



INTERNATIONAL LAW  
JOURNAL

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

*Peer - Reviewed & Refereed Journal*

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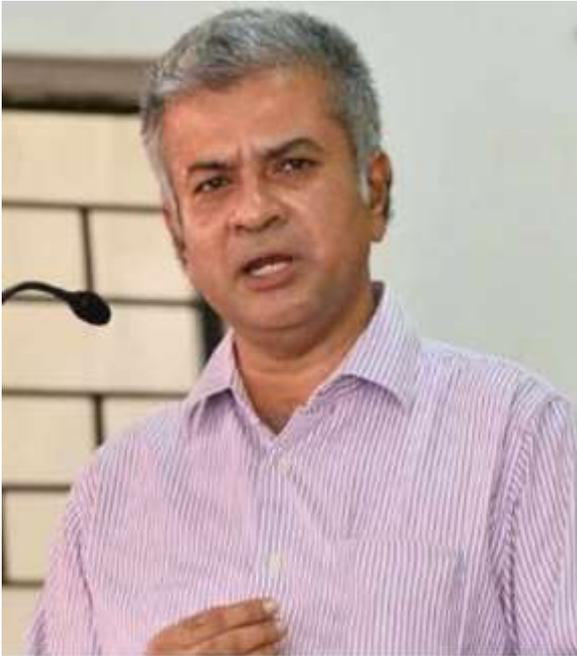
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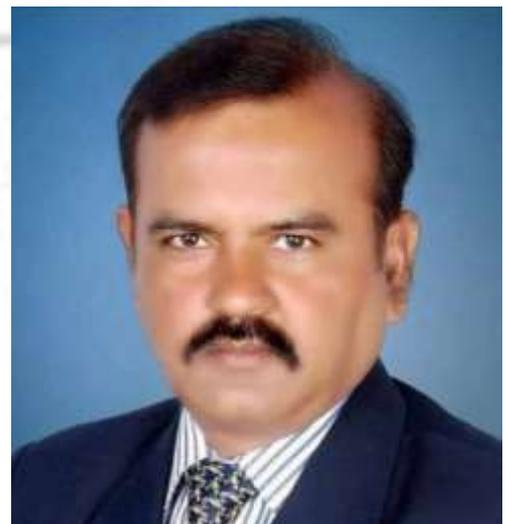


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and 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

## **CASE COMMENTARY: - "JACOB MATHEW V. STATE OF PUNJAB"**

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### **Introduction:**

The intersection of criminal law and medical practice has been a cause of heated debate in India for years, especially on how far healthcare professionals are held criminally responsible for the outcome of patients. The historic judgment in *Jacob Mathew v. State of Punjab*<sup>1</sup>, rendered by the Supreme Court of India on August 5, 2005, is a watershed decision in Indian medical jurisprudence that, fundamentally, recast the legal paradigm informing criminal prosecutions of medical negligence. This case arose at a critical time when the medical fraternity was confronted with an unprecedented number of criminal complaints, usually resulting in arrests and prosecutions on the basis of allegations that had little concrete proof of gross negligence. The Supreme Court, in appreciation of the virtuous work done by medical practitioners and the need to shield them against malicious prosecutions, created wide-ranging guidelines that continue to shape the way courts handle medical negligence cases today.

The case takes on special relevance in the Indian context, where medical services had already been brought under the purview of consumer protection under the Consumer Protection Act, 1986, after the ruling in **Indian Medical Association v. V.P. Shantha**. Though that judgment gave strength to patients to recover damages through consumer forums, the *Jacob Mathew* case answered the question of when medical negligence advances to the point that it becomes criminal rather than civil responsibility. The ruling attempted to achieve a fine balance between protecting patients' rights and shielding medical professionals from the "chilling effect" of indiscriminate criminal prosecutions on the practice of medicine.

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<sup>1</sup> *Jacob Mathews vs State of Punjab*

### **Facts of the Case:**

The factual matrix in *Jacob Mathew v. State of Punjab* was the result of a ghastly accident that took place at the Christian Medical College (CMC) Hospital in Ludhiana, Punjab, in February 1995. On February 15, 1995, Jeevan Lal Sharma was admitted as a patient in the private ward of the hospital to be treated. The patient was under medical treatment until February 22, 1995, when a life-threatening crisis occurred that would ultimately result in one of India's biggest medical negligence cases.

