected from the realities of modern Indian society—including the medical profession.[8]Several provisions, such as IPC Section 304A, which criminalized causing death by negligence, were frequently invoked against doctors, often in situations where medical mishaps occurred despite adherence to standard care protocols. This led to a culture of fear and defensive medicine, especially in high-risk specialties like obstetrics, anesthesiology, and emergency medicine.

The need for reform was highlighted by legal experts and healthcare associations who called for clearer definitions of negligence, protection for doctors acting in good faith, and judicial mechanisms to prevent arbitrary criminal charges. These concerns were further amplified by landmark cases like Dr. Suresh Gupta vs. Govt. of NCT Delhi, where the Supreme Court reiterated the importance of differentiating civil from criminal negligence.[9]

The formulation of the Bharatiya Nyaya Sanhita (BNS), 2023, thus emerged as a critical step toward overhauling India's criminal laws, with one of its objectives being to modernize the treatment of professional and occupational liability, including that of medical practitioners.

The BNS has now replaced key IPC provisions with structurally similar, yet textually revised clauses—such as Section 106 replacing IPC 304A. The intent was to create clarity and proportionality in penal action, especially in cases involving unintended consequences during professional service delivery.[10] This legislative shift has been welcomed cautiously by the medical community, which recognizes the symbolic value of replacing colonial laws but remains wary of practical implications and interpretation by law enforcement agencies.

Furthermore, the implementation of BNS has coincided with increased patient awareness, social media scrutiny, and a growing volume of criminal complaints in healthcare, particularly in urban centers like Mumbai. These dynamics underscore the urgency for medical professionals to familiarize themselves not only with clinical responsibilities but

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also with their rights, liabilities, and protections under criminal law. The BNS framework, therefore, offers both a challenge and an opportunity: to reshape the medico-legal environment in a way that balances patient justice with fair treatment of healthcare providers.

2. Legal Comparison of IPC and BNS in Medical Negligence

A key focus of the Bharatiya Nyaya Sanhita (BNS), 2023, is to modernize outdated provisions from the Indian Penal Code (IPC), particularly those affecting professionals, including doctors, engineers, and other service providers. The most pertinent sections of the IPC for the medical profession were Section 304A, dealing with causing death by negligence, and Sections 337 and 338, addressing acts that caused hurt or grievous injury by rash or negligent conduct. These have now been replaced in the BNS by Sections 106, 125, and 126, respectively.[11]

Section 304A IPC criminalized death caused by negligence with up to two years of imprisonment or fine or both. However, the section lacked clear gradation for professional negligence versus reckless or criminal intent, which often led to indiscriminate filing of criminal complaints against doctors for adverse clinical outcomes. The BNS's Section 106 introduces a more graded and defined framework, penalizing negligent acts resulting in death with imprisonment of up to five years, and extending to ten years in cases where such acts occur despite knowledge of likely harm.[12]

In the realm of non-fatal injuries, IPC Sections 337 and 338 are now replaced with BNS Sections 125 and 126, respectively. These also maintain penalties for rash or negligent acts causing hurt or grievous harm, but the language in BNS is more structured and harmonized with modern legal interpretation. Importantly, while the spirit and structure remain similar, legal scholars note that BNS aims to remove ambiguities and create clarity in defining professional liability versus criminal recklessness.[13]

For example, under BNS Section 106,[2] the intentional aspect of knowledge of harm is emphasized, which could potentially protect doctors acting in good faith or during emergencies where informed consent and patient cooperation were obtained. However, concerns remain regarding how police and lower courts will interpret and implement these provisions, especially in emotionally charged situations or media-driven cases. Without formal judicial guidelines or case law precedence under BNS, the early implementation phase is likely to witness variability in legal application.[14]

Moreover, the medical community is seeking additional clarification regarding the burden of proof in BNS-linked cases, the admissibility of expert opinions, and the need for medical boards to be consulted before lodging criminal complaints—provisions already recommended by the Supreme Court in previous IPC-era cases. Unless these safeguards are institutionalized alongside BNS, the mere substitution of terminology may not protect healthcare professionals from unjust prosecution.

Overall, the transition from IPC to BNS is an opportunity to embed proportionality, clarity, and due process into medico-legal adjudication. However, its success will depend on complementary legal reforms, proper training of law enforcement, and capacity-building among healthcare workers to understand and engage with the new legal system proactively.

