



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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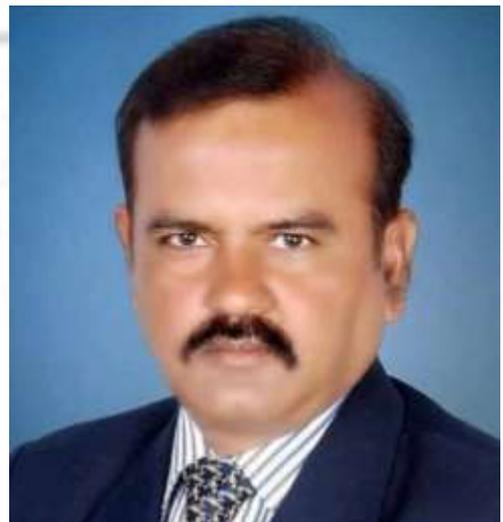


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**AN ANALYSIS OF DUE PROCESS SAFEGUARDS IN
MEDICAL NEGLIGENCE CASES WITH REFERENCE
TO THE CASE OF MOHAMMED RIZWAN T VS.
STATE OF KERALA**

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ABSTRACT

The growing incidence of medical negligence cases has sparked concerns regarding the safeguarding of professional ethics and the assurance of patient rights. The procedural guidelines evolved through Court in *Dr. Suresh Gupta V. NCT. Delhi*¹ and later in *Dr. Jacob Mathew V. State of Punjab*² build a rigid yet unorganized set of codes that must be followed by the investigating officers while proceeding with the Criminal prosecution. The existing guidelines primarily aim to protect doctors from unwarranted arrests and frivolous litigation, though they often result in limited justice for victims due to procedural complexities and delays in redress. The inevitable element to constitute Criminal culpability is “*rash and gross negligence*” which restrict the scope criminal prosecution as not all medical negligence passes the requisite test. The universally accepted *Bolam Test* is a standing test even now to determine the Standard care expected from the Doctors under which results in the carelessness or breach of the owed duty. The standard care along with the rash and gross negligence i.e. *high degree of negligence* encompasses the standard rule for prosecuting doctors under Criminal justice system. The recent direction of Kerala High Court to the concerned government on the framed guidelines for Medical negligence cases open up a new trail in the systematic prosecution of Medical Negligence cases under Criminal law. It upheld the due process rights of parties involved by framing a dozen of clear cut guidelines for the Criminal prosecution of doctors reclaiming the Natural Justice perspective throughout the process.

¹ (2004) 6 SCCC 422

² (2005) 6 SCC 1

KEY WORDS: MEDICAL NEGLIGENCE | GROSS NEGLIGENCE| RASHNESS|RECKLESSNESS|BOLAM TEST| DUE PROCESS RIGHTS | NATURAL JUSTICE

INTRODUCTION

Medical Negligence is the breach of duty via action or omission owed to the patient. If a doctor did not possess the necessary skills or knowledge that he professed to have possessed or if he refrain himself from exercising his skills or knowledge despite having them. This result in constituting liability over the doctor mainly civil liability and the injured person is exclusively qualified for compensation. To prosecute a doctor for Medical negligence under *Sec.304A*³*IPC*, the facts need to prove beyond mere carelessness or omission. Criminal liability attracts only if the degree of negligence is high and the act or omission is far less than the standard care. Sec. 304 A, now *106 (1) BNS*⁴ explicitly incorporates the term “Gross and negligent act” which is usually deciphered by court from time to time as “Rash or Gross negligence as the inevitable element which separates the civil and criminal culpability. Though the terms have not defined anywhere in the IPC OR BNS, it is interpreted by the court based on the *degree of deviation* and preferably the action or omission is so high and it would not be justified or accepted among the medical community. If the doctor exercises any surgery or prescribes medication beyond his level of expertise or even failed to deliver the expected standard of care, he is liable for criminal prosecution. In *Bolam V. Friern Hospital Management Committee*⁵ where the court came up with a test termed as Bolam Test to determine the Medical negligence which is applicable to both Civil and Criminal laws. It mandates that the doctor has a duty to offer standard care below which they are not supposed to serve the patients resulting negligent act. There is no expectation of expert or higher level skill required to exercise, but minimum standard care that doctor professed he have possessed. So determine an act constitute medical negligence it needs to pass Bolam Test where it first ensure the treatment or service provided by the doctor is standard and it accepted by the medical practitioners across the country and there is no act of deviation on the part of doctors. But to qualify as Criminal case, the breach of duty must be rash or gross which is beyond mere carelessness.