During the evening of February 22, 1995, around 11:00 PM, the patient was having extreme trouble breathing.

Vijay Sharma, the patient's elder brother and the informant's elder brother, who was in the room at the time, immediately made a call to the duty nurse to seek her help. The duty nurse, in turn, ordered a doctor to see the patient in distress. Yet, even though the situation was of the greatest urgency, no doctor made it to the bedside of the patient for a disturbing span of 20-25 minutes.

Finally, two doctors—Dr. Senior physician Jacob Mathew and Dr Allen Joseph came to the patient's room. Having realised the seriousness of the respiratory distress, they ordered an oxygen cylinder to be brought in and attached to the patient's ventilator. But instead of bringing relief, the patient's condition worsened after the oxygen cylinder was attached. On inspection, it was found that the oxygen cylinder was empty—not a single drop of oxygen was being supplied to the patient.

The patient's son, desperate to save his father's life, also ran to an adjacent room and fetched another gas cylinder. But valuable time had been wasted—some 5-7 minutes had gone by while efforts were on to get the new gas cylinder operational and properly attached. At this point, another doctor also reached there and, after checking the patient, declared him dead.

Jeevan Lal Sharma's younger son, Ashok Kumar Sharma, registered a First Information Report (FIR) with the police. The complaint, as it appears in the official records, read: "The death of my father has taken place due to negligence of doctors and nurses and unavailability of an oxygen cylinder and the vacant cylinder was attached to the mouth of my father, and his breathing was completely cut off, thus my father expired. I sent the deceased body of my father

to my village for burning, and for information, I have approached you. Suitable action should be taken".

The police filed an offence under Section 304A (causing death by negligence), read with Section 34 (acts done by several persons in furtherance of common intention) of the IPC, 1860. A criminal case was opened, and charges were drawn against Dr Jacob Mathew and other medical attendants who were involved in the case. The trial court hearings began, and Dr Jacob Mathew, who was being criminally prosecuted, turned to the High Court with a prayer for quashing of proceedings. The High Court refused to quash the proceedings, holding that the appellant's pleas in defence could be considered at the trial stage. Dr Jacob Mathew filed special leave appeals before the Supreme Court of India.

### **Issues Raised:**

1. Whether medical negligence would constitute an offence under Section 304A of the Indian Penal Code (sec 106 of BNS), and if so, what degree of negligence is required to be proved?
2. What is the standard of care owed by doctors, and when does a failure to meet that standard amount to criminal negligence?
3. Is the presence of the element of mens rea (guilty mind) required in the determination of criminal liability in medical negligence?
4. What protections and principles should apply to the prosecution and arrest of medical personnel who are charged with negligence?

### **Legal Provisions Involved:**

#### **Section 304A of the Indian Penal Code, 1860: (sec 106 of BNS)**

Section 304A, as added to the IPC by the Amendment Act of 1870, reads: "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".

This section was enacted specifically to bridge the gap left in the original Penal Code, which contained no provision for punishing deaths resulting from negligence without intent or knowledge. The basic ingredients of this offence are: (i) death of a human being; (ii) such death

caused by the accused; and (iii) the act of the accused was rash or negligent but did not constitute culpable homicide.

Section 34 of the Indian Penal Code, 1860:

Section 34 addresses "acts done by several persons in furtherance of a common intention". In the Jacob Mathew case, this section was used to possibly make several medical personnel members liable together for the claimed negligent act, acknowledging that hospital treatment usually involves a team of experts.

Section 482 of the Code of Criminal Procedure, 1973:

Section 482 CrPC grants inherent powers to the High Court to pass such orders as are necessary to give effect to any order issued under the Code, or to prevent abuse of process of a court, or to protect the ends of justice. Dr Jacob Mathew had invoked this provision before the High Court, requesting the quashing of the criminal proceedings because the continuation of prosecution would be an abuse of process.

The Bolam Test:

While not a statutory norm, the Bolam test laid down in **Bolam v. Friern Hospital Management Committee** has been universally adopted by Indian courts in medical negligence cases. The test lays down that "a doctor is not negligent if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art". The Supreme Court in Jacob Mathew upheld this test, making clear that medical professionals must be held against the test of ordinary competent practitioners in their profession, and not idealised standards of perfection.

