

State Legislative Brief

JHARKHAND

The Jharkhand Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Bill, 2023

Key Features

- The Bill prohibits violence against or by medicare service persons, and damage to property of medicare service institutions.
- An act of violence will be punishable with imprisonment and a fine. Offenders may also be liable to pay compensation for damage caused to the property of medical institutions.
- For complaints of misbehaviour or wrong treatment, an enquiry will be conducted in the presence of at least two independent witnesses.

Key Issues and Analysis

- The need for a separate law is unclear as the Indian Penal Code, 1860 deals with all forms of violence, and the National Medical Commission Act, 2019 deals with the conduct of doctors.
- The enquiry committee looking at wrong treatment does not mandate the presence of a medical expert.
- Compliance with installing certain security measures may be onerous for smaller medical institutions.
- The technical committee to assess property damage will assess such damage only in government institutions.

The Jharkhand Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage to Property) Bill, 2023 was introduced in the Jharkhand Legislative Assembly on March 22, 2023. The Bill prohibits violence against medical personnel and damage to the property of medical institutions.

PART A: HIGHLIGHTS OF THE BILL

Context

The World Health Organization and the International Labour Organization have attributed reasons for violence in the healthcare sector to: (i) working with people in distress, (ii) understaffed healthcare facilities, and (iii) working with insufficient resources and inappropriate equipment.¹ The Karnataka Law Commission (2018), based on a survey conducted by the Indian Medical Association (IMA), noted that over 75% of doctors across the country faced some form of violence.² The Indian Penal Code (IPC), 1860, penalises certain offences against individuals such as: (i) causing hurt or grievous hurt endangering life, and (ii) assault.³ During the COVID-19 pandemic, the Epidemic Diseases Act, 1897 was amended to protect medicare service personnel from violence during an epidemic.⁴ In 2017, the Union Ministry of Health and Family Welfare circulated a draft Bill provided by IMA to protect medical service persons and institutions from violence in all states.⁵ It had requested state governments to either strictly enforce existing laws to protect medical service persons or to enact a law as per the draft.⁵

Several states including Assam, Kerala, Madhya Pradesh, and Odisha have passed laws to address the issue of violence against medicare professionals.^{6,7,8,9} Most state laws define medicare service personnel to include registered doctors, nurses, medical and nursing students, and paramedical staff. Some states including Gujarat, Goa, and Madhya Pradesh extend the protection to medical support staff such as ayah, dai, and ward boys. All these laws primarily prohibit acts of violence against medicare service persons and damage to property of medicare service institutions. In these laws, violence is defined to include: (i) harm, injury, or threat to a medicare service personnel, (ii) obstructing medicare professionals from carrying out their duties, and (iii) damaging property of medicare service institutions. For more details on respective state laws, see Table 1 in the Annexure.

Key Features

- **Prohibition of violence against medicare personnel and institutions:** The Bill prohibits violence by or against medicare service persons, and damaging the property of medicare service institutions. Medicare service includes providing medical care, including ante-natal and post-natal care, and care for any sickness, injury, or infirmities. Violent acts include causing threat, intimidation, harm, injury, hindering the duty or endangering the lives of medicare service persons such as registered medical practitioners and nurses, paramedical personnel, and medical and nursing students.

- **Penalties and compensation:** Any person committing an act of violence or damaging property of medicare service institutions will be punishable with imprisonment of up to two years, and a fine of up to Rs 50,000. In addition, they may be liable to pay compensation for damage to the property of a medicare service institution.
- **Security measures:** Medicare service institutions must implement measures to ensure the security of the institution and its personnel. These include installing CCTV cameras, centralised control rooms, and regulated entry into their premises. Laws prohibiting violence against medical service personnel and institutions must be prominently displayed in these institutions. The Deputy Commissioner should appoint a doctor of at least the rank of the Additional Chief Medical Officer to monitor negligence in medical treatment.
- **Ethical guidelines for medicare personnel:** All doctors and medicare service institutions must comply with medical ethics prescribed by the National Medical Commission. Other requirements include: (i) providing complete information to patients or attendants regarding the treatment being given, (ii) handing over the dead bodies of the patients without waiting for payment of medical bills, and (iii) displaying various medical facilities offered and their estimated expenses.
- **Grievance redressal:** For complaints of misbehaviour or wrong treatment by doctors or medicare service institutions, the Deputy Commissioner of the district will constitute an enquiry. The enquiry will be conducted by an officer of at least the rank of sub-divisional officer. The enquiry must be conducted in the presence of at least two independent witnesses. The enquiry report must be submitted within 15 days of it being constituted. The Deputy Commissioner will make appropriate decisions based on the enquiry report.