³ The Indian Penal Code, 1860(Act 45 of 1860) ; Section 304 A read as “Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”

⁴ The Bharatiya Nyaya Sanhita, 2023(Act 45 of 2023)

⁵ [1957] 1 WLR 583

In *R V Adomako*⁶, the test to determine the Criminal liability of doctors in Medical negligence laid down emphasizing a four stage test. In this case a patient was died following an eye surgery due to cardiac arrest as a consequence of the disconnection of the endotracheal tube. The doctor ignored the situation even after the timely alarm system, raises the question of gross negligence manslaughter. The test framed by the court includes- **First**, the defendant must have owed the victim **a duty of care**. **Second**, the defendant must **breach that duty**. **Third**, it is the **breach of the duty** that **caused contributed to the death** of the victim. Lastly, taking into account the risk of death involved, **the conduct of the defendant was bad in all the circumstances** as to amount to a criminal act or omission. Using this four stage test, the House of Lord found that it was correct to uphold the conviction of the appellant for gross negligence manslaughter⁷. In *Dr.Suresh Gupta V.N.C.T Delhi*⁸ and *Dr. Jacob Mathew V. State of Punjab*⁹, the court clearly raised the **threshold of negligence** and separates the mere fact of error of judgment from constituting criminal liability. Jacob Mathew's case is still relevant on the guidelines issued by the court to prevent frivolous litigation against doctors thereby introduced a new procedure standards while dealing medical negligence. Later in *Martin F. D'Souza v. Mohd. Ishfaq*¹⁰ case also the court reiterated the same preposition laid down in its earlier judgments. The Court reaffirmed the established principle that an unsuccessful medical treatment does not, by itself, constitutes or could attract criminal liability rather only conduct amounting to gross negligence or reckless indifference prosecute a doctor for medical negligence under criminal law. Though there is definite boundary differentiating civil and criminal liability for medical negligence, a procedural guidelines ensuring due process is still absent leaving the process involved perplexes and the life of parties hard.

The recent direction of Kerala high court in *Mohammed Rizwan T V. State of Kerala*¹¹ to the government to take in to account and frame formal guidelines over the proposed draft stands as path breaking towards the prosecution of Medical negligence cases. This case comment is an attempt to dissect the case law by navigating through the facts, issues, arguments and the

⁶ [1995] 1 AC 171

⁷ Criminal law Analysis R V Adomako, available at <https://www.dissertationhomework.com/samples/assignment-essay-samples/criminal-law/criminal-law-analysis-r-v-adomako> (last visited on 03 September 2025)

⁸ *Supra* at 1

⁹ *Supra* at 2

¹⁰ (2009) 3 SCC 1

¹¹ CRL.MC NO. 3414 OF 2025, also available at : <https://www.verdictum.in/court-updates/high-courts/kerala-high-court/dr-mohamed-rizwan-t-v-state-of-kerala-medical-negligence-cases-guidelines-1589959> (last visited on 07 October 2025)

ratio decidendi involved and also makes an effort to analyse the judgment based on the existing legal framework on the criminal prosecution of doctors in medical negligence. The paper also comments up on the extent to which the guidelines facilitates the due process rights and ensure a harmonious approach in balancing the professional safeguards and victim protection.

FACTUAL MATRIX

The court considers two cases and delivered a common judgment, as the issues raised in both were substantially similar. In the first case, the petitioner, a medical practitioner by profession, stands as the sole accused in C.C. No. 52 of 2025 pending before the Judicial First Class Magistrate Court, Kunnankulam. The proceedings stem from Crime No. 485 of 2024 registered at Peramangalam Police Station for an alleged offence under Section 304A of the Indian Penal Code. The circumstances culminating in the registration of the said case are happened on 12.07.2023, when the deceased Vinod P.V. was admitted to Amala Medical College with a lacerated chest wound. His wife, who accompanied him, informed the attending medical staff that the injury was accidental and sustained when her husband, under the influence of alcohol, fell onto a sharp wooden object. The patient, who was conscious and oriented, confirmed this account. It was further stated that he had initially been taken to the Government Hospital, Puthukad, and thereafter referred for higher medical care. However, contrary to the referral advice, he was taken first to the ESI Hospital and then to Amala Medical College. During the course of treatment at Amala Medical College, the patient passed away at about 1:50 a.m. on 14.07.2023. The post-mortem conducted later that day revealed diminished oxygen saturation, moderate fluid accumulation, and partial collapse of the left lung. The report further indicated that no active medical intervention had been undertaken to drain the collected blood. Upon learning that the fatal wound had been inflicted by the deceased's wife, an initial case was registered against her. Thereafter, the Deputy Superintendent of Police, Chalakudy, intimated the petitioner and the Medical Superintendent of Amala Medical College that an inquiry into possible medical negligence was being considered based on the Forensic Surgeon's observations.

