

Review Article

# Doctors in conflict with the criminal law: A records review of gross medical negligence cases under the Indian penal code

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## ABSTRACT

Medical negligence is a critical issue in the healthcare system, often resulting in harm to patients and legal disputes.

**Objectives:** The article focuses on cases of criminal medical negligence in India, including notable cases such as Jacob Mathew, Syad Akbar, and PB Desai. The study aims to analyze the judgments given by courts against medical professionals charged under the Sec. 304A of the Indian Penal Code (IPC). This specific study was undertaken as there was a dearth of research around criminal negligence; however, ample data were available for civil breach of duty by doctors.

**Material and Methods:** This is a records review type of research. The research methodology involved conducting an extensive search for relevant judgments on [indiakanoon.com](http://indiakanoon.com) using keywords such as “medical negligence,” “due care,” “Bolam test,” and “Supreme Court (SC) judgments.” The study specifically focused on judgments that pertained to criminal cases under Section 304 IPC (Death due to rash or negligent action) while excluding civil cases, consumer court cases, and disciplinary actions of state medical councils.

**Results:** After conducting a judgment search, 90 cases met the inclusion criteria. The legal principles pertaining to negligence as established in the Jacob Mathew case, such as the definition of negligence amounting to a criminal nature and the criteria for determining a breach of duty, were reproduced. In the Syad Akbar case, SC laid down the difference in evidence required to prove medical negligence amounting to a crime. In the PB Desai case, the court clarified that mere differences in opinion between 2 doctors do not amount to negligence if due care was taken and the treatment was in line with the standard of care applicable at that time.

**Conclusion:** The results of the study provide valuable insights into the judicial approach to criminal medical negligence cases in India. By examining a range of judgments from different jurisdictions, the study identifies common themes, emerging trends, and significant precedents that shape the legal landscape surrounding medical negligence. It underscores the need for robust standards of due care and emphasizes the role of the judiciary in promoting patient safety, accountability, and fair compensation in cases of medical negligence. This article contributes to the existing body of knowledge on medical negligence in India, serving as a valuable resource for legal professionals, healthcare practitioners, policymakers, and researchers interested in understanding and addressing the complexities of this important issue.

**Keywords:** Criminal medical negligence, death during childbirth, death due to medical negligence, Independent medical opinion, death due to poisonous substance

## INTRODUCTION

William Osler said, “A good doctor treats the disease, and a great doctor treats the patient who has the disease.” The rising incidence of violence against doctors<sup>[1]</sup> and other professionals<sup>[2]</sup> highlights the prime issue of Indians working in the professional field – there is a lack of inter-professional understanding among the professionals.

The Consumer Protection Act was enacted in 1986. In the landmark judgment Indian Medical Association versus V.P. Shantha and Ors,<sup>[3]</sup> the apex court opined that “services rendered by a medical practitioner from the ambit of the main

part of Section 2(1) (o) of the CPA 1986.” This judgment allowed for the prosecution of Indian doctors for civil breach of duty and paved the way for patients to get compensation for negligence by their treating doctor.

## WHAT IS NEGLIGENCE?

Negligence has different definitions in different contexts. In the case of medical negligence, there are primarily two types of negligence – Negligence in tort law and negligence in criminal law. In India, criminal negligence is usually filed under Section 304A Indian Penal Code (IPC) in cases of

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Received: 24 November 2023 Accepted: 30 January 2024 EPub Ahead of Print: 18 May 2024 Published: 01 August 2024 DOI: 10.25259/SRJHS\_50\_2023