PART B: KEY ISSUES AND ANALYSIS

Need for the Bill

Bill: Clause 3, 5, and 7 The Bill prohibits violence by and against doctors and other medical personnel. It also penalises damaging property of medicare service institutions. It provides a framework for investigating complaints of misbehaviour and wrong medical treatment. It also provides for certain ethical compliances for doctors and medicare service institutions. The need to enact a special law with these provisions is unclear given that they are already covered under various existing laws. Further, it is also unclear why a special law is needed to penalise violence by medicare service persons. We discuss the overlaps with existing legal frameworks below.

Causing voluntary hurt and damaging property is penalised under the Indian Penal Code (IPC), 1860. Voluntary hurt is punishable with imprisonment up to one year, a fine up to Rs 1,000, or both.³ Grievous hurt is punishable with imprisonment of up to seven years and a fine.³ Any mischief causing loss or damage of at least fifty rupees is penalised with imprisonment of up to two years, a fine, or both.³ The Bill penalises violence against medicare service persons as well as damage to property with imprisonment of up to two years and a fine of up to Rs 50,000.

To regulate the professional conduct of medical professionals, the National Medical Commission Act, 2019 provides for an Ethics and Medical Registration Board.¹⁰ This Board seeks to ensure that medicare service persons comply with the code of professional and ethical conduct through the respective State Medical Councils. The Jharkhand State Medical Council may receive complaints from patients and their relatives against misconduct or negligence by medical practitioners.¹¹ The IPC also penalises the death of a person caused by any rash or negligent act with imprisonment of up to two years, a fine, or both.³ The jurisprudential concept of negligence differs in civil and criminal law.¹² Criminal negligence involves a significantly greater degree of recklessness or gross negligence.¹² Civil liability in cases of medical negligence is covered under the Consumer Protection Act, 2019 (services rendered by medical practitioner).^{13,14}

Some of the ethical compliances for doctors and medicare service institutions under the Bill are covered under the National Medical Commission Registered Medical Practitioner (Professional Conduct) Regulations, 2023.¹⁵ These include providing complete information to patients or attendants regarding the treatment being given. The Bill requires medicare service institutions to display on their premises the available medical facilities along with their estimated expenses. Note that a similar provision exists under the Clinical Establishment Rules, 2012.¹⁶

Investigation of wrong medical treatment

Investigation of wrong medical treatment may not involve medical experts

Bill: Clause 7(6) The Bill empowers the Deputy Commissioner of the district to initiate an enquiry into complaints of misbehavior or wrong treatment by doctors or medicare service institutions. The enquiry must be conducted by an officer of at least the rank of sub-divisional officer in the presence of at least two independent witnesses. The Bill does not specify the qualifications of the witnesses. The presence of a qualified medical practitioner may be necessary when investigating cases of wrong treatment to examine the treatment undertaken.

The process of complaint for medical negligence differs from the method proposed by the Supreme Court

The proposed enquiry method under the Bill is different from the process suggested by the Supreme Court (2005) to govern the prosecution of doctors for offences of criminal negligence.¹² As per the Court's guidelines, before a complaint is filed for medical negligence, the complainant must provide initial evidence that the doctor's actions were reckless. This should be in the form of a credible opinion from another competent doctor to support the charges. The investigating officer, before proceeding with such a case, should also obtain an independent medical opinion, preferably from a doctor engaged in government service.¹²

Compliance requirements for smaller medical institutions may be high

Bill:
Clauses
8(1),
8(2),
and 8(3)

The Bill requires all medicare service institutions to take certain measures for their security and the security of persons working at such institutions. These include: (i) installing CCTV cameras, (ii) deployment of security teams, (iii) setting up a centralised control room for monitoring, and (iv) restricting access to their premises. Complying with some of these measures, such as deploying security teams and setting up centralised control rooms, may be onerous for smaller medical institutions such as private nursing homes or clinical laboratories. This may also increase the cost of compliance for such institutions which may be passed on to the patients in the form of higher costs of medical services.

Technical committee to assess damage only for government institutions

Bill:
Clause 6

Under the Bill, courts may pass orders for the offender to pay compensation as per the cost price of damages to the medicare service institution. For government institutions, the Deputy Commissioner will constitute a technical committee to assess the damage caused to the property. The committee will consist of competent government engineers, doctors, and experts in medical equipment. No such framework has been provided for assessing damage to the property of private medicare service institutions.

Annexure

Table 1: Laws across different states for preventing violence against medicare personnel and institutions

