



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.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal

– The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## EDITORIAL TEAM

### Raju Narayana Swamy (IAS ) Indian Administrative Service officer



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and a

professional diploma in Public Procurement from the World Bank.

### Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.





## **Senior Editor**

### **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

### **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi, Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



### **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

## **Dr. Rinu Saraswat**



Associate Professor at School of Law, Apex University, Jaipur,  
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

## **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



## **Subhrajit Chanda**



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

# **JACOB MATHEW VS STATE OF PUNJAB [2005]:** **CASE ANALYSIS**

AUTHORED BY: SARITHA. S. MENON,  
Asst. Professor, Al- Ameen Law College, Shornur, Palakkad.

## **Introduction:**

This is a landmark judgement in which the Supreme Court of India states or laid down that certain guidelines are to be followed for every court at the time of deciding a case that involves the question of medical negligence. Medical negligence wasn't an offence in tort law, but it was incorporated in it as a simple tort that a patient may go through when he/she may be through an incorrect or inappropriate treatment due to the carelessness of the doctor or the hospital staff, which may lead to the death of the patient or injury.

Medical negligence is being discussed in the case primarily. Whenever medical negligence incurs, there can be two possibilities. There will be either an act of negligence or carelessness from the side of staff or the doctor, or both the staff and the doctor may have acted carelessly. Joint and several liabilities, which allocate obligations equally between the hospital and the doctor, are typically applicable.

## **Facts of the case:**

As per the case, Jeevan Lal Sharma was admitted to a private ward in a CWC Hospital, which was situated in Ludhiana. On February 22, 1995, the patient suffered from breathing problems. Vijay Sharma, who was the elder brother of the informant was present there and after seeing his father in pain, he called the nurse and doctor, but even after calling them, no one arrived there for about 20-25 minutes. After 25 minutes, two doctors visited the patient room, named Jacob Mathew and Allen Joseph. After coming there, he immediately ordered the oxygen gas cylinder to be connected to the mouth of the patient. However, even after doing so, the patient started to face more problems because it was found that the oxygen gas cylinder was empty, and after searching all over, it was discovered that there was no other gas cylinder present in the hospital. Vijay Sharma started searching for another



gas cylinder, but after 7 minutes, the doctors confirmed that the patient was dead. The younger son of the late Jeevan Lal Sharma, Ashok Kumar Sharma, filed an FIR under Section 304A of the IPC, read with Section 34 of the IPC. According to the FIR, it has been further stated that the informant's father's death was brought on by the negligence of the doctors, and nurses and the lack of availability of the oxygen gas cylinder in the hospital. The main reason for the death was the negligence in fixing an empty oxygen gas cylinder to the mouth of the patient, which caused problems in breathing and, as a result, the patient stopped breathing completely. As per the statement given by Mr. Ashok Kumar Sharma in the FIR, a case was made under Sections 304A and 34 of the IPC, and the investigation got started thereafter. The charges were made by the judicial magistrate of the First class of Ludhiana. Both the doctors who were the accused in this case filed a revision petition against the order of the first-class judicial magistrate of Ludhiana before the session judge of Ludhiana, which was later dismissed by the learned session judge. On the charges having been filed against the doctors and dismissed by the learned Session Judge, the accused doctors moved to the Hon'ble High Court of Punjab under 482 of the Cr.P.C. with a prayer to quash all the proceedings against both of them. Before the High Court it was further argued over there. The learned Judge of the High Court has rejected the said petition by a judgment dated 18th January, 2002. Thereafter, a recall request to the said order dated 24th January, 2003 was issued and the same has also been rejected. After the dismissal of the application for recalling the above order by the Hon'ble High Court, the appellant moved to the Hon'ble Supreme Court. The appellant argued that the deceased Jeevan Lal Sharma had advanced cancer, and according to the evidence at hand, he had not been admitted to any hospital in the country. The case was later before the Hon'ble Supreme Court, under the two judge bench. Dr. Suresh Gupta v/s Government of NCT of Delhi was the judgement that the judges relied or referred. Further hearings and proceedings were also conducted on the same later on.

### **Issues of the case:**

The two major issues that were involved in this case were:

1. Whether is there any test through which it can be determined whether the doctor acted in negligence or not while performing his/her duty?
2. Whether there is any difference between civil and criminal law on the concept of negligence?