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death and Section 336,337,338 IPC where damage is done without causing the death of the patient. Section 304A of the IPC 1860 deals with death of a person due to rash or negligent action. It reads “304A. *Causing death by negligence – 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 a fine, or with both.*” Death by negligence comes into play when manslaughter has happened, which was not pre-mediated or planned but happens due to the reckless act of the accused. In the context of criminal negligence, it applies when a doctor shows gross disregard for the life of the patient, amounting to *mens rea* (criminal intent), one of the necessary ingredients (other being criminal act or *actus reus*) to prove any criminal charges against a person. A doctor “treating” and “curing” a patient would lack *mens rea*, but a doctor who is grossly negligent would possess *mens rea* as per the ratio laid down by the supreme court (SC) of India in the Jacob Mathew Case<sup>[4]</sup> in paragraph 12 which reads as follows “12. *The essential ingredient of mens rea cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence. In R. v. Lawrence, [1981] 1 All ER 974 (HL), Lord Diplock spoke in a Bench of five and the other Law Lords agreed with him. He reiterated his opinion in R. v. Caldwell 1981(1) All ER 961 (HL) and dealt with the concept of recklessness as constituting mens rea in criminal law.*”<sup>[4]</sup> In the Suresh Gupta case (Suresh Gupta vs. Govt. of NCT Delhi, [2004] 6 SCC 422),<sup>[5]</sup> the patient died when he was operated for removing his nasal deformity due to the alleged absence of a cuffed endotracheal tube. In an appeal, the SC quashed the criminal proceedings against the doctor and took the view that to affix criminal liability on a doctor, a greater degree of wrongdoing, i.e., that is, a higher degree of immorality and deliberate wrongdoing, must be proved. This view was challenged later by a two-judge bench that first heard the appeal of Dr. Jacob Mathew versus the state of Punjab.<sup>[4]</sup>

### JACOB MATHEW CASE

It is a landmark judgment in the domain of medical negligence, where the court largely settled the law on medical negligence in India.<sup>[4]</sup>

Two qualified doctors Dr. Jacob Mathew and Dr. Allen Joseph, faced the brunt of state machinery. They submitted before the court that the Patient, Jivan Lal Sharma, was suffering from cancer in an advanced stage. The patient later succumbed to the illness allegedly as the doctor connected empty oxygen cylinders when the patient started to feel breathless.<sup>[4]</sup>

The trial court framed charges under Section 304A. The Sessions and High Court refused to intervene with the said order. Finally, the matter came up for hearing before a

Bench of two learned judges of SC. Reliance was placed by the appellant on a recent two-judge Bench decision SC in Dr. Suresh Gupta v. Govt. of NCT of Delhi and Anr. (2004) 6 SCC 422.<sup>[5]</sup> The Bench hearing this appeal doubted the correctness of the view taken in Dr. Suresh Gupta's case and, vide order dated September 9, 2004,<sup>[5]</sup> expressed the opinion that the matter called for consideration by a Bench of three Judges. This is how the case has come up for hearing before a three-judge bench, which included then Chief Justice of India, Justice Lahoti.

As per the referring order dated September 9, 2004, the division bench assigned two reasons for their disagreement with the view taken in Dr. Suresh Gupta's case.<sup>[5]</sup> The three-judge bench in Jacob Mathew Case formulated two questions to be answered: - (i) *Is there a difference in civil and criminal law on the concept of negligence?; and (ii) whether a different standard is applicable for recording a finding of negligence when a professional, in particular, a doctor is to be held guilty of negligence?*<sup>[4]</sup>

Thus, the case reached a three-judge bench who finally delivered their verdict on August 5, 2005, and said, “*In view of the principles laid down hereinabove and the preceding discussion, we agree with the principles of law laid down in Dr. Suresh Gupta's case (2004) 6 SCC 422 and re-affirm the same.*” This landmark verdict settled the issue of doctor's prosecution under IPC, mainly Section 304A.<sup>[5]</sup>

The basic principle relating to medical negligence is known as the “BOLAM” rule. This rule was laid by Justice McNair in the case of Bolam Versus Friern Hospital Management Committee.

“*A man need not possess the highest expert skill at the risk of being found negligent. It is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art.*”

In conclusion 4 of the Jacob Mathew case,<sup>[4]</sup> the court approved Bolam's rule to be of good application while deciding cases of professional negligence. While adjudicating on the merits of Jacob Mathew cases,<sup>[4]</sup> the court quashed the criminal proceedings against the two doctors. As far as negligence in criminal law as opposed to civil negligence is concerned, there are various differences as enumerated below.

### The degree of negligence

In Jacob Mathew,<sup>[4]</sup> it has been held that “Showing a simple lack of care, which would constitute a civil liability is not enough; for purposes of the criminal law, there are degrees of negligence; and *a very high degree of negligence is required to be proved before the felony is established.*”

This concept of “Higher degree of negligence” has been used as a precedent in many criminal negligence charges, we analyzed where the court found out that “gross” negligence was absent as evident from the facts of the case, for example, in Dr. Nameeta Agarwal versus State Of U.P. And Another<sup>[6]</sup> and Dr. Ashok Ladha versus State of Madhya Pradesh<sup>[7]</sup>

In the Jacob Mathew case,<sup>[4]</sup> the court laid down a few guidelines that are to be followed whenever a case against a doctor is brought under Section 304A IPC as follows.

