

CARRY ON, DOCTOR: THE HINDU EDITORIAL ON THE AMENDED BHARATIYA NYAYA (SECOND) SANHITA BILL

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December 26, 2023 12:15 am | Updated 09:05 am IST

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The proverbial slip between the cup and lip was in evidence when the Union Home Minister's assurance on the floor of the Lok Sabha was at variance with the actual amendment on [punishment for doctors in cases of death due to negligence](#). Amit Shah initially said: "If someone died due to medical negligence by doctors it was treated as culpable homicide not amounting to murder. I am bringing an amendment today. Doctors have been exempted from punishment [under this section]. The Indian Medical Association [IMA] had requested us [for the exemption]." The amended [Bharatiya Nyaya \(Second\) Sanhita Bill, 2023](#), passed since, however did not provide that blanket exemption to doctors. Instead, the amended Section 106(1) specifies that a registered medical practitioner (RMP) shall be punished with imprisonment up to two years and a fine. In effect, the punishment for doctors as specified under Section 304(A) of the Indian Penal Code that the BNSS replaces, has been retained. With the IMA still thanking the government despite the status quo situation, a deft look behind the scenes reveals that a draft Bill submitted to the Parliamentary Standing Committee on the issue, actually suggested a seven-year imprisonment term for death due to negligence in case of an RMP. The IMA then submitted to the Standing Committee that there was no mens rea or criminal intent in the relationship between the patient and the doctor, and thus the increased punishment was not justified. The committee then reduced the imprisonment to five years, which finally rested at two years, as the law was passed.

It is pertinent to look at the index case that defined guidelines relating to medical negligence — *Jacob Mathew vs State of Punjab & Anr. (2005)*. The court held that the negligence should be 'gross', of a significantly high degree, and consequently, criminal liability would come up only if the physician's act can be demonstrated to be negligent or reckless, causing death. Even during prosecution, at various levels, the weight is on the opinion of a similarly qualified expert on whether negligence on the part of the doctor led to death. While it may be argued that doctors thus enjoy adequate protection under the law in the execution of their duties, the reality is that the incidence of violence against medical professionals is indeed increasing. To offer doctors refuge from fear of assault while discharging their duty, and to ensure that any decision made is not clouded or impaired from such fear is important. No one is above the law, but any attempt to demonise doctors for deaths that occur may cause them to hold back from giving patients the best available care. That, under no circumstances, is acceptable.

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