

THE KERALA MEDICAL PRACTITIONERS (PROTECTION FROM FRIVOLOUS AND UNJUST PROSECUTIONS) BILL

A bill to protect the Medical practitioners from frivolous and unjust prosecutions and to regulate the initiation and conduct of prosecution in appropriate cases, in a just and fair manner and thus to safe guard the interest of both the patients and the Medical practitioners who attend on them,

BE it enacted in the Fifty Ninth Year of the Republic of India.

1. *Short title, extent and commencement of the Act.*—(1) This Act shall be called The Kerala Medical Practitioners (Protection from frivolous and unjust prosecutions) Bill—
(2) It shall extent to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may notify in the Official Gazette.

2. *Definitions.*—Unless the context otherwise require the words.—(a) “Act of Commission and omission” means any culpable act or omission committed by medical practitioners in the performance of their duties as such, to patients under their treatment.
Explanation.—‘For an act or omission’ to become culpable, an element of ‘mens rea’ should be involved in it or the ‘act or omission’ should be grossly negligent.

(b) “Medical Practitioners” means and includes any person ordinarily engaged in the practice of modern medicine, homeopathic medicine or indigenous medicine including traditional practitioners of Ayurvedic medicine included in indigenous medicine known as Paramparya Vaidyans and ‘Marma Chikitsakas’ registered under the Travancore Cochin Medical Practitoners Act or any other corresponding Act in force in Kerala at the commencement this Act.

(c) “Patient” means and includes any person who seeks or receives medical advice or any kind of medical assistance for any ailment or any other body or mental condition.

3. *Procedure for initiation and conduct of criminal proceedings against Medical Practitioners.*—Medical Practitioners are liable to be prosecuted for their acts of commissions and omissions only in the manner and to the extent permitted hereunder.

(a) Notwithstanding anything to the contrary contained in the Criminal Procedure Code, no Court shall entertain a complaint against a medical practitioner unless the complainant produces along with the complaint or within the time allowed by the Court a credible opinion given by another doctor belonging to the same discipline and having not less than 10 years of service under the Government as a *prima facie* evidence in support of the

charge of culpability of the act or omission on the part of the Medical Practitioner in the course of performance of his duties as such.

(b) In all other cases, on receipt of information about the commission of any act or omission by a Medical Practitioner in the course of performance of his duties as such either orally or in writing, the Police Officer concerned shall make a record of the same and shall refer the matter to a Doctor practicing in the same system of medicine in which the concerned doctor was practicing and having not less than 10 years of practice under the Government for his opinion regarding the culpability of the act or omission about whom the complaint is filed.

(c) If the opinion formed by the Doctor to whom the matter is referred to is that the act of commission or omission complained of is culpable; investigation officer shall proceed with the investigation and take all further steps in accordance with the provisions contained in the Criminal Procedure Code.

(d) If the opinion of the Doctor is against the culpability of the medical practitioner, the Investigation Officer shall close the complaint summarily on the basis of the opinion giving notice of the same to the complainant.

(e) Any person aggrieved by an order passed under clauses (c) or (d) may file a revision challenging the orders passed by the Court or the Investigation Officer, before the District and Sessions Court and the Court may after issuing notice to both parties dispose of the revision giving both side sufficient opportunities to establish their respective cases. The order passed by the District Judge in revision shall be final and binding on the parties.

(f) In cases where a Medical Practitioner is allowed to be prosecuted under clauses (a) and (b) of this Section, all further proceedings shall be continued following the normal procedures prescribed under the relevant provisions of the Criminal Procedure code.

(g) It is made clear that the opinion filed in court or received by the investigating officer under clauses (a) and (b) respectively shall only be treated as *prima facie* evidence and both sides are at liberty to produce further evidence of any kind either in support or against it.

(h) A Medical Practitioner proceeded against under this Act can be arrested only under orders of Court after hearing him and giving reasons for passing the order for arrest.

4. Rule Making Power.—Every rule under this Act shall be laid as soon as may be after it is made or issued before the legislative assembly for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session to which it is so laid or the session immediately following, the legislative assembly makes any modification in the rule or decided that the rule should not be made or issued, the rule shall thereafter have effect only in such modified form or be of no

effect, as the case may be; so however that any such modifications or annulment shall be without prejudice to the validity of anything previously done under that rule.

Statement of Objects and Reasons

The Supreme Court has in the decision Jacob Mathew V. State of Punjab reported in 2005(3) KLT 965 has elaborately considered the true nature of the negligence for which medical practitioners can be justifiably be prosecuted for the alleged acts or omission treating it as a criminal offence. The judges comprising the Bench especially Chief Justice Lahoti who wrote the Judgment, has elaborately brought out the need to have some caution in the matter of initiation of criminal proceedings against the medical practitioners mainly for the purpose of ensuring fair and reasonable treatment for patients. The Bench has also laid down the guidelines regarding prosecution of medical professionals in the concluding portion of the judgment. In the light of the various principles explained and guidelines laid down in the judgment the commission found it fit to prepare a bill indicating the circumstances in which and the conditions subject to which a medical practitioner can be prosecuted for acts or omission amounting to culpable or gross negligence. As the title of the Bill itself shows the object and reason of the Bill is to protect the medical practitioner from frivolous or unjust prosecutions and at the same time make them liable to be proceeded against criminally in justifiable circumstances and that too subject to special conditions.