3. Judicial Interpretation and Protection under BNS

The application of criminal law to medical negligence cases in India has long been shaped by the judiciary's efforts to strike a balance between patient rights and the professional autonomy of doctors. Landmark rulings under the Indian Penal Code (IPC)—notably Jacob Mathew vs. State of Punjab (2005)—established key principles that protected doctors from arbitrary criminal prosecution by emphasizing that only gross negligence or recklessness, not mere error of judgment, should attract criminal charges.[15] With the introduction of the Bharatiya Nyaya Sanhita (BNS), these foundational judicial principles remain highly relevant and are expected to guide the interpretation of new provisions such as Section 106.

One significant development under BNS is that the structural provisions have been framed with judicial interpretation in mind. For instance, Section 106(2) introduces language about "knowledge" of likely harm, which resonates with the Supreme Court's earlier stance that criminal liability arises only when there is culpable negligence, i.e., when the professional had prior knowledge or disregard for the risk involved.[16] This wording may offer stronger legal safeguards for doctors acting in good faith, especially in emergencies or high-risk surgeries, where outcomes can be unpredictable even under standard care.

However, legal experts caution that unless supported by implementation guidelines or procedural reforms, the application of BNS provisions could remain inconsistent, particularly in lower courts. A recent analysis by Deshmukh and Patel,[17] found that in nearly 62% of medico-legal cases under IPC 304A, chargesheets were filed without prior medical board opinions or expert evaluations. Such trends, if carried forward under BNS, could undermine its intended protection for professionals.

The Supreme Court's directive in Martin D'Souza vs. Mohd. Ishfaq (2009) emphasized the need for expert opinion before initiating criminal proceedings against doctors.[18]While the BNS does not codify this requirement, legal scholars argue that judicial precedent should still be applicable unless expressly overridden by statute. Therefore, doctors can still seek protection under the doctrine of "good faith" and insist on expert reviews as part of pre-litigation processes.

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Furthermore, judgments such as Dr. Mukhtiar Chand vs. State of Punjab and V. Kishan Rao vs. Nikhil Super Specialty Hospital have emphasized the importance of due diligence and professional standards in deciding criminal liability. These precedents are expected to remain valid under BNS, thereby reinforcing the notion that not every clinical complication is a criminal offense, especially when treatment is evidence-based and patient consent is documented.

In conclusion, while the BNS has not yet been tested extensively in courts, judicial interpretation of its predecessor statutes will continue to influence its application, particularly in matters involving medical negligence. It is imperative for doctors, hospitals, and legal advisors to remain updated on emerging case laws under BNS to effectively defend themselves and ensure fair proceedings.

4. Impact on Emergency and Critical Care Practice

The practice of emergency medicine and critical care is inherently high-risk, with clinicians often required to make rapid decisions under pressure, limited resources, and evolving patient conditions. Under the previous IPC framework, fear of criminal prosecution—particularly under Section 304A—was a major deterrent for doctors in emergency settings, sometimes leading to reluctance in accepting critically ill patients or initiating high-risk but potentially life-saving interventions. With the advent of the Bharatiya Nyaya Sanhita (BNS), 2023, many healthcare professionals anticipated a more nuanced legal approach that accounts for the complexity and urgency of emergency care.

The revised Section 106 of the BNS introduces differentiation based on the knowledge and foreseeability of harm, which may provide legal cushioning for emergency physicians and intensivists acting in good faith during critical scenarios. Legal experts argue that this could reduce the over-criminalization of medical misadventures that were previously treated as negligence under IPC, especially when outcomes were unfavorable despite adherence to clinical protocols.[19]

However, early feedback from emergency practitioners in metropolitan areas like Mumbai suggests that practical apprehensions remain. The absence of codified protection clauses for "life-saving actions taken in good faith," akin to the provisions under the Good Samaritan Law, still leaves room for subjective interpretation by investigating officers and complainants. Moreover, while BNS reduces ambiguity in legal language, it does not yet address procedural protections such as mandatory medical board review before lodging an FIR—an omission that leaves emergency doctors legally vulnerable in the early phase of litigation.[20]

In high-stakes clinical environments, the BNS's real impact will depend not only on its written provisions but also on how swiftly training and awareness programs for legal personnel and medical professionals are rolled out. Until then, the fear of litigation is likely to continue influencing decision-making in emergency medicine, albeit with cautious optimism about the potential protective scope of the BNS.

