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# CONCEPT OF CRIMINAL NEGLIGENCE IN CRIMINAL LAW

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## **1.1 Meaning and Nature of Negligence**

Negligence is one of the most important concepts in legal jurisprudence because it operates in both civil and criminal law. Broadly understood, negligence means the failure to exercise the care that the law expects in a given situation, resulting in injury, loss, or damage to another. Though the basic idea appears simple, negligence assumes different meanings depending upon whether it is examined through the lens of private law or public law.

In civil law, negligence usually gives rise to liability in tort. The central purpose of civil liability is compensatory rather than punitive. Courts seek to place the injured person, so far as money can do so, in the position he or she would have occupied had the negligent act not occurred. Criminal law, however, approaches negligence differently. Where negligence reaches a sufficiently serious level, the State may intervene and impose punishment. Criminal negligence therefore concerns conduct that is not merely careless, but so blameworthy that it becomes a public wrong deserving penal sanction.

Under the Bharatiya Nyaya Sanhita, 2023, Section 106 deals with cases where death is caused by rash or negligent acts. This provision substantially replaces the earlier Section 304A of the Indian Penal Code, 1860, while introducing new dimensions of liability. In particular, Section 106(2) appears to enhance punishment in cases involving post-incident conduct such as failure to report the accident or fleeing the place of occurrence. Although the legislative language continues earlier principles, the broader framework indicates an expansion in the understanding of criminal responsibility.

The essence of criminal negligence lies in the requirement of “grossness.” Mere carelessness or minor inadvertence is not enough. Criminal law insists upon a serious departure from the conduct expected of a reasonable person. Since conviction may lead to imprisonment, stigma, and other serious consequences, the threshold of blameworthiness must necessarily be higher than that applied in civil disputes.

Indian courts have repeatedly affirmed this distinction. In *Jacob Mathew v. State of Punjab*, the Supreme Court explained that negligence becomes criminal only when it is gross or of a very

high degree. An ordinary error of judgment, momentary lapse, or simple lack of skill cannot automatically attract criminal punishment. The judgment was especially significant in the field of medical negligence, where adverse outcomes may occur even when reasonable care has been taken.

The policy basis for criminalising negligence lies in public safety. Certain activities—such as driving vehicles, operating dangerous machinery, or rendering medical treatment involve foreseeable risks. Persons engaging in such activities are expected to maintain a standard of caution proportionate to those risks. Where this standard is grossly violated and serious harm follows, punishment may be justified not only to censure the offender but also to deter similar conduct by others.

At the same time, criminal negligence raises theoretical concerns because traditional criminal law is ordinarily founded upon *mens rea* that is, intention, knowledge, or conscious recklessness. Negligence differs because it is based upon failure to foresee or prevent harm rather than a deliberate decision to cause it. Nevertheless, modern criminal law accepts that gross negligence may itself demonstrate sufficient fault to justify liability, particularly when the consequences are grave.

Another distinction between civil and criminal negligence lies in procedure and proof. Civil negligence is established on the balance of probabilities, and remedies usually take the form of damages. Criminal negligence must be proved beyond reasonable doubt, and punishment may include imprisonment or fines. This higher standard reflects the seriousness of penal sanctions. The concept of rashness is often considered alongside negligence. Rashness generally refers to conscious risk-taking where a person knows danger exists but proceeds in the hope that harm will not occur. Negligence, by contrast, involves failure to take proper precautions. Though conceptually distinct, courts sometimes examine both together, especially in road accident cases.

Causation is another essential component. The prosecution must show that the negligent conduct of the accused was the proximate cause of the injury or death. This includes factual causation (“but for” the act, would the harm have occurred?) and legal causation (is the result sufficiently connected to the conduct to justify liability?). Liability cannot rest upon remote or speculative consequences.

Foreseeability is equally relevant. The accused need not actually foresee the precise harm, but the risk must be one that a reasonable person in similar circumstances ought to have anticipated. In criminal negligence cases, failure to appreciate an obvious danger must amount to a

substantial deviation from ordinary prudence.

