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Apology Laws – Are they the right answer for Medical Practitioners?

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Mahatma Gandhi, famously said this a number of times, *"Confession of errors is like a broom which sweeps away the dirt and leaves the surface brighter and clearer. I feel stronger for confession."* This year, I want to begin surmising, whether this broom can be applied to medical practitioners too? Can medical practitioners make their – and the entire world's inhabitants' – life easier by confessing to their errors, the moment they discover it? Can this be done? Has it ever been done in the form of any legislation? Of course it has been, in several US and Canadian states and several countries in Europe.

In Japan there are no explicit "apology laws", but she does have a strong cultural practice of medical professionals apologizing and explaining errors to patients and families when they occur. After a medical error, usually there are informal meetings between medical staff and affected parties, written explanations of what went wrong, expression of regret and even an offer of compensation. But what happens in other countries?

But why in the first place should be worry about some countries, when in general it is clear that these laws do exist at some places and thus the possibility of implementing them everywhere is very much there? These "apology laws" are also called "I'm Sorry" Laws.[1] They refer to legal provisions in a country/state, where, after a medical error has occurred, the doctor is treated less harshly, if -and only if- he discloses the error and apologizes to a patient or his survivors. On the contrary, if he decides to keep quiet, and the error is discovered later, he would be treated more harshly.[2]

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These kinds of laws have been implemented in some form or the other, virtually in every continent – although not necessarily in relation to medical errors. Take India for example. India does not have “apology laws” for medical practitioners as such. But apology laws make their appearance in hidden form in several laws. Take for example the recently enacted Bharatiya Nyaya Sanhita, 2023 or BNS, 2023 [roughly translates as the Indian Justice Code, 2023; it replaced the older Indian Penal Code (IPC)]. Several provisions in this new Code include apology laws – albeit hidden. But let me take the example which a forensic pathologist encounters almost on a daily basis – Death by rash and negligent driving. The former law addressed this crime through s304A IPC. Briefly it stated that if someone caused the death of a person by doing a rash or negligent act [such a rash driving] shall be punished with imprisonment of 2 years or fine or both.

. . .What was the punishment if someone caused the death of more than one person by rash and negligent act? What about killing 100 people or more, say by driving a vehicle through a crowd. . .

Glaring deficiencies in this law were:

*What was the punishment if someone caused the death of more than one person by rash and negligent act? What about killing 100 people or more, say by driving a vehicle through a crowd – of course unintentionally; merely because the driver was drunk? Will he still get away with 2 years? No clear cut answer was available. Of course the judge could pronounce 2 years for each of those 100 deaths, and pronounce that the punishments would run consequently – not concurrently [as is the norm]. However I never saw that kind of judgment. Glaring examples are **Bhopal gas tragedy of 1984**, and **Uphaar Cinema fire of 1997**. None of the perpetrators was given any sentence commensurate with the gravity of crime.

*Secondly, was this law applicable to medical practitioners? Nothing was mentioned in the law, although it was usually invoked for this purpose.

. . .My prediction is there would be apology laws for medical practitioners everywhere in the world sooner than later.. . .

The newly enacted *Bharatiya Nyaya Sanhita, 2023* or *BNS* deals with it through s106. There is a radical change in wordings now. The actual text is far longer and extensive, but I will not get into its details. There are several improvements in it, most importantly **inclusion of an apology law**, although it is not so apparent at first. Essentially it says that if a rash and negligent driver hits – say a pedestrian – and runs away, and the victim dies, the driver would get 10 years. But if he reports it to a police officer or a magistrate soon after the incident, he will get only 2 years. This is actually an "apology law" loud and clear.

Apology laws are here to stay. My prediction is there would be apology laws for medical practitioners everywhere in the world sooner than later. I know currently these laws have not succeeded in US and elsewhere,[3] but there are good reasons for this. And let this be a topic for another day.

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