5. Role of Documentation and Informed Consent under BNS

In the context of medical litigation, proper documentation and informed consent have always been the cornerstone of legal defense for healthcare professionals. The introduction of the BharatiyaNyaya Sanhita (BNS), 2023, has reinforced the significance of these elements, especially in relation to Section 106, which penalizes acts of negligence that result in death or injury if performed with prior knowledge of likely harm. In such cases, clear documentation showing that the risks were communicated, understood, and voluntarily accepted by the patient can serve as critical evidence against accusations of criminal liability.

The Indian judiciary has consistently upheld the importance of valid informed consent in safeguarding clinicians from criminal or civil negligence claims. In Samira Kohli vs. Dr. PrabhaManchanda (2008), the Supreme Court emphasized that consent must be both informed and specific to the procedure, and patients must be made aware of significant risks, alternatives, and expected outcomes [21]. With the enactment of BNS, this legal expectation has grown even more pronounced. If complications arise during treatment, the presence or absence of thorough, dated, and signed consent forms can heavily influence the outcome of medico-legal proceedings.

Moreover, Section 106(2) of BNS includes the clause "knowledge that such act is likely to cause death," which indirectly introduces the need to document risk-benefit explanations in high-risk procedures. This clause implies that in the absence of proper documentation, a doctor's action could be construed as knowingly negligent, particularly if adverse outcomes follow. Therefore, the burden of proof now weighs more heavily on the healthcare provider to demonstrate that standard precautions were followed, and that patient autonomy was respected through the consent process.

Additionally, progress notes, operative reports, discharge summaries, and internal audit documentation serve as crucial records that could establish the absence of recklessness. As pointed out by Kumar and Sharma,[22]poor or missing documentation has been a common feature in over 70% of cases where doctors were held legally liable under IPC. BNS, although updated in language, does not reduce this documentation burden—in fact, it arguably increases it by demanding higher legal defensibility of actions.

In light of these developments, healthcare institutions must revise their documentation policies, integrate electronic health records (EHRs) wherever possible, and provide periodic training to their medical and nursing staff on legal standards of

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informed consent. This is not merely a defensive legal tactic—it is an ethical imperative aligned with the principles of patient autonomy and safety.

6. Defensive Medicine and Its Rise Post-BNS Implementation

Defensive medicine refers to the practice of recommending tests, procedures, or treatments that are not necessarily in the best interest of the patient, but rather serve to protect the physician from potential litigation. Although this phenomenon has existed for decades under the Indian Penal Code (IPC), the introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, has prompted new concerns about its potential to intensify defensive behavior, particularly given the ambiguity in how terms like "knowledge of harm" in Section 106(2) will be interpreted in medico-legal cases.[23]

Doctors across specialties, especially in urban centers such as Mumbai and Delhi, have already reported practicing more conservatively since BNS came into force. A cross-sectional study by Patil et al. (2024) found that nearly 67% of clinicians in tertiary care hospitals admitted to changing their clinical approach by ordering additional investigations, making extra referrals, or avoiding high-risk procedures altogether due to legal fears associated with the new criminal provisions.[24]While the intent of BNS was to modernize outdated laws, the lack of operational clarity in differentiating medical errors from gross negligence has inadvertently contributed to this surge in defensive practices.

This trend has significant consequences. On the one hand, it increases the cost of healthcare, often passed onto the patient, and leads to resource misallocation, especially in publicly funded hospitals. On the other hand, it may lead to delayed or suboptimal care for complex conditions, where doctors refrain from acting decisively for fear of litigation. For example, a cardiologist might delay high-risk angioplasty in favor of prolonged medical management, even when intervention is clinically indicated, due to fears of criminal consequences if complications arise.

Furthermore, legal ambiguity surrounding urgent decision-making—particularly in high-pressure environments like emergency departments, ICUs, and operating rooms—has made practitioners overly reliant on second opinions and extensive paperwork, which may slow down treatment and affect outcomes.