The Bolitho Qualification:

The Bolitho case from English law brought a nuance to the Bolam test to the effect that even if there exists a body of medical opinion regarding some practice, the court is free to accept such opinion and reject the practice if the opinion does not hold on logical examination. Indian courts have referenced the Bolitho principle sparingly, though the Jacob Mathew case referred mainly to the vintage Bolam formulation.

Consumer Protection Act, 1986:

Although not immediately relevant to criminal trials, the Court recognised the importance of

the Consumer Protection Act, 1986, which was made applicable to medical services in **Indian Medical Association v. V.P. Shantha**. The Act gives a civil cause of action to patients affected by sub-standard medical services by enabling them to seek compensation from consumer forums without proving the higher standard of gross negligence necessary to hold one criminally liable.

### **Judgment of the Supreme Court**

The Supreme Court had given a judgment that radically changed the scenario of medical negligence prosecution in India.

#### **Acquittal of Dr Jacob Mathew**

The Supreme Court granted the appeals and acquitted Dr Jacob Mathew, finding that there was no sufficient evidence to prove gross negligence or criminal liability on his part. The Court observed that the complaint did not make any charge against Dr Mathew for being unable to treat the patient, and most importantly, the unavailability of the oxygen cylinder was attributed to hospital management and not to the personal negligence of the doctor. The Court held that though the hospital could be held liable in civil law for such administrative negligence, Dr Mathew could not be convicted under Section 304A IPC since there was no proof which showed direct causation between his acts and the death of the patient to the extent of criminal negligence.

#### **Requirement of Gross Negligence and Mens Rea:**

The Court firmly held that for negligence to be a criminal offence, the ingredient of mens rea must be proved. The verdict declared: "For an act to amount to criminal negligence, the degree of negligence should be much higher, i.e., gross or of a very high degree.". The Court differentiated this from civil negligence, explaining that mere lack of care, a mistake of judgment, or an accident is not evidence of criminal negligence on the part of a medical practitioner. Criminal liability is only present when the medical practitioner displays gross lack of competence, inaction, and want of regard for the safety of the patient, resulting from gross ignorance or gross negligence.

#### **Application of the Bolam Test:**

The Supreme Court sanctioned the Bolam test as the correct test for determining medical

negligence in India. The Court held that a doctor cannot be criminally prosecuted simply because a superior course of treatment existed or could have resulted in better outcomes. The test question is whether the doctor acted in line with a practice accepted as proper by a responsible group of medical opinion at the time.

### Comprehensive Guidelines for Prosecution of Medical Professionals:

Realizing that investigating officers and private complainants cannot decide on medical matters and may not possess the expertise to know whether an alleged action amounts to criminal negligence or not, and realizing that criminal prosecution brings medical professionals to serious embarrassment and harassment that can result in irremediable damage to their reputation despite them being acquitted eventually, the Supreme Court established elaborate guidelines to be adhered to before proceeding with prosecution against physicians.

The Court instructed that statutory rules and executive orders incorporating these guidelines should be drafted by the Central and State Governments in consultation with the Medical Council of India. Until statutory guidelines are drafted, the Court ordered the following safeguards:

#### 1. Guidelines for Private Complaints:

A private complaint of medical negligence must not be heard by a court unless the complainant has a prima facie case in the shape of a reasonable opinion of another competent physician substantiating the allegation of rashness or negligence against the charged doctor. This requirement helps to assure that complaints are not brought on grounds of mere suspicion or disapproval of the outcome of treatment, but on grounds supported by expert opinion of a deviation from accepted standards of care.

#### 2. Investigation Guidelines:

Before taking action against a physician charged with a rash or negligent act, the investigating officer should seek an independent competent medical opinion, preferably from a government doctor who is qualified in the concerned branch of medical practice. The Court pointed out that such government physicians may generally be relied upon to provide impartial and unbiased opinions about the facts gathered on investigation without being under the pressures which may operate in the case of private practitioners.

### 3. Rules for Arrest:

The Court held that a physician who is alleged to be rash or negligent should not be arrested routinely merely because a complaint has been made against him. An arrest should be made only where it is required in the interest of further investigation, for the procurement of evidence, or if the investigating officer feels that the physician would not present himself for trial unless arrested. This rule acknowledges that medical doctors are generally good citizens who will also comply with investigations and that routine arrest has no valid purpose but tremendous damage to their professional reputations.