- a. A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor (emphasis supplied) to support the charge of rashness or negligence on the part of the accused doctor.
- b. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion (emphasis supplied), preferably from a doctor in government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation.
- c. A doctor accused of rashness or negligence may not be arrested in a routine manner (simply because a charge has been leveled against him) Unless his arrest is necessary for furthering the investigation or for collecting evidence.

### The types of proof

In the Syad Akbar v. State of Karnataka,<sup>[8]</sup> it was said "...there is a marked difference as to the effect of evidence, namely, the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, but in criminal proceedings..... the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based on an error of judgment..."

### Difference in professional opinion

In P.B Desai versus the state of Maharashtra,<sup>[9]</sup> there was a difference in line of management taken by the doctor for a terminally ill cancer patient. The doctors in the USA advised for a conservative approach, but the doctor in India, after due consent, took the patient for a more radical approach by explorative laparotomy. When the operation led to an adverse outcome, a criminal suit against the doctor was filed, which was later quashed. The court observed that. "54.... The two experts in the medical field may differ on the decision to undertake the surgical operation. But for the sake of life, which, anyway was struggling to live is the respect to doctors in their position to operate the patient or not....the appellant took the bold decision, namely, that surgical operation was worth taking a risk, as even otherwise, the condition of the patient was deplorable. The appellant has even given his justification and rationale for adopting this course of action..."

### The impact of the new Penal code in India, the Bharatiya Nyaya Sanhita (BNS), 2023.

BNS Section 106 (1) reads "Whoever causes 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 five years, and shall also be liable to fine; and if such act is done by a registered medical practitioner while performing medical procedure, he shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.*

The introduction of BNS Section 106 (1), would mean that the SC ratio that only gross negligence can be penalized under Indian criminal law could be void. The word gross with respect to medical professionals is of no consequence henceforth as Section 106(1) does not carry words gross and only mentions "and if such act is done by a registered medical practitioner." The act being "any rash or negligent act not amounting to culpable homicide." In the Jacob Mathew case,<sup>[4]</sup> the SC had inserted the word "gross" into erstwhile Section 304A of IPC while dealing with the negligence of the doctor. However, the legislature, while formulating the new BNS, had only made a distinction in the punishment awarded to medical practitioners and not the nature of the act (*viz.*, higher degree or gross or culpable) that can be penalized under IPC.

The data for our study included judgments collected from Indian Kanoon ([www.indiakanoon.com](http://www.indiakanoon.com)), which is an Indian law search engine. The website does not claim any *accuracy or completeness* of any judgment available. Such disclaimers are also present on other legal search engines like [www.sconline.com](http://www.sconline.com). The limitation of the website, as with all other legal search engines, is that cases that are non-reportable are not available on them.

### Aim

We aim to analyze the case of medical negligence punishable under Section 304A of the IPC under the following objectives.

### Objectives

The cases meeting the inclusion criteria will be analyzed under the following subheadings.

- d. Section under which the case was filed
- e. The outcome of the case (in favor of the doctor vs. against them)
- f. The verdict and the precedence set by the court.

### MATERIAL AND METHODS

This is a records review study conducted over one month. The court judgments were obtained after a relevant search query on [indiakanoon.com](http://indiakanoon.com).

The search query included terms such as "criminal negligence," "medical negligence," "Jacob Mathew case,"<sup>[4]</sup> "Bolam test," and "due care" to look within the judgment. We also initiated another search by checking cases that had "Dr." inside the title of the judgment.

Supreme and high court judgments from across India were included in the study. A medical negligence case was