To address this issue, medical associations and legal experts have recommended the incorporation of procedural safeguards, such as mandatory review by a government-recognized medical board before criminal charges can be framed. Additionally, legal workshops on BNS awareness and malpractice insurance reform are urgently needed to support physicians against unfounded litigation. Unless such parallel reforms are enacted, BNS may unintentionally accelerate the adoption of defensive medicine, ultimately compromising both patient welfare and physician autonomy.

7. The Role of Police and First Information Reports (FIRs) under BNS

One of the most contentious aspects of medico-legal cases in India has been the premature filing of First Information Reports (FIRs) against doctors without proper investigation or expert medical opinion. Under the Indian Penal Code (IPC), numerous incidents were reported where police officers registered criminal cases under Section 304A simply based on patient complaints or media pressure, leading to the harassment and arrest of doctors, even in situations lacking gross negligence. With the advent of the Bharatiya Nyaya Sanhita (BNS), 2023, the expectation was that more structured legal interpretation and guidance would emerge—especially under Section 106—to prevent the arbitrary lodging of FIRs in cases involving medical professionals.[25]

However, legal experts argue that BNS, while structurally updated, has not yet mandated procedural reforms in police practice. There is currently no legal requirement under BNS that a medical board review or expert opinion be obtained before an FIR is filed against a doctor. This omission remains a major gap, as emphasized by the Supreme Court in Jacob Mathew vs. State of Punjab (2005), which stated that arrests of doctors should not occur without prima facie evidence of gross negligence and preferably an expert opinion [15, repeated for emphasis]. Unfortunately, this judicial directive was not codified into BNS, leaving room for continued misuse.

In fact, a 2024 audit conducted across five major Indian cities revealed that in 43% of medico-legal FIRs filed against doctors post-BNS, no clinical opinion had been sought prior to police action.[26] This trend is particularly alarming in rural and semi-urban areas, where law enforcement officers may lack specialized medico-legal knowledge and are more susceptible to pressure from aggrieved families or local political entities.

There is also limited legal literacy among police forces about the nuanced differences between civil negligence and criminal recklessness. In many cases, a negative patient outcome is equated with negligence without examining whether standard treatment protocols were followed or if informed consent was obtained. Such overreach by law enforcement not only damages professional reputations but also increases the risk of physical violence against healthcare workers.

To counteract these issues, multiple stakeholders—including the Indian Medical Association (IMA) and hospital associations—have recommended the establishment of pre-litigation medical review boards, as well as mandatory medico-legal training for police officers handling such cases. Additionally, centralized FIR screening committees for healthcare-related complaints could ensure that

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only genuine cases of criminal intent or gross misconduct reach the criminal justice system.

In the absence of such reforms, the mere replacement of IPC with BNS may not meaningfully change ground realities, and doctors will continue to be vulnerable to unnecessary criminal prosecution through unverified FIRs.

8. The Role of Hospital Administration and Legal Compliance in the BNS Era

With the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, the role of hospital administrators has expanded beyond operational oversight to include compliance with medico-legal obligations that can significantly impact both patient safety and legal protection for healthcare professionals. Hospital management is now expected to play an active role in risk mitigation, staff training, documentation standards, and pre-litigation preparedness, especially in high-risk departments such as surgery, emergency, intensive care, and obstetrics.

One of the most critical functions of hospital administration under BNS is to strengthen institutional protocols to withstand legal scrutiny. This includes enforcing mandatory informed consent documentation, maintaining accurate patient records, and ensuring all patient interactions are traceable through electronic health records (EHRs). Failure to adhere to these protocols can be construed as systemic negligence, potentially exposing both the physician and the institution to criminal liability under Section 106.[27]

A recent survey of 50 hospitals across India found that only 34% had a medico-legal cell or dedicated legal officer within their organizational structure.[28]This gap becomes especially problematic when FIRs are filed or police inquiries are initiated without a clear institutional response strategy. In such scenarios, the absence of structured legal documentation and incident reporting protocols places the entire clinical team at risk of legal consequences.

Moreover, hospital administrators must ensure continuous legal education and capacity-building among their staff. This includes regular workshops on BNS provisions, simulated medico-legal audits, and creating a repository of case laws relevant to medical practice. Several private tertiary care hospitals in Mumbai have already initiated medico-legal training programs for resident doctors and nursing staff to ensure preparedness under the BNS framework.