Supreme Court also asked the Medical Council of India to assist them during the proceeding.



## **Judgement of the case:**

Through this judgement some major guidelines were laid down by the Hon'ble Supreme Court. The case was brought in front of a two judge bench. Even though they took reference to Dr. Suresh Gupta v/s Government of NCT of Delhi [2004]. The position of the case wasn't satisfactory for the judges. Therefore later on, they left the case to the three-judge's bench. As a result, the hearing for that matter was fixed before the three-judge bench.

The major guidelines that were laid down by the Supreme Court when there is any medical negligence in the matter were:

1. The judgment stated that it was imperative to make clear that this does not absolve doctors from accountability for careless or negligent actions. The intention is to underline how important caution and care are for the welfare of society. Doctors provide some of the finest quality services to humanity, hence they should be protected from unfair or baseless punishment. Complainants have occasionally utilized criminal processes to force medical providers to pay them unfairly or without good reason. Such malicious deeds must be put an end to.
2. It was further observed that the Medical Council of India should advise the Government of India and the State Government on developing and releasing executive instructions or statutory rules that include detailed instructions in order to solve this matter. The Court suggested the establishment of some rules for future instances involving the prosecution of doctors for crimes including criminal negligence or recklessness until such standards are created. A trustworthy assessment from another licensed doctor supporting the accusation of recklessness or carelessness on the part of the accused doctor is a sufficient kind of prima facie evidence that the court should consider before accepting a private complaint.
3. The court also stated that the investigating officer should obtain a qualified and unbiased medical opinion before taking any further action against the physician who is being accused of negligence or recklessness. Preferably, this opinion should come from a government physician who is proactive in the relevant medical field. Using the data acquired during the investigation, the physician (Jacob Mathews) is expected to provide an unbiased evaluation. A doctor who has been should not be arrested until and unless proper evidences are collected and produced.

4. The court decided that the arguments presented to them were convincing. It was said that even if they accept as true all of the allegations made by the complainant in the complaint, this does not prove that the accused-appellant was negligent or even careless. The complaint has determined that the primary cause of death was the unavailability of oxygen gas cylinders, citing the accusing physicians' lack of qualifications to treat the patient they had committed to care.

According to the complaint, the main problem in this matter was the absence of a gas cylinder with oxygen. This was likely because the hospital forgot to deliver one or because it was discovered to be empty. Although the charged physician cannot be held accountable or punished under Section 34 and Section 304A of the Indian Penal Code, which are based on the BOLAM's <sup>1</sup> criteria, the hospital, in a civil suit, could have been held liable for the complete absence of responsibility in this case. As a consequence, the allegation brought against the defendant practitioners under Section 34 and Section 304A of the Indian Penal Code were dismissed.

### **ANALYSIS AND REASONING OF THE CASE:**

According to BOLAM's test, a doctor who acts in accordance with the principles of practice laid down by his professional body is not guilty of malpractice if he follows those guidelines in any particular case. Therefore, the doctor in question was not blamed for anything since he took care of his obligations to the best of his knowledge and abilities. However, an oversight on the part of the hospital administration led to loss of life of a patient. In strict sense what hospital staff has done may be considered.

### **CONCLUSION:**

The case of Jacob Mathew vs State of Punjab had established guidelines for handling medical negligence cases. The Supreme Court stressed the need for a balanced approach to shield doctors from unfounded criminal charges. The decision highlighted the importance of administrative accountability of hospitals and laid down various provisions for a clear structure to distinguish

---

<sup>1</sup> This test was laid down in the case of *Bolam vs. Friern Hospital Management Committee, (1957)*. This case serves as the *locus classicus* for developing the legal standard of care that doctors are supposed to provide. This test, which originated from BOLAM's situation, has extended to become a fundamental component of legal evaluations of medical negligence and has shaped the standards by which doctors are held accountable for the care they give to their patients.

between criminal and civil negligence in medical practice.

### **BIBLIOGRAPHY:**

1. <https://e-lawresources.co.uk/Bolam-v--Friern-Hospital-Management-Committee.php>
2. <https://blog.ipleaders.in/jacob-mathew-v-state-of-punjab-2005-case-analysis/>



W H I T E   B L A C K  
L E G A L