

Negligence of Medical Professionals in Pakistan

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Abstract

The Medical profession is perhaps the most respected profession in Pakistan. The country produces a high number of such professionals each year and the competition for acceptances into medical schools is very high. While Pakistan has ensured that the process of selection of such acceptances is very stringent, little attention has been paid to the actual practice of this profession. While doctors and nurses are required to go through extensive training to receive practicing licenses, the rules they are required to abide by, to ensure the viability of these licenses, are rarely enforced. This allows medical professionals a blanket immunity for instances where they are reckless or negligent as to their responsibility as a professional. Since many times the life of a human is at stake, the cost paid by the victim is very high. This paper will offer an analysis of relevant laws to see what prevents accountability in cases where there are victims of medical negligence and will offer suggestions on how to deal with them.

Introduction

The practice of medicine is as old as the existence of human beings on earth. Medical professionals,¹ doctors in particular, are accorded the reverence offered to a worshipped deity, in many parts of the world. Their importance in a society is also enhanced by the fact that they discharge functions essential to the existence and quality of life which increases the onus of responsibility on such professionals. Medical practitioners are therefore required to maintain stringent adherence to Standard Operating Procedures² to ensure that the quality of service offered to patients is maintained, the chances of misdiagnosis are reduced and that the medical staff does not engage in malpractice.

The concern for malpractice is a very pertinent one, especially as far as Pakistan is concerned. Government treatment facilities are well known for their poor reputation owing to the bad quality of services they provide. The risk of complications and the conveyance of harm to a patient is higher and has been seen to materialize often.³ While complications and misdiagnosis are no strangers to the practice of medicine, they cannot be ignored when their sole or most obvious cause is negligence by the professional.

Causes contributing to medical negligence are not solely premised within the inefficacy of medical negligence laws. The patient to doctor ratio in Pakistan is gravely disproportionate. The Pakistan Medical and Dental Council in February of 2018 recorded 1,90,325⁴ registered doctors. The total population of Pakistan according to the 2017 census was recorded to be

¹ Medical professionals include nurses, dentists, osteopaths, surgeons, staff members, hospitals and others providers of health care services.

² Hereafter 'SOP'. Steps outlining the course of action taken by an individual in dealing with a patient.

³ Shamsul Islam, 'Precaution gone wrong?: 'Polio vaccine, doctors' negligence' kills child' *The Express Tribune* (Faisalabad, 3 November 2011) <<https://tribune.com.pk/story/286901/precaution-gone-wrong-polio-vaccine-doctors-negligence-kills-child/>> accessed 12 February 2018.

⁴ Pakistan Medical and Dental Council, 'Statistics' (*PMDC*) <<http://www.pmdc.org.pk/Statistics/tabid/103/Default.aspx>> accessed 13 February 2018.

199,031,265⁵, which leaves there to be over a 1000 patients per doctor. While there are private hospitals and clinics which have enough supporting medical staff to facilitate patients, most of the population in Pakistan cannot afford their services. The medical facilities provided by the government, where services are provided at a minimal cost do not have enough supporting staff or facilities to accommodate the high influx of patients. Given the high pressure to deal with the large inflow of patients, doctors are likely to end up being negligent in their work.

While there are teaching medical facilities available, the chances of all medical professionals getting placements for training are low. This is attributable to the high demand for training centers and the lack of enough centers to fulfil that demand. The lack of training facilities lies parallel to the lack of funding for governmental medical facilities. This leaves them without the essential tools which they need for treatment and has resulted in unethical practices such as using used hypodermic needles and unsterilized equipment, which leads to transmission of diseases.⁶ Hepatitis B, Hepatitis C and HIV are the most commonly transmitted diseases owing to such practices.

The lack of funding also contributes to the longer hours required by each member of the medical staff in governmental healthcare facilities. Being overworked and underpaid, such individuals lack motivation to discharge their duty to the standard required of them. Lack of effective oversight only aids this process.

All prescriptions in Pakistan are made manually, by hand. Doctors are known for having illegible handwriting, which is surprisingly a very lethal contributor to medical negligence. Directions on use and dosage are often misunderstood by patients. In fact, as reported by the Pakistan Journal

⁵ 'Pakistan Population' (*Country Meters*) <<http://countrymeters.info/en/Pakistan>> accessed 10 February 2018.