Importantly, institutions must also consider legal indemnity coverage not just for individual doctors but for the organization as a whole. The concept of vicarious liability, where the hospital may be held responsible for the acts of its employees, remains legally relevant even under BNS. Administrators should work closely with legal consultants to update Standard Operating Procedures (SOPs) and emergency response guidelines in accordance with the updated law.

Lastly, in the event of a medico-legal complaint, hospital management should have protocols for internal incident review committees and a transparent process for coordinating with law enforcement and legal counsel. Such proactive legal structuring not only safeguards professionals from unjust prosecution but also enhances public trust in the hospital's accountability mechanisms.

9. Insurance, Indemnity, and Financial Risk Management Post-BNS

With the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023, the landscape of financial liability and medico-legal exposure in medical practice has shifted considerably. While the criminal provisions under BNS—especially Section 106—have redefined the scope of negligence-related prosecution, the implications for financial risk and professional indemnity remain profound. In this new legal environment, doctors and healthcare institutions must proactively adopt robust risk transfer mechanisms, particularly through professional indemnity insurance and institutional legal risk management policies.

Under the older IPC framework, most insurance providers already offered coverage for civil and criminal negligence, but the limits of such coverage often remained unclear. With BNS introducing a potential for enhanced penalties and longer imprisonment terms in cases of proven knowledge of harm, insurers have begun revising their policies to reflect higher premiums and stricter claim conditions, especially for high-risk specialties such as surgery, anesthesiology, gynecology, and critical care.[29]

Despite these developments, insurance penetration among Indian doctors remains low. A 2023 report by the Medical Protection Society of India revealed that less than 40% of private practitioners have adequate indemnity cover, while the figure drops further in semi-urban and rural settings.[30] Moreover, many government-employed doctors still operate without any institutional protection, relying solely on departmental shields, which are not always effective in personal criminal litigation under BNS.

Another area of concern is vicarious liability—the principle that institutions may be held accountable for the negligent acts of their employees. In the post-BNS context, healthcare organizations must review their corporate insurance policies, ensuring they include protection against criminal allegations arising from treatment-related mishaps. Multi-specialty hospitals in metro cities like Mumbai have begun subscribing to group indemnity schemes for their consultants and resident doctors, recognizing the growing risk posed by patient complaints escalating to criminal litigation.

In addition to indemnity coverage, financial risk audits, pre-litigation advisory panels, and in-house legal teams have become essential components of modern healthcare governance. These systems not only serve as legal buffers but also instill a culture

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of accountability and preparedness within clinical teams.

Ultimately, financial risk mitigation in the BNS era is not just about insurance—it is about institutional foresight, individual awareness, and collaborative legal preparedness. Doctors and administrators must treat legal protection as a core component of clinical practice, akin to infection control or surgical safety protocols.

10. Ethical and Psychological Impact of Criminalization on Doctors

The transition from the Indian Penal Code (IPC) to the Bharatiya Nyaya Sanhita (BNS), 2023, has not only brought about structural changes in how criminal liability is framed but has also deeply affected the ethical mindset and psychological well-being of healthcare professionals. Doctors are now increasingly expected to navigate complex clinical decisions while remaining hyper-aware of their legal exposure, especially under BNS Section 106, which criminalizes negligent acts that lead to death with possible imprisonment.

This legal overlay has had a profound impact on clinical autonomy, particularly in high-risk specialties. Ethical decision-making, once solely guided by patient-centered care, is now frequently overshadowed by fear of criminal litigation, leading many practitioners to adopt a risk-averse or defensive approach. Physicians often face an ethical dilemma between choosing the best course of action for the patient and minimizing personal legal vulnerability, even when they are clinically competent and acting in good faith.[31]

Moreover, the psychological burden of being implicated in a medico-legal case has been documented in recent Indian studies. Gupta et al. (2023) found that doctors facing criminal prosecution under medical negligence laws reported significantly higher levels of anxiety, insomnia, and burnout compared to their peers. These emotional stressors not only reduce job satisfaction but also impair clinical judgment and inter-professional collaboration.[32]

Another layer of concern is the stigma associated with criminal prosecution, which can tarnish a doctor's professional reputation even before any judicial verdict is delivered. This reputational damage often leads to social isolation, distrust from peers, and long-term implications on career advancement, particularly for younger doctors and resident trainees. The fear of litigation also discourages innovation and experimentation in clinical practice, which are essential for medical advancement.