The petitioner, who was among the surgical team that treated the deceased, was informed over a year later that the District Medical Board, in its meeting dated 19.02.2024, had concluded that there was negligence in the treatment provided. The Board observed that despite the scan taken on 13.07.2023 revealing substantial internal bleeding and the Radiologist's clear marking

for tube insertion to drain the collected blood, *no steps were taken to either consult a Cardiothoracic Surgeon or perform the required drainage procedure.* Acting upon the said findings of the Expert Panel, an FIR was registered on 28.06.2024 naming the petitioner as an accused. Following completion of the investigation, a final report was filed, and the learned Magistrate took cognizance of the offence. Meanwhile, the petitioner has preferred an appeal challenging the conclusions of the Expert Panel before the State Level Apex Expert Committee on Medical Negligence Cases.

In the second case, CrI.M.C. No. 4729 of 2025, the petitioner, a medical practitioner, is the sole accused in C.C. No. 2316 of 2017 pending before the Judicial First Class Magistrate Court, Adoor. She faces prosecution for an alleged offence punishable under Section 304A of the Indian Penal Code. The case originates from Crime No. 784 of 2010 registered at Pandalam Police Station, following the death of one Bindu Sajeew during post-delivery treatment at Chitra Multispeciality Hospital, Pandalam. The petitioner, who was serving as an Obstetrician and Gynaecologist, had performed a Lower Segment Caesarean Section (LSCS) on Bindu Sajeew at around 9:40 p.m. on 26.07.2010, after obtaining consent from her husband. The surgery resulted in the delivery of a live baby at 9:56 p.m. During the procedure, a large retroperitoneal haematoma extending from the diaphragm to the pelvic wall was detected. Acting on the advice of the hospital's consultant surgeon, the petitioner adopted conservative management measures aimed at stabilizing the patient's condition.

However, as the patient's condition progressively deteriorated, her husband was advised at around midnight to shift her to Kottayam Medical College Hospital, the nearest higher medical centre. The advice was reiterated at 4:10 a.m. on 27.07.2010, but the patient was taken to the Medical College only by 6:00 a.m. Tragically, she succumbed to her condition before reaching the hospital. A post-mortem examination was conducted on the same day. At the request of the Deputy Superintendent of Police, Adoor, an Expert Medical Panel was constituted to examine the case. Upon detailed evaluation, the panel submitted its report on 19.05.2012, observing that there was no act of commission attributable to the treating doctor. However, the panel also opined that an earlier referral and timely surgical intervention by way of exploratory laparotomy could have potentially saved the patient's life and, to that extent, held that there was an element of negligence on the part of the treating doctor. Relying upon this report, the investigating agency completed the investigation and filed the final report, arraying the petitioner as the accused.

The court has taken both cases together for a common judgment.

ISSUES RAISED

1. Whether the existing procedure adopted by the Police and Medical Boards in investigating allegations of medical negligence ensures compliance with the principles of natural justice?
2. Whether a doctor accused of medical negligence is entitled to prior notice, opportunity to be heard, and access to the materials considered by the Expert Medical Board before an adverse opinion is formed?
3. Whether criminal prosecution under Section 304A IPC can be initiated solely on the basis of expert opinion without proof of gross negligence?
4. Whether the circulars and guidelines presently governing the constitution and functioning of Medical Expert Committees in Kerala provide adequate procedural safeguards to protect doctors from arbitrary or premature criminal prosecution?
5. Whether the District Medical Board and the State-level Apex Expert Committee have acted in accordance with due process and fairness in forming opinions in the petitioner's case?
6. Whether the High Court should laid down or modify guidelines governing the procedure for inquiry, expert opinion, and prosecution in cases alleging medical negligence by healthcare professionals?