⁶ Use of injections to administer drugs has increased 10.8% in 2005 to 37.8% in 2011 amongst which 94% of injections were administered without injection equipment. 'HIV/AIDS in Pakistan' (*The World Bank*, 10 July 2012) <<http://www.worldbank.org/en/news/feature/2012/07/10/hiv-aids-pakistan>> 10 February 2018.

of medical sciences⁷ legibility was poor in 58.5% prescriptions and about 78% prescriptions lacked directions for medicine usage. While no record of this being lethal in Pakistan is available, since research is something the country does not prioritise, references for the consequences of this can be made to countries such as the United States where statistics show that incomplete and illegible handwriting kills more than 7000 people annually.⁸

The category of medical negligence is a legal device which deals with such cases and acts to punish those who have caused harm while failing to discharge their duty as a medical professional. It is by virtue of this duty that the law is capable of regulating this profession.

A. Duty of care

Negligence is a concept grounded in the Law of Torts. Given the lack of tortious litigation in Pakistan, the applicable legal definition of negligence and its application in Pakistan is sourced from the English Legal System.

‘Negligence’ is defined as a failure to meet the standard of conduct prescribed by a law.⁹ It may be seen as mere carelessness. As demonstrated by the case of *Blyth v. Birmingham water co 1856*,¹⁰ negligence is an act which a sensible man would not do in the circumstances similar to those of the defendant and also, is an omission of doing an act which a prudent and a sensible man would do, in circumstances similar to the defendant. To prove negligence the presence of legal duty attached to the person along with damage, resulting from breach of the duty, is required.

⁷ Usman Ahmad Raza, Tayyeba Khursheed, Muhammad Irfan, Maryam Abbas, Uma Maheswari Irfan, ‘Prescription patterns of general practitioners in Peshawar, Pakistan’ (2014) 30(3) Pak J Med Sci 462.

⁸ Jeremy Caplan, ‘Cause of Death: Sloppy Doctors’ *Time* (15 January 2007) <<http://content.time.com/time/health/article/0,8599,1578074,00.html>> accessed 9 February 2018.

⁹ *Blyth v. Birmingham water co* (1856) 156 ER 1047.

¹⁰ *ibid.*

Medical malpractice and medical negligence operate on the premise that the medical professional is placed under a duty of care to the individuals who are subject to their instruction or in other words, are under their care. A doctor owes certain duties to the patient who is consulting him for his/her illness. It is now a duty of the doctor to provide treatment that is not short of the medical standard of care. This standard encompasses the watchfulness, attention and diligence that a reasonable medical professional, in similar circumstances would exercise. If the doctor's behaviour does not match the required standard of care, then he fails to discharge his duty of care.

It is therefore, the failure to discharge this duty which results in negligence. Clinical negligence is a term which can be applied to the illegal or irresponsible behaviour of a doctor. Pakistan is a developing country with fairly a low standard of health care. Contributing factors to this include the fact that most Pakistanis are not aware of the duty which they are owed by healthcare professionals. Aiding this is the low level of literacy in the country which not only leaves majority of Pakistanis ignorant of their rights when engaging professional help for medical needs, it also decreases the value of the device of medical negligence for them, which accounts for the lack of its use in Pakistan. While a plethora of cases of medical negligence have been reported by news/media publications,¹¹ little legal action has been seen to result as a consequence.¹²

The Punjab Healthcare Commission Act 2010 along with The Pakistan Medical and Dental Council guidelines and Code of Ethics deals with the standard of services provided to the patients at the hospital. The mere existence of legislation which does not seem to be efficient or effective, given the lacuna of reprimand for those medical professionals who are responsible for harming patients, is not enough. This in turn gives birth to the question which doubts the efficacy of such laws.

¹¹ Asif Chaudhry, 'PMDC holds hospital responsible for Imanae's death' *Dawn* (Lahore, 7 May 2015) <<https://www.dawn.com/news/1180488>> accessed 10 February 2018.

¹² This has included the administration of wrong medicine, use of expired and old drugs, wrong diagnosis of the patient, leaving gauze/instruments inside the patient's body during a procedure, amputating the wrong limb, using substandard and expired stents in heart patients which have not only caused complications but also resulted in death.

B. Laws on Medical Negligence in Pakistan

According to Punjab Healthcare Commission Act, medical negligence refers to a case where a doctor exhibits such an improper treatment in a healthcare facility that a patient either sustains an injury or dies as a result of such treatment¹³.¹⁴ A health care service provider would be liable for medical negligence if the hospital does not have the necessary and mandatory human resources and equipment which it acknowledges to possess and when its employee fails to exercise the skill which he possesses, with proficiency.¹⁵

The Pakistan Medical and Dental Council 'Code of Ethics of practice for medical and dental practitioners'¹⁶ provide that a doctor owes complete loyalty towards his patients and he shall always keep in mind the duty of protecting human life. If any treatment is beyond his capability he is under an obligation to call for another physician to avoid any sort of harm. The doctor is also under an obligation to provide emergency care as a humanitarian duty.¹⁷

The PMDC Code of Ethics also determines the responsibilities and conduct of medical and dental professionals registered with the PMDC. These professionals must ensure that they have a valid registration with PMDC and only those with a and valid registration can practice medicine or surgery.¹⁸

The PMDC also has jurisdiction over the instances of medical negligence as it can take disciplinary action via the disciplinary committee of the council, which may be required for criminal convictions, professional negligence or serious professional misconduct of a doctor.¹⁹

¹³ The Punjab Healthcare Commission Act 2010, art 2(xii).

