



IPC SECTIONS APPLICABLE TO MEDICAL PROFESSION

IN GENERAL:

Section : 176 : Omission to give notice or information to public Servant by legality bound persons.

*Section: 269 & } : Negligent act likely to spread infection
Section: 270 } : dangerous to life.*

Section: 271 : Disobedience to quarantine rule.

RELATED TO DRUGS & MACHINERY:

Section: 274 : Adulteration of drugs.

Section: 275 : Sale of adulterated drug.

Section: 276 : Sale of drug as a different drug.

Section: 287 : Negligence in using Machinery.

Section: 312 : Causing Miscarriage.

RELATED TO MISCARRIAGE:

Section: 313 : Causing Miscarriage without women's consent.

Section: 314 : Death caused while doing miscarriage.

Section: 315 : Act done to prevent child from live birth and also to cause death after birth.



Section: 316 : Causing death of a unborn child amounting to culpable homicide.

Section: 318 : Concealment of birth by secret disposal of dead body of a child.

RELATED TO HURT:

Section: 319 : (**HURT**) whoever causes bodily pain disease or infirmity to any other.

Section: 320 : (**GRIEVOUS HURT**) Emasculation, permanent privation of sight of either eye, permanent privation of hearing of either ear, privation of any joint, Distraction or permanent impairing of any member or joint permanent disfiguration of the head or face, # dislocation of bone or tooth, Hurts endangering life or causing severe bodily pain or unable to follow his ordinary pursuits.

RELATED TO NEGLIGENCE:

Section: 336 : Act endangering life or personal safety of others

Section: 337 : Causing hurt by act endangering life or personal safety of others.

Section: 338 : Causing Grievous hurt by act endangering life and personal safety of others.

Section: 304A : Causing Death by Negligence

"WHOEVER CAUSES DEATH OF ANY PERSON BY DOING ANY RASH AND NEGLIGENT ACT NOT AMOUNTING TO CULPABLE HOMICIDE

PUNISHMENT : IMPRISONMENT UP TO 2 YEARS OR FINE OR BOTH.

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CRIMINAL LIABILITY OF MEDICAL PROFESSION, CRIMINAL PROCEDURES, ARREST OF DOCTORS AND ATTACK ON HOSPITALS



DEFENCE SECTIONS IN IPC FOR MEDICAL PROFESSION

Section: 52 : Good faith : A thing shall be deemed to be done in good faith where in fact done honestly.

Section: 80 : Accident in doing lawful act.

Section: 81 : Act likely to cause harm, but done without criminal intent and to prevent other harm.

Section: 87 : Act not intended and not likely to cause death or grievous hurt, done by consent

Section: 88 : Act not intended to cause death, done by consent in good faith for persons benefit.

MEDICAL NEGLIGENCE

DEFINITION

"Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."

ELEMENTS OF MEDICAL NEGLIGENCE

- The doctor must be under a "Duty of care"
- The "Standard of care" for carrying out the duty must have been breached by the doctor
- As a result of the breach of duty by doctor the patient should have received injury, and such injury must have been 'foreseeable'.
- The injury must be the result of the breach of duty by the doctor.

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CRIMINAL LIABILITY OF MEDICAL PROFESSION, CRIMINAL PROCEDURES, ARREST OF DOCTORS AND ATTACK ON HOSPITALS



SOME ASPECTS OF ARREST & BAIL

ARREST BY POLICE:

- Section: 41: - Police can arrest without warrant for cognizable offence.
- When proclaimed as an offender by code or by order of Govt.
 - Suspected to possess stolen property.
 - Obstructing police from executing his duty
 - Deserter from any of the armed forces.
 - Reasonable complaint, credible information and suspicion for committing any punishable act in India.
 - Released convict with breach of any rule.
 - By request of another police officer for some act

ARREST BY MAGISTRATES:

- Section: 44: - Magistrate can arrest or order arrest when some offence is committed in his presence in his jurisdiction.
- Competent arrest may be done or ordered at any time in his jurisdiction.



PROCEDURE OF ARREST :

- Section: 46 : - Arrest should be made without touching the individual to be arrested.
- If the person resists, attempt to evade arrest, the police can use all means to effect the arrest.
 - The police has no right to cause death (exemptions are there)
- Section: 50 : - Person arrested should be informed of the grounds of arrest and also his right to bail.
- Section: 51 : - Arrested person should not be retained for more than 24 hours exclusive of the time to travel from place of arrest to the magistrates court.

BAIL

- Section: 436 : - While person other than accused of non bailable offence is arrested and detained without warrant
- Bail can be given by police officer or court by a bond with or without sureties.

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CRIMINAL LIABILITY OF MEDICAL PROFESSION, CRIMINAL PROCEDURES, ARREST OF DOCTORS AND ATTACK ON HOSPITALS



ARREST OF DOCTORS

DOCTORS MAY NOT BE ARRESTED IN A ROUTINE MANNER. - APEX COURT.

HIGHLIGHTS OF THE LANDMARK JUDGMENT - APEX COURT

(CRIMINAL APPEAL NOS: 144-145 OF 2005)

For Criminal Negligence against doctors high degree of negligence or gross negligence is necessary. Simple lack of care or error of judgment cannot form the basis for criminal prosecution.

The "Rashness" and "Negligent" in 304-A should be read as "Grossly Rashness" and "Grossly Negligent" with reference to medical profession.

GUIDELINES FOR PROSECUTING MEDICAL PROFESSIONALS BY APEX COURT: **(JACOB MATHEW CASE)**

Without prima facie evidence private complaint may not be entertained.

Credible opinion from another doctor (Govt doctor of the same specialization) to support Rashness and Negligence should be obtained before filing a case.

Doctor may not be arrested as a routine manner.

Arrest may be done only if the investigation officer feels that the doctor will not make himself available for enquiry.



ARREST OF DOCTOR - A GROUND FOR CONTEMPT OF COURT

Arrest is done usually to satisfy the angry mob.

For arrest of doctor we may take action against the police for "contempt of court".

Section 304 A, 336, 337, 338 etc are all bailable offences only.

Director General of Police (~~Dr. Mathew~~) order is based on Supreme Court Judgment.

Whenever some mishap had happened the Crisis Management Committee should meet the Police Officers and explain them about this Apex Court Ruling and DGP order to prevent unwanted Arrests and harassments by police who may not be aware about this order.

Token strike may be declared to the police if 304-A is applied or arrested against the Supreme Court Judgment

Even if some doctor is arrested contempt of court petition should be moved against the police so that other police officers and public will know about the fact that doctors may not be arrested.