

**Bill No. 277 of 2022**

THE CRIMINAL LAW (AMENDMENT)  
BILL, 2022

By

DR. ALOK KUMAR SUMAN, M.P.

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*further to amend the Indian Penal Code, 1860 and  
the Code of Criminal Procedure, 1973.*

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5        1. (1) This Act may be called the Criminal Law (Amendment) Act, 2022.  
          (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,  
and  
commencement.

## CHAPTER II

## AMENDMENTS TO THE INDIAN PENAL CODE, 1860

Insertion of new section 304C.	<p><b>2.</b> In the Indian Penal Code (hereinafter this Chapter referred to as the Penal Code), after section 304B, the following section shall be inserted, namely—</p>	45 of 1860. 5
Causing death by medical negligence.	<p>“304C. Whoever, being a registered medical practitioner, causes the death of any person doing the cause of medical treatment due to any medical negligence shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both:</p> <p>Provided that causing the death of a person during medical treatment or intervention done with consent in accordance with the proviso to section 88 of this Code shall not be considered as medical negligence, unless the contrary is proved supported by a team of medical experts or a medical Board.</p> <p><i>Explanation.</i>— For the purpose of this section, registered medical practitioner means a person who possesses recognised medical qualification and registered under the provisions of the National Medical Commission Act, 2019 (30 of 2019).”.</p>	10 15
Insertion of a new section 327A.	<p><b>3.</b> After section 327 of the Penal Code the following section shall be inserted, namely—</p>	20
Violence against health care service personnel and damage to property.	<p>“327A. Whoever,—</p> <p>(i) commits or abets the commission of an act of violence against an healthcare service personnel; or</p> <p>(ii) abets or causes damage or loss to any property of a healthcare service personnel, shall be punished with imprisonment for a term which shall not be less than three months, but which may extend to five years, and with fine, which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees:</p> <p>Provided that while committing an act of violence against a healthcare service personnel if a person causes grievous hurt as defined in section 320 to healthcare service personnel, he shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine, which shall not be less than one lakh rupees, but which may extend to five lakh rupees.”.</p>	25 30 35

## CHAPTER III

## AMENDMENT TO THE CODE ON CRIMINAL PROCEDURE, 1973

Amendment of First Schedule.	<p><b>4.</b> In the First Schedule to the Criminal Code, under the heading “I.— OFFENCES UNDER THE INDIAN PENAL CODE”,—</p>	2 of 1974. 40
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(a) after the entries relating to section 304B, the following entry shall be inserted, namely:—

	1.	2.	3.	4.	5.	6.
5	304C	Causing death by medical negligence	Simple imprisonment of two years or fine or both	Non-cognizable	Bailable	Any Magistrate

(b) after the entries relating to section 327, the following entry shall be inserted, namely:—

	1.	2.	3.	4.	5.	6.
10	327A	Violence against Healthcare service professionals	Imprisonment which shall not be less than three months but which may extend upto five years and fine, which shall not be less than fifty thousand but which may extend.	cognizable	Non-bailable	Court of Session
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## STATEMENT OF OBJECTS AND REASONS

Our Constitution guarantees to all persons the right to life and personal liberty and the equal protection of laws to all classes of citizens. It is deemed necessary and expedient to enact legislation for the protection of these rights guaranteed by the Constitution. In this regard, the Hon'ble Supreme Court in the case of Jacob Mathew *vs.* State of Punjab AIR2005SC3180; (2005)6SCC1 had afforded necessary guidelines and procedures, to be adopted by the Central and State Government for proceeding against a medical professional to be held responsible under Section 304A of Indian Penal Code, 1973.

The Ethics and Medical Registration Board of the National Medical Commission [Letter No. NMC/MCI/EMRB/C-12015/0023/2021/ETHICS/022426 dated-29/09/2021 in compliance with the mandamus issued by the Apex Court (*vide supra*) has framed specific guidelines needed for prosecution of doctors for causing death of innocent patients due to 'gross' medical negligence. The Hon'ble Supreme Court in the aforesaid judgment (*vide supra*) had coined a few terms to deal with the cases of death due to medical negligence. Since the provisions available under section 304 A IPC is generic in nature and as such insufficient to deal with the professional medical negligence, which is more complex where the help of medical experts become necessary. The constitution bench of the Hon'ble Supreme Court in the matter of Lalita Kumari *vs.* State of U.P. & OR's, [2 SCC 1 : (2014) 1 SCC (Cri) 524] *vide* Judgment dated 12.11.2013 (and partially modified on 05.03.2014) held that while ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry (in medical negligence cases) should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

The Hon'ble Supreme Court in the case of Jacob Mathew *vs.* State of Punjab opined that to prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury which resulted was most likely imminent. Negligence to be established by prosecution must be culpable or gross and not the negligence merely base upon an error of judgment. And death should have been the direct cause. The Hon'ble Supreme Court in the case of Jacob Mathew *vs.* State of Punjab observed that the word 'gross' has not been used in section 304A of Indian Penal Code, 1973, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be 'gross'. The expression 'rash or negligent act' as occurring in Section 304A of the IPC has to be read as qualified by the word 'grossly'.

To cope with the difficulty of unjust litigations against doctors, the Hon'ble Supreme Court in the case of Jacob Mathew *vs.* State of Punjab issued some guidelines for proper investigations. But almost sixteen years have passed by and in the absence of a clear cut section in IPC, our police responsible to register an FIR, is still groping in the dark to find out a suitable

Section of law to proceed with case of death due to medical negligence cases, resulting thereby, such cases are registered ‘usually’ under **Section 304 IPC**, ‘occasionally’ under **Section 304 A IPC** or ‘sometimes even’ under **Section 302 IPC**. This mix up has made the life of both the complainant and the accused miserable. The accused is harassed by the police and invariably the FIR is quashed by the Hon’ble courts for want of proper investigations and as such justice is eluded for both. This frustrates the general public and now-a-days, the hapless people, in case of any eventuality, resort to violence to press for unjust compensation on the spot.

However, in the EPIDEMIC DISEASES (AMENDMENT) ACT, 2020, some specific Sections to deal with the cases of violence have been added. Since the incidence of violence is not limited to epidemic period only, the same provisions are required to be added in criminal laws to deal with the cases of violence during the time of peace. The Hon’ble Supreme Court in the case of *Jacob Mathew vs. State of Punjab* quoted that ‘Medical Professionals in Criminal Law- The criminal law has invariably placed the medical professionals on a pedestal different from ordinary mortals. The Indian Penal Code enacted as far back as in the year 1860 sets out a few vocal examples. **Section 88** in the Chapter on General Exceptions provides exemption for acts not intended to cause death, done by consent in good faith for person’s benefit. **Section 92** provides for exemption for acts done in good faith for the benefit of a person without his consent though the acts cause harm to a person and that person has not consented to suffer such harm. There are four exceptions listed in the Section which is not necessary in this context to deal with. **Section 93** saves from criminality certain communications made in good faith. The present day scenario demands some new sections in criminal law to deal with the prevailing situation properly.

Hence this Bill.

NEW DELHI;  
*November, 22 2022.*

ALOK KUMAR SUMAN

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the Code of Criminal Procedure, 1973.

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*(Dr. Alok Kumar Suman, M.P.)*