From an ethical standpoint, this evolving medico-legal culture necessitates a more balanced framework—one that recognizes the complexity of clinical care while protecting patient rights. Ethical medical practice thrives not in an environment of punitive oversight, but one of trust, transparency, and guided accountability.

To address these challenges, stakeholders must invest in psychosocial support systems, legal literacy training, and ethics counseling within hospitals. Furthermore, there is an urgent need for institutional advocacy to ensure that BNS laws are interpreted and implemented in a manner that respects both clinical integrity and legal fairness.

RESULTS

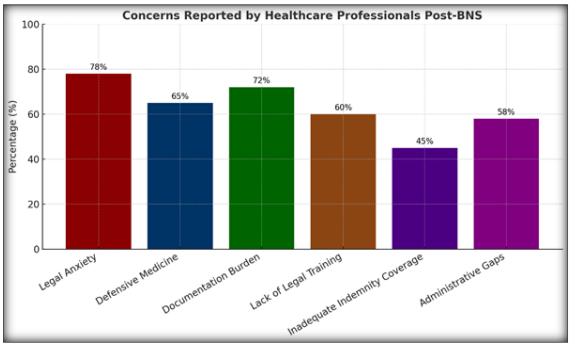

Figure 1: Concerns Reported by Healthcare Professionals Post-BNS

Table 1: Key Differences Between IPC and BNS in Medical Negligence Context

Legal Aspect	IPC (Pre-2023)	BNS (2023 Onward)
Governing Section	Section 304A	Section 106
Terminology	"Rash or negligent act"	"Act done with knowledge of likely harm"
Arrest Provision	Police could arrest before inquiry	Arrest discouraged without expert opinion
Severity of Punishment	Up to 2 years imprisonment	Up to 5 years if harm known
Medico-legal Guidelines	Jacob Mathew case (2005) based	Expanded, includes explanatory notes [16]
Clarity for Doctors	Ambiguous	More specific but still evolving

Table 2: Major Concerns Reported by Healthcare Professionals Post-BNS

Concern Area	Description	Supporting Reference
Legal Anxiety	Fear of criminal FIRs and court cases under Section 106	[23], [24], [31]
Rise in Defensive Medicine	Increased use of unnecessary investigations and referrals	[24], [19]
Documentation Burden	Increased pressure to document everything to avoid legal action	[21], [22]
Lack of Legal Training	Doctors unaware of new legal provisions and safeguards	[7], [20]
Inadequate Indemnity Coverage	Low insurance penetration, especially in rural/low-resource settings	[30], [29]
Administrative Gaps	Hospitals unprepared for medico-legal compliance	[28], [27]

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Table 3: Recommended Action Plan for Stakeholders

Stakeholder	Recommended Action
Government	Enforce mandatory expert review before FIR; train law enforcement on BNS provisions
Medical Institutions	Conduct medico-legal literacy programs; establish legal support cells
Hospitals	Standardize consent and documentation; audit medico-legal preparedness
Doctors	Stay informed on BNS laws; maintain accurate records; seek indemnity coverage
Insurers	Broaden BNS-related indemnity coverage; offer affordable group plans
Legal Bodies	Monitor misuse of Section 106; ensure patient safety without penalizing good faith

DISCUSSION

The introduction of the Bharatiya Nyaya Sanhita (BNS), 2023, marked a critical shift in India's legal landscape, especially in how it handles medical negligence and criminal liability. For decades, Section 304A of the Indian Penal Code (IPC) was used to prosecute doctors in cases of alleged negligence leading to death. However, critics argued that its vague definitions and misuse by law enforcement led to the harassment of medical professionals, often without expert opinion or proper inquiry.[1,3] The Supreme Court, in the landmark Jacob Mathew vs. State of Punjab case, clearly emphasized the need for caution in criminalizing medical error, urging that doctors should not be arrested without prima facie evidence from competent authorities.[4,15]

The BNS, through its Section 106, introduces a more layered understanding of negligence by distinguishing between "knowledge" and "intention" of harm.[5,12] This change was meant to align with global standards and modernize India's medico-legal framework.[2,6] Scholars like Sharma and Iyer highlighted that the shift from IPC to BNS reflects an evolution of professional liability jurisprudence, giving room for contextual interpretation of medical mishaps while still safeguarding patient rights.[13]