ARGUMENTS BY THE PARTIES

ARGUMENTS BY THE PETITIONER

The learned counsel appearing for the petitioner in the first case made the contention that the patient was undergoing delirium caused by alcohol withdrawal and displayed aggressive behaviour, making it highly unsafe to insert or keep a chest tube in place. Any disconnection of the tube could allow a large volume of air to enter the chest cavity, potentially causing rapid deterioration or even death. He further added, attempting the procedure while the patient was agitated risked puncturing vital organs and disturbing the blood clot that had already formed. Citing several authoritative studies, it was contended that hemothorax cases can be safely managed without performing Tube Thoracostomy (TT), and in the given circumstances, opting for treatment without TT was the most appropriate course of action. Therefore there is no negligence on the part of the doctor as he did his job with due care and caution. The doctor

could not able to bring this to the attention of the panel as he was denied of a proper representation of his case and contention before the panel. The panel arbitrarily made the report only taking in to account the available medical reports by not hearing the side of the accused doctor. The death by negligence under Sec.304-A IPC is explicitly read as “rash or negligent act” whereas the negligent act itself takes in to negligent acts that are gross or reckless not mere error of judgment. As there is no clear evidence of gross negligence on the part of the doctor, he cannot be prosecuted under the related Section based on expert opinion. The counsel underpinned the fact that the Accused doctor could not able to submit his case before the district level expert committee panel nor he could avail a proper adjudication from the apex expert level committee as investigation officers submitted the final report before the court without waiting for the state level expert committee leave the professional and personal life of doctor in distress. This kind of routine prosecution without completing the preliminary enquiry results in the prejudiced litigations and affects the professional integrity of medical practitioners. Therefore it is finally argued by the counsel that excessive reliance by trial courts on the Expert Panel’s report results in serious prejudice, as its credibility is difficult to challenge, even through testimony from other experts. Hence, the counsel emphasizes the need to ensure the proper composition and functioning of the Expert Panel.

Referred Cases:-

- ❖ Jacob Mathew v. State of Punjab and Another¹²
- ❖ Kishan Chand and Another v. State of Haryana¹³
- ❖ John Oni Akerele v. The King¹⁴
- ❖ Bolam v. Friern Hospital Management Committee¹⁵
- ❖ Hucks v. Cole¹⁶
- ❖ Hunter v. Hanley¹⁷

The learned counsel appeared for the petitioners in the second case adopted the similar contentions of the counsel in the first case and argued for the absence of negligence on the part of the doctor. The doctor made the opinion to shift the patient to the Medical college hospital

¹² *Supra* at 1

¹³ (1970) 3 SCC 904

¹⁴ AIR 1943 PC 72

¹⁵ *Supra* at 5

¹⁶ 1968 (118) New LJ 469

¹⁷ (1955) SLT 213

was on time and there was no delay on his part, it is the patient's husband and relatives who made the delay to shift and for the same doctor cannot be prosecuted for medical negligence. The doctor could able to prove this if he was given a reasonable opportunity to be heard and the same was denied without any reasonable ground.

ARGUMENTS BY THE RESPONDENT

The learned Additional Director General of Prosecution (ADGP) submitted that before forming its conclusions by the Expert panel, it should allow the doctor accused of medical negligence an opportunity to present his or her explanation. The ADGP further suggested that it would be appropriate to provide the doctor with a copy of the Expert Panel Report and to wait for the outcome of any appeal filed against it before finalizing the investigation and submitting the final report to the court. The ADGP also submitted a copy of the letter containing the recommendations of the Kerala State Medical Council.

OBSERVATIONS OF THE COURT

After considering the arguments and recognizing the need to establish appropriate guidelines for the functioning of the Expert Panel, the Court appointed *amicus curiae* to assist in framing such guidelines. The learned *amicus curiae*, after conducting a detailed study, submitted a comprehensive report with valuable recommendations. **The court reiterated the decisions in the landmark cases of Dr. Jacob Mathew, Dr .Suresh Gupta and Martin F. D'Souza** to clarify that criminal liability only for gross or reckless negligence. It firmly underpin mere error of judgment cannot make a doctor criminally liable not even by an expert opinion. **The court further cited *Kusum Sharma and Others v. Batra Hospital and Medical Research Centre & Others*¹⁸** and marked that doctors cannot be found guilty of

medical negligence so long as they have discharged their duties with a reasonable degree of professional skill and competence. It also cited the decision from the case, ***Arun Kumar Manglik v. Chirayu Health & Medicare Private Ltd & Anr*¹⁹**, where the Supreme Court emphasized that the standard of care laid down in the *Bolam* case must evolve in line with its later interpretations by both English and Indian courts. The Court further reiterated that, as affirmed in *Jacob Mathew*, the conduct of a medical professional must align with the “*general*