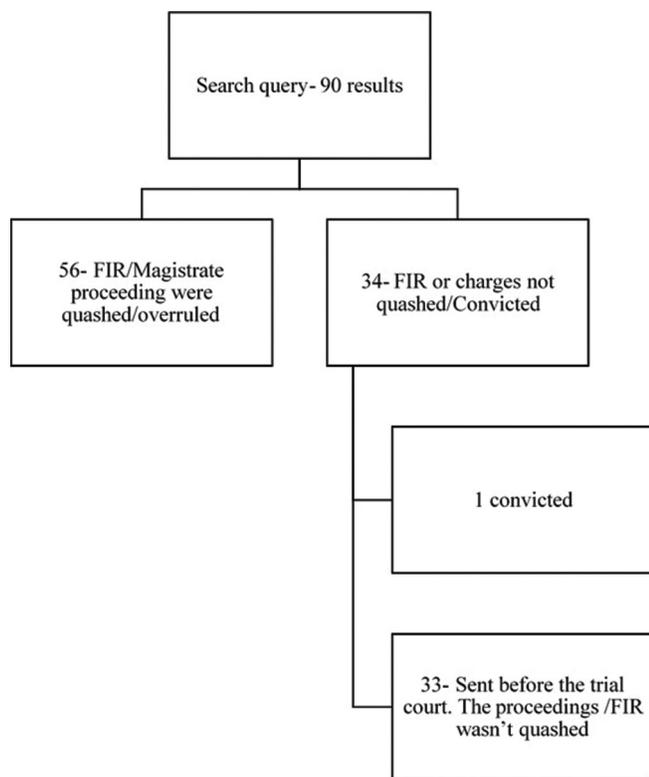
identified by it being filled under Section 304A and against a doctor alleging negligence on their part. Judgments not pertaining to criminal charges against doctors (E.g., civil cases, consumer court cases, and disciplinary actions of the state medical council) were excluded from the study.

## RESULTS

Ninety results were obtained after applying the search query [Figure 1]. In the majority of the cases, the magistrate court proceedings or the first information report (FIR) against the doctor were quashed (56, 62%). In rest of the cases, the appellate court refused to quash the proceedings. In such instances, the trial court will consider the matter on its merit and pass a judgment.

## DISCUSSION

1. The National Crime Record Bureau report of 2021<sup>[10]</sup> says that there are 515 cases pending for the previous year and 79 new cases of medical negligence (under s.304A of IPC). There have been three convictions in total out of 594 (0.5%) and 16 acquittals (2.7%) in all out of 594 cases for trial before the court.
2. In the 56 judgments, a petition under S. 482 Cr.P.C (power of the high court to prevent abuse of the process of any Court or otherwise to secure the ends of justice) had been filed. The magistrate or trial court proceedings that were not in accordance with the Jacob Mathew case<sup>[4]</sup> were quashed.



**Figure 1:** Flowchart depicting the types of cases and their outcome. FIR: First information report

It was seen that in most of the cases, “Independent and competent Medical opinion” was not taken, and hence, the trial court proceeding could not stand.

As it stands, independent medical opinion was considered a major factor. In the case of Dr. Meera Malik versus The State of U.P And Anr,<sup>[11]</sup> the opinion of a doctor who was involved in the treatment of the patient cannot be termed as independent. In this case, after the patient was shifted from one hospital to another, the opinion of the doctor who attended the patient in the new hospital is not considered independent. Furthermore, in the Tahir Mehmood and Another versus State of J&K,<sup>[12]</sup> the opinion by a doctor involved in the subsequent course of treatment was not taken as an independent medical opinion by the court.

The word competent also has weightage. In the case of Dr. Neeru Gupta versus State of J&K and Anr,<sup>[13]</sup> the opinion of a board of four expert doctors was given more weightage over the opinion of a physiotherapist opinion produced by the complainant. Moreover, the physiotherapist is not a registered medical practitioner as per the definition in the India Medical Council Act 1956<sup>[14]</sup>, and they are regulated under the provisions of the Rehabilitation Council of India Act 1994.<sup>[15]</sup> To hold a doctor negligent, it must be shown he/she did something or did not do something a reasonably competent person would in their position. This test of a reasonably competent person would mean to prove a case of negligence, an independent expert’s opinion is needed.

3. Negligence charges against crosspathy (Ayurveda doctor prescribing allopathic medicines and vice versa). In the case of Dr. Ashish Khare versus the state of Madhya Pradesh,<sup>[16]</sup> Dr. Ashish was an Ayurveda doctor who was not in possession of the requisite qualifications for treating patients in an Allopathic System, and since he had treated the patient in Allopathic System and had prescribed Allopathic Medicines, was therefore “negligent *per se*.” Moreover, he was also liable to be punished for an offence under Section 15(3) of the Indian Medical Council Act, 1956,<sup>[14]</sup> but prima facie, there is sufficient material to show that he was negligent. Crosspathy or mixopathy is rampant in India, where there is a sufficient amount of the Indian population in rural areas who visit a “Hakim” (a traditional healer) and in urban area where they visit Ayurveda/Homeopathic practitioners who routinely charge less than their allopathic counterparts.
4. Doctors are protected under the law for acts done in good faith. The IPC sections that protect medical professionals from unnecessary criminal prosecution were quoted. In the Dr. K.C. Vidyarthi versus the State of Bihar,<sup>[17]</sup> In this case, a doctor tried to save a boy who