State	Inclusion of private medicare institutions	Penalty/Punishment	Compensation for property damage	Authority to enquire into cases of medical negligence	Medical experts in medical negligence authorities
Jharkhand Bill	Yes	Imprisonment of up to 2 years and fine up to Rs 50,000	Yes	Yes	No
Andhra Pradesh, Assam, West Bengal ^{6,17,18}	Yes	Imprisonment of up to 3 years and fine up to Rs 50,000	Yes	No	-
Bihar ¹⁹	Yes	Imprisonment of 3 years and a fine up to Rs 50,000 and/or action under IPC	Yes	Yes	Yes
Chhattisgarh ²⁰	Yes	Imprisonment up to 3 years	Yes	Yes	Yes
Maharashtra, Tripura ^{21,22}	Yes	Imprisonment up to 3 years and a fine up to Rs 50,000	Yes	Yes	Yes
Delhi ²³	Yes	Imprisonment up to 3 years, fine up to Rs 10,000, or both	Yes	No	-
Goa ²⁴	Yes	Imprisonment up to 3 years, fine up to Rs 50,000, or both	Yes	Yes	Yes
Haryana ²⁵	Yes	Imprisonment of 3 years	Yes	No	-
Karnataka ²⁶	Yes	Imprisonment of 3 years with a fine of up to Rs 50,000	Yes	No	-
Kerala ⁷	Yes	Imprisonment up to 3 years and a fine up to Rs 50,000	Yes	No	-
Madhya Pradesh ⁸	Yes	Imprisonment up to 3 months, fine up to Rs 10,000, or both	No	No	-
Odisha ⁹	No	Imprisonment up to 3 years and a fine up to Rs 50,000	Yes	No	-
Tamil Nadu ²⁷	Yes	Imprisonment up to 10 years and a fine	Yes	No	-
Uttar Pradesh ²⁸	Yes	Imprisonment up to 3 years, fine up to Rs 50,000, or both	Yes	No	-

Sources: See endnotes for the respective state acts; PRS.

1. [Framework Guidelines for Addressing Workplace Violence in the Health Sector](#), International Labour Organization and World Health Organisation, 2002.
2. [46th Report](#): Amendment to Section 4 of Karnataka Prohibition of Violence Against Medicare Service Personnel and Damage to Property in Medicare Service Institutions, 2009.
3. Sections 304-A, 319, 320, 425, 427, [Indian Penal Code, 1860](#)
4. [The Epidemic Diseases \(Amendment\) Act, 2020](#).
5. [Unstarred Question no. 1646](#), Ministry of Health and Family Welfare, Lok Sabha, July 27, 2018.
6. [The Assam Medicare Service Persons and Medicare Service Institutions \(Prevention of Violence and Damage to Property\) Act, 2011](#).
7. [The Kerala Healthcare Service Persons and Healthcare Service Institutions \(Prevention of Violence and Damage to Property\) Act, 2012](#).
8. [Madhya Pradesh Chikitsak Tatha Chikitsa Seva Se Sambaddha Vyaktiyon ki Suraksha Adhiniyam, 2008](#).
9. [The Orissa Medicare Service Personnel and Medicare Service Institutions \(Prevention of Violence and Damage to Property\) Act, 2008](#).
10. Section 27, [The National Medical Commission Act, 2019](#).
11. [Powers](#), Jharkhand State Medical Council, as accessed on November 9, 2023.
12. [Jacob Mathews vs the State of Punjab](#), Supreme Court of India, August 5, 2005.
13. [Indian Medical Association vs V.P. Shantha & Ors](#), November 13, 1995.
14. [The Consumer Protection Act, 2019](#).
15. [National Medical Commission Registered Medical Practitioner \(Professional Conduct\) Regulations, 2023](#), Ethics and Medical Registration Board, National Medical Commission, August 2, 2023.
16. [The Clinical Establishment \(Central Government\) Rules, 2012](#).
17. [The Andhra Pradesh Medicare Service Persons and Medicare Service Institutions \(Prevention of Violence and Damage to Property\) Act, 2008](#).
18. [The West Bengal Medicare Service Persons and Medicare Service Institutions \(Prevention of Violence and Damage to Property\) Act, 2009](#).
19. [Bihar Medical Service Institution and Person Protection Act, 2011](#).
20. [The Chhattisgarh Medicare Service Persons and Medicare Service Institutions \(Prevention of Violence and Damage to Property\) Act, 2010](#).
21. [The Maharashtra Medicare Service Persons and Medicare Service Institutions \(Prevention of Violence and Damage or Loss to Property\) Act, 2010](#).
22. [The Tripura Medicare Service Personnel and Medicare Service Institutions \(Prevention of Violence and Damage to Property\) Act, 2013](#).
23. [The Delhi Medicare Service Personnel and Medicare Service Institutions \(Prevention of Violence and Damage to Property\) Act, 2008](#).
24. [The Goa Medicare Service Personnel and Medicare Service Institutions \(Prevention of Violence and Damage or Loss to Property\) Act, 2013](#).
25. [The Haryana Medicare Service Persons and Medicare Service Institutions \(Prevention of Violence and Damage to Property\) Act, 2009](#).
26. [The Karnataka Prohibition of Violence Against Medicare Service Personnel and Damage to Property in Medicare Service Institutions Act, 2009](#).
27. [The Tamil Nadu Medicare Service Persons and Medicare Service Institutions \(Prevention of Violence and Damage or Loss to Property\) Act, 2008](#).
28. [The Uttar Pradesh Medicare Service Persons and Medicare Service Institutions \(Prevention of Violence and Damage to Property\) Act, 2013](#).

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