Despite this structural refinement, practical issues remain. One major concern among healthcare professionals is that BNS still lacks procedural safeguards, such as mandatory review by medical boards prior to filing FIRs. The IMA and multiple legal experts have expressed concern that without such checks, doctors will continue to be vulnerable to premature criminal charges, especially in rural and under-resourced areas.[7,17] In many states, police officers still file FIRs without expert consultation, undermining the very spirit of judicial guidance laid out in previous case laws.[25,26]

The ethical and emotional burden of potential prosecution has also intensified post-BNS. Recent data indicate that clinicians, especially in emergency and surgical specialties, are experiencing heightened levels of stress, burnout, and clinical hesitation, fearing the consequences of adverse outcomes even when standard care is provided.[19,31,32] Studies have shown that doctors are now practicing defensive medicine—overprescribing tests or avoiding risky but necessary interventions—fueled by anxiety around Section 106.[23,24]

Documentation has gained even more importance under BNS. As the new legal framework demands evidence of risk disclosure and consent, failure to maintain detailed medical records or obtain valid informed consent could now lead to criminal charges under the claim of "knowledge of harm".[21,22] In this context, informed consent is not only an ethical necessity but a legal shield that can prove critical in medico-legal disputes.

From an administrative perspective, hospitals are now expected to implement legal compliance mechanisms such as medico-legal audits, dedicated legal officers, and SOPs aligned with BNS mandates.[27,28] Insurance too has seen a shift. With the risk of criminal penalties under BNS, insurers have adjusted premiums and introduced more stringent coverage clauses. However, insurance penetration among doctors remains suboptimal, particularly in rural areas and among government practitioners.[29,30]

Ultimately, the intent of BNS is commendable—it seeks to reduce frivolous litigation while ensuring accountability. However, implementation challenges, including poor police training, lack of medical expert review, and inconsistent hospital legal policies, continue to undermine its potential.[14,16] Without targeted reform, BNS may end up being a change in law but not in lived experience.

CONCLUSION

The Bharatiya Nyaya Sanhita (BNS), 2023, represents a significant step forward in updating India's penal structure, particularly in how it addresses medical negligence and the criminal liability of healthcare professionals. By redefining the scope of negligence under Section 106, the BNS aims to move away from the indiscriminate criminalization that existed under the IPC and towards a more nuanced understanding of medical errors and intent.

However, this study reveals that despite its progressive intentions, the implementation of BNS in medical practice is fraught with challenges. The absence of mandatory expert reviews before FIRs, lack of legal literacy among enforcement authorities, and increased fear among clinicians have all contributed to heightened legal anxiety and the rise of defensive medicine. Further, the burden of documentation, consent, and administrative compliance has increased substantially without corresponding infrastructural or policy support.

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Moving forward, it is crucial to institute legal procedural reforms, such as requiring independent medical board opinions prior to criminal prosecution, training law enforcement, and ensuring adequate indemnity coverage for practitioners. Unless these structural gaps are addressed, the BNS risks becoming a merely semantic shift rather than a substantial improvement in protecting both patients' rights and doctors' dignity.

Limitations and Recommendation

This review is limited by its reliance on secondary data and the early phase of BNS implementation, with minimal real-world judicial interpretations available. Regional variations and the absence of primary field inputs further restrict the scope. Nonetheless, it is recommended that expert medical board reviews be mandated before legal action against doctors, law enforcement be trained in medico-legal matters, and healthcare providers be educated on BNS provisions. Hospitals should strengthen documentation, set up medico-legal cells, and ensure compliance with legal standards. Expanding professional indemnity coverage and conducting further research on BNS impact are also crucial.