was bought to him and had alleged to have consumed poison. Even after treatment, the patient could not survive, and being aggrieved by this, an FIR against the doctor was filed. The various IPCs that protect the doctor are Sections 80 through 92, which protect doctors against medical misfortune which was undertaken lawfully (Section 80), against acts likely to cause harm if done without criminal intent (E.g., – the complication of a procedure, Section 81), act not intended to cause death done for patients benefit (Section 88), acts done in an emergency to save the life of the patient (Section 92), privileged communication (Section 93). These sections would only protect a doctor against the criminal complaint and would not come into play for civil breach of duty (e.g., – complaint under Consumer Protection Act for compensation).

5. In cases where the doctor tries to perform a procedure for which he does not have adequate training or a more complex procedure for which special training is needed, then to bring out the breach of duty, a higher standard of care which is appropriate for that procedure is considered.

In the only case where the court did not favor, the doctor was that of Dr. Subas Chandra Dash versus State Of Orissa,<sup>[18]</sup> the court held that

*“13...The deceased was diagnosed as G3P2 in labor with “antepartum hemorrhage.” According to medical science, the patient of “antepartum hemorrhage” should be hospitalized in a well-equipped center with facilities for blood transfusion, emergency cesarean section and neonatal care unit...”*

However, the court noted that the doctor did not have adequate facilities and still did not attempt to shift the patient to an equipped center. This implies a gross disregard of the life of the patient and, hence, might amount to criminal negligence. Therefore, the court refused to quash the case against the doctor.

6. Arresting a government employee. Along with following the guidelines laid down in the Jacob Mathew case while prosecuting against a government doctor the, Section 197 Cr.P.C (Prosecution of Judges and public servants) also comes into play.<sup>[4]</sup> In the Dr. (Smt.) Manorama Tiwari versus Surendra Nath Rai,<sup>[19]</sup> it was alleged that prosecution against the appellant is not maintainable without sanction as required under Section 197 Cr.P.C. This legal protection must be known by each and every doctor in government service, especially under training resident doctors.
7. The attribution of grossness to an action is purely a legal issue and is decided by the judiciary, keeping in mind the facts of the case. What might seem such as gross and culpable negligence to a layperson (leaving a swab inside the body) need not be negligence in the eyes of

the law. For example, in the case Dr. (Mrs.) Rashi versus State Of Bihar decided on July 14, 2017 (Criminal Miscellaneous No.19158 of 2014), it was disclosed to the patient that as gauze was left after the operation done by the doctor earlier as a result, her organs in the abdomen got infected and infection reached up to gallbladder and the gallbladder of the patient was removed. However, the court opined that *“there is no cogent material available in the present case to gather any case of medical negligence.”*

## CONCLUSION

The Jacob Mathews stands as the landmark judgment when it comes to criminal negligence cases. This judgment was seen as a welcoming move due to the protection it gives the medical professional against undue harassment under the criminal law.

Most of the cases we analyzed led to the criminal case being quashed against the doctor. The courts mainly relied on non-fulfillment of the legal procedure laid in the Jacob Mathew judgment to quash the cases.

## Acknowledgment

We would like to thank our parents for their constant support and motivation.

## Ethical approval

The Institutional Review Board approval is not required.

## Declaration of patient consent

Patient's consent not required as there are no patients in this study.

## Financial support and sponsorship

Nil.

## Conflicts of interest

There are no conflicts of interest.

## Use of artificial intelligence (AI)-assisted technology for manuscript preparation

The authors confirm that there was no use of artificial intelligence (AI)-assisted technology for assisting in the writing or editing of the manuscript and no images were manipulated using AI.

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**How to cite this article:** Sethi A, Bilgaiyan R. Doctors in conflict with the criminal law: A records review of gross medical negligence cases under the Indian penal code. Sri Ramachandra J Health Sci. 2024;4:6-11. doi: 10.25259/SRJHS\_50\_2023