Section 106(2) of the BNS introduces a more complex model by linking punishment not only to the negligent act itself but also to conduct after the event. Where an offender leaves the scene or fails to inform authorities, liability may become more severe. This marks a shift from viewing negligence as a single act to assessing the broader behaviour of the accused.

Such expansion, however, invites questions of fairness and proportionality. If negligence already represents a lower degree of fault than intention or recklessness, imposing harsh punishment because of later omissions may appear excessive. It also raises structural concerns: should failure to report be treated as an aggravating circumstance within the same offence, or as a separate offence altogether?

Further, two individuals whose original negligent conduct was identical may be punished differently depending on their reaction after the accident. One may remain at the spot; another may flee in panic. While policy considerations may justify this distinction, it complicates traditional criminal law theory.

In sum, criminal negligence seeks to balance individual fault with collective safety. Its development under the Bharatiya Nyaya Sanhita demonstrates an attempt to adapt established principles to modern realities. Yet any expansion of negligence-based liability must remain consistent with fairness, proportionality, and the foundational values of criminal justice.

## **1.2 Civil vs Criminal Negligence**

The divide between civil negligence and criminal negligence is one of the clearest illustrations of how the same conduct may attract different legal consequences depending on its seriousness and social impact. Both arise from breach of a duty of care, yet they differ fundamentally in purpose, degree of fault, standard of proof, and remedy.

Civil negligence is principally remedial. It arises when a person fails to act with the care expected of a prudent individual and thereby causes loss to another. The objective of civil proceedings is compensation rather than punishment. Courts seek to allocate loss and provide financial redress to the injured party.

The standard of proof in civil matters is comparatively lower. The claimant must show that negligence is more probable than not. Since imprisonment and criminal stigma are absent, the law does not require proof beyond doubt.

Criminal negligence serves a different purpose. Here, the State intervenes because the conduct threatens public safety and social order. Only negligence of a grave character often described

as gross, culpable, or bordering on recklessness can justify penal sanctions.

Because criminal conviction may result in imprisonment and moral condemnation, the prosecution must establish guilt beyond reasonable doubt. This higher burden acts as a safeguard against wrongful conviction.

In *Jacob Mathew v. State of Punjab*, the Supreme Court clearly held that the degree of negligence required in criminal law is substantially higher than that required in civil proceedings. Only conduct showing serious disregard for life and safety should invite punishment.

The distinction may also be understood through culpability. Civil negligence is largely objective: conduct is measured against that of a reasonable person. Criminal negligence, while also using an objective standard, demands a level of blameworthiness sufficient to warrant condemnation by the State.

Consequences also differ sharply. Civil liability usually leads to damages or restitution. Criminal liability may lead to imprisonment, fine, or both, along with the stigma of conviction. In practice, the same facts may give rise to both forms of liability. A careless driver who injures another may be sued for compensation and also prosecuted if the conduct was sufficiently rash or grossly negligent. Similarly, a doctor may face civil action for negligence, but criminal prosecution only where conduct reaches the threshold of gross negligence.

The danger lies in confusing these categories. If ordinary negligence is criminalised too readily, the law risks punishing conduct better addressed through civil remedies. Such overreach burdens individuals and weakens the coherence of criminal jurisprudence.

Section 106(2) of the BNS has revived this debate. By attaching severe consequences to negligent acts coupled with failure to report, the law may in some cases transform ordinary negligence into a serious penal offence. This raises questions about whether omission after the event should elevate liability so dramatically.

At the same time, the State has a legitimate interest in ensuring accountability, especially where prompt reporting may save lives. The challenge is to balance deterrence with fairness.

Ultimately, civil and criminal negligence differ not merely in degree but in character. One is primarily compensatory; the other is punitive. Preserving that distinction is essential if criminal law is to remain just and proportionate.