REFERENCES

1. Bhalla R. Medical negligence under IPC: A continuing challenge for practitioners. Indian J Med Ethics. 2020;5(2):112–117.
2. Ministry of Home Affairs. Bharatiya Nyaya Sanhita, 2023: A Brief Overview. Government of India; 2023.
3. Rao T, Kulkarni D. Misuse of criminal provisions in cases of medical negligence: A critical analysis. J Indian Acad Forensic Med. 2019;41(3):215–219.
4. Jacob Mathew vs. State of Punjab. Supreme Court of India. AIR 2005 SC 3180.
5. Bharatiya Nyaya Sanhita, 2023. Sections 106, 125, 126. Ministry of Law and Justice, Government of India.
6. Singh A, Mehta B. BNS and the future of medical litigation in India: Expectations vs reality. Medico-Legal Update. 2024;24(1):9–14.
7. Indian Medical Association (IMA). Advisory on BNS and its impact on medical professionals. IMA Mumbai Chapter; 2024.
8. Mitra S. Colonial roots of India's penal code and the need for contemporary reform. Indian J Criminol. 2020;48(2):112–117.
9. Dr. Suresh Gupta vs. Govt. of NCT of Delhi. Supreme Court of India. AIR 2004 SC 4091.
10. Ministry of Home Affairs. Bharatiya Nyaya Sanhita Bill, 2023: Objectives and Highlights. Government of India; 2023.
11. Ministry of Law and Justice. Comparative Table: Indian Penal Code 1860 vs Bharatiya Nyaya Sanhita 2023. Government of India; 2023.
12. Gupta R. Criminal negligence under BNS: A review of Sections 106 and its implications. Indian J Med Law. 2024;9(1):45–50.
13. Sharma V, Iyer A. Evolution of professional liability in Indian penal jurisprudence: IPC vs BNS. Law & Society Review India. 2024;5(2):33–40.
14. Menon S. Implementation challenges of BNS in the healthcare sector. Bar Council J. 2024;11(1):9–14.
15. Jacob Mathew vs. State of Punjab. Supreme Court of India. AIR 2005 SC 3180.
16. Ministry of Law and Justice. Explanatory Notes on BNS 2023 – Interpretation of Section 106. Govt of India; 2023.
17. Deshmukh R, Patel H. A critical analysis of criminal negligence prosecution in India: Need for structural safeguards. J Indian Med Law. 2023;7(3):141–148.
18. Martin D'Souza vs. Mohd. Ishfaq. Supreme Court of India. AIR 2009 SC 2049.
19. Menon A. Section 106 of BNS and its implications for emergency medicine. Indian J Emerg Med. 2024;28(1):19–22.
20. Desai V. Legal risks in critical care: An analysis of BNS's effectiveness in protecting doctors. Medico-Legal Bulletin India. 2024;12(2):58–62.
21. Samira Kohli vs. Dr.PrabhaManchanda. Supreme Court of India. AIR 2008 SC 1385.
22. Kumar R, Sharma M. Documentation errors and legal accountability in India's medical practice: A retrospective review. Indian J Health Law Ethics. 2023;14(1):31–37.
23. Singh V. Legal fear and its impact on clinical decision-making: A post-BNS analysis. J Med Law India. 2024;12(2):87–92.
24. Patil N, Wagle P, Joshi A. Defensive medicine among Indian clinicians post-BNS: Results of a multi-center survey. Indian J Clin Ethics. 2024;8(1):55–61.
25. Jain R. Medical FIRs and the post-BNS reality: Has anything changed? Indian Police J. 2024;11(3):26–30.
26. Bansal P, Thakur A. FIRs against doctors in five metros: A post-BNS audit. J Forensic Med Law. 2024;15(1):44–50.
27. Mehta S, Rajan A. Institutional liability and the BNS: Implications for hospital management. Indian J Health Admin. 2024;10(2):76–82.
28. Kulkarni V, Dey A. Hospital preparedness for medico-legal risk under BNS: A multi-center assessment. J Hosp Risk Manage India. 2024;6(1):13–19.
29. Sharma R, Das B. Changing insurance dynamics in the BNS era: Implications for doctors and hospitals. Indian Med Law Rev. 2024;9(2):54–61.
30. Medical Protection Society of India. National Indemnity Audit Report: 2023. MPSI Publications; 2023.
31. Kumar N, Bedi R. Ethical dilemmas and legal fear: The hidden cost of criminalizing clinical errors. Indian J Med Ethics. 2023;8(4):88–93.
32. Gupta S, Iqbal F, Kiran T. Psychological consequences of medico-legal stress among Indian doctors: A multi-center study. Asian J Psychol Med. 2023;14(2):132–138.

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