¹⁸ (2010) 3 SCC 480

¹⁹ (2019) 7 SCC 401

and approved practice” followed in the field. Further the court highlighted *Lalita Kumari v. Government of Uttar Pradesh & Ors*²⁰, where the Constitution Bench of the Supreme Court examined the crucial question of whether police officers are mandatorily required to register a First Information Report (FIR) upon receiving information about the commission of a cognizable offence under Section 154 of the Code of Criminal Procedure, 1973, or if they may first conduct a preliminary inquiry to verify the authenticity of the information before registering the case. In this case, it emphasized the situations on which a preliminary inquiry is mandatory which includes *Matrimonial disputes/family disputes, Commercial offences, Medical negligence cases, Corruption cases etc.*

The Court observed that the circulars issued since 1989 are ambiguous and inconsistent in their procedures, as they fail to specify clear timelines, standards for committee composition, or the responsibilities of experts in forming their independent opinions. The Court identified procedural irregularities in how the District Medical Board and the Apex Committee reached their conclusions. As the petitioner was not given a chance to present a response before adverse findings were recorded, those proceedings could not be treated as conclusive evidence of guilt. Therefore, the Court ordered that the matter be re-evaluated by the Expert Committee in compliance with the newly proposed procedural safeguards. The Court concluded that judicial intervention was essential to prevent arbitrary criminal prosecution of medical professionals and to strike a balance between safeguarding professional independence and upholding patient rights. Consequently, it issued *interim guidelines* to be *applied in all medical negligence investigations* throughout Kerala until the State Government formally adopts them.

The guidelines listed as follows:-

- ❖ After the receipt of complaint, the investigation officer shall collect doctor’s notes, nurse’s diary, duty roster, shift reports, attendance sheets, assessment forms, consent forms, medical reports, diagnostic reports, lab results, referral or cross consultation records, treatment notes, discharge summaries etc.
- ❖ Request for an expert panel meeting from the investigating agency.
- ❖ Doctors with specialization need to be incorporated in the expert panel.
- ❖ Conclude the expert panel meeting within 30 days.
- ❖ Notice to doctor and de facto complainant.

²⁰ (2014) 2 SCC 1

- ❖ If the panel finds the doctor prima facie liable, he shall be vested with an opportunity to be heard and submit the evidences.
- ❖ The Expert Panel's report should include the separate opinions of each expert, while the Panel's final conclusion must be determined by consensus.
- ❖ Determination of the gross negligence and state the reasons.
- ❖ Reasoning must be reflected explicitly in the report.
- ❖ If no negligence found on the part of the doctor, copy of the report must be served to the de facto complainant.
- ❖ Both the medical practitioner and the de facto complainant should be granted the right to appeal against the Expert Panel's findings.
- ❖ A specific time frame must be established for filing the appeal and for the State Level Apex Expert Committee to decide it. If the appeal is submitted within the prescribed period, the Investigating Officer should submit the final report only after the appeal has been resolved.

DECISION

The learned ADGP is directed to present these draft guidelines to the Government for prompt consideration and necessary action. Since the final reports in the Criminal Miscellaneous Cases were submitted before the petitioners appeal were decided, the proceedings in the Calendar Cases are therefore stayed for a period of three months. The learned Additional Director General of Prosecution (ADGP) is directed to ensure that the State Level Apex Expert Committee disposes of the petitioners appeals within two months and submits the decisions before this Court.

CONCLUSION

The guidelines put forward by the court for the government's approval is really significant and remarkable. If Kerala government taken up this issue with due diligence and expected seriousness, it could pave a way for the other states with a procedural model to ensure the due process rights in the criminal prosecution of medical negligence cases. The attempt of the court to come up with such a draft is prospective in terms of shedding light over the long existing vacuum and resolving the issue with a systematic approach cemented on the Natural Justice.