### Protection against Frivolous and Malicious Prosecution:

The Court underscored the fact that several complainants utilise the criminal process as a tool for pressuring medical professionals to compel them to pay uncalled-for or unfair compensation. Such vitiating proceedings, the Court ruled, need to be avoided to secure the integrity of the medical profession and enable doctors to carry out their profession without incurring a perpetual fear of criminal liability for any unfavourable result. The Court made it clear, however, that it was not deciding that doctors could never be prosecuted for rashness or negligence offences, but only highlighting the necessity of caution and care in the spirit of society, considering the nobler service performed by the medical profession.

### Analysis:

The Jacob Mathew judgment is an important judicial activism that has far-reaching effects on medical practice, patient rights, and the criminal justice system in India. A critical examination discloses both the merits and the weaknesses of this historic ruling.

### Effect on the Medical Field:

The judgment relieved the medical community of immense agony, which was experiencing an unprecedented rise in criminal complaints and arrests for charges of alleged medical negligence. The rules prescribed by the Court, especially those demanding expert medical opinion prior to considering grievances and limiting ordinary arrests, drew a shield of protection for medical professionals. This was justified on the basis that doctors carry out vital social functions and ought not to be discouraged from taking necessary medical risks due to apprehension of criminal prosecution. The ruling acknowledged that contemporary medicine is not a precise science and that even the most skilful and diligent physicians can experience

negative results owing to circumstances over which they have no control.

#### The Mens Rea Controversy:

The Court's ruling that mens rea needs to be proved in criminal liability under Section 304A IPC has been controversial. As has been pointed out by some judges and commentators, Section 304A doesn't even mention mens rea or use language such as "gross negligence" or "recklessness" but only speaks of "rash or negligent acts". By interpreting the requirement of mens rea into the statute and reading "negligence" as "gross negligence," the Court possibly overstepped the borderline between interpretation and amendment of the statute.

#### Comparison with International Standards:

The Jacob Mathew judgment's methodology is in general conformity with international standards of medical negligence. The majority of advanced legal regimes agree that criminal prosecution of doctors should be confined to gross cases of gross negligence or gross recklessness and that ordinary cases of medical negligence should be handled through compensation mechanisms in civil law. The adoption of the Bolam test also symbolises the universal application of the standard among common law regimes.

#### Impact on Healthcare Delivery:

The Jacob Mathew judgment has had important repercussions for the delivery of healthcare in India. Positively, the guidelines have enabled doctors to practice with more confidence and possibly feel free enough to undertake advanced or risky procedures that would be required to save lives without too much fear of criminal prosecution for bad outcomes. This is especially necessary in a situation of emergency where doctors are forced to act under uncertainty.

The verdict is also not handling larger issues of healthcare systems, like insufficient infrastructure, insufficient medical supplies, and absence of regulatory mechanisms—issues that were responsible for the tragedy in the Jacob Mathew case itself, where the lack of an oxygen cylinder was blamed on the hospital administration and not the individual physician.

#### Contemporary Relevance:

Almost two decades since the Jacob Mathew judgment, its principles remain to be followed by courts all over India. The case is cited repeatedly in medical negligence cases and has developed into a core precedent in this field of law. More recent cases have struggled with

implementing the Jacob Mathew guidelines while also acknowledging that protection from frivolous prosecution cannot be extended to physicians who work in inadequately equipped facilities or who exhibit gross negligence.

### **Conclusion:**

Jacob Mathew v. State of Punjab is a milestone in Indian medical jurisprudence that redefined the criminal law-medical practice interface. However, while protecting doctors from baseless allegations by introducing the requirement of gross negligence or recklessness tantamount to mens rea for criminal liability and also considering expert medical opinion before prosecution, the apex court did observe that doctors would be liable in case of real negligence. The court relies more extensively on professional standards rather than lay opinion, invoking the Bolam test.

99While this judgment's pro-doctor stance is good policy, it leaves much to chance for those who suffer at the hands of genuinely negligent doctors. Though the principles are novel in kind, they are judicial guidelines and not statutory provisions, which causes inconsistent application. In the view of complete legislation for medical negligence, inclusive of these principles to provide for reasonable compensation and yet not impede professional duty, is the need of the hour. Until it is, Jacob Mathew continues to be the cornerstone of the law relating to medical negligence in India.

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