¹⁴ Punjab Healthcare Commission Act, s 2(19)(1), (2).

¹⁵ *ibid.*

¹⁶ Hereafter 'PMDC Code of Ethics'.

¹⁷ PMDC Code of Ethics, s 4.

¹⁸ PMDC Code of Ethics, s 7.

¹⁹ PMDC Code of Ethics, s 50 (1), (2).

The Punjab Consumer Protection Act, 2005 defines the concept of 'services' and all services (including those by medical professionals²⁰) fall into its ambit except for those offered under a contract of personal service or non-professional services like astrology or palmistry.²¹ A suit can be filed for instances where the services provided are not up to the standard expected of them, pursuant to this Act. This act primarily deals with protection and promotion of the rights and interests of the consumers where consumer is a person who hires any service against some consideration.²² The relationship of a doctor and a patient is also the exchange of a service (the help of a doctor) for consideration (usually the doctor's fee). Under this act a doctor or a surgeon would be liable for the damages caused by providing faulty and defective services.²³ However, if the consumer has not suffered any damage due to the provision of faulty services, the service provider shall not be liable for any damage but can be obligated to return the damages or the costs accruing due to his negligence.²⁴

Consumer protection law places significant responsibilities on medical professionals in Pakistan. They are required to disclose any qualifications and capabilities which they may have and the products and procedures which they are to use in the treatment of their patient.²⁵ Not only does this allow the patient to make an informed decision on the course of action which will affect his/her life, the patient is also capable of avoiding treatment by individuals not qualified to treat them. If enforced, this provision is capable of enacting a system where the patient would not just be a passive subject of medical treatment but will be more informed of the process, which will help them be more enthusiastic about their treatment and more likely to follow the doctor's instructions. Also, many times doctors do not disclose the side effects of the treatments and medicines which they prescribe to the patient. In doing so they make a decision in which the patient is subject to a potentially harmful consequence, on behalf of the patient. This not only infringes the patient's right to be informed and to choose to engage such treatments, it also subjects them to harm, pursuant to

²⁰ *Indian Medical Association vs. V.P. Shantha & Ors* 1996 AIR 550.

²¹ Punjab Consumer Protection Act 2005, s 2(k).

²² Punjab Consumer Protection Act, s 2(c).

²³ Punjab Consumer Protection Act, s 13, 14.

²⁴ Punjab consumer protection Act, s 15.

²⁵ Punjab Consumer Protection Act, s 16.

someone else's decisions. Not only does this breach disclosure laws, it also violates the dignity of a person which is a constitutionally protected right.²⁶

It is part of standard practice to make patients sign documentation whereby which they give up the right to take legal action in case of complications or negligence by the doctor. The pressing need for medical treatment and the lack of understanding of legal provisions allows for such agreements to be signed by patients who proceed with the understanding that they are incapable of taking legal action against the medical professional or the medical facility. The Consumer Protection Act makes ineffective any such agreements or provisions as no notice or prior contract can exclude the doctor from his duty of care and disclosure²⁷ but many patients are unaware of this and therefore prohibited from pursuing legal action.

The provision of false, deceptive or misleading information or representation regarding the type and quality of service (e.g. the clinic or hospital) and about the provider of those services regarding sponsorship, approval, recognition or affiliation is also penalized. The case of Dr. Shamshad Hussein²⁸ is a Pakistani case illustrating this as the respondent, a hospital, was made liable for providing defective services by issuing a wrong report. The consumer protection law can therefore be made use of for cases of medical negligence in Pakistan.

C. Constitutional Concerns

The 'right to life' enshrined in article 9²⁹ of constitution of Pakistan is not only considered as a mere right to physical existence or a right not to be deprived of life but it also means a sum total of rights which are primarily attached to an individual, which he may require to enjoy his existence. However, article 9 does not explicitly protect the right to healthcare and

²⁶ Constitution of Pakistan 1973, art 14.

²⁷ Punjab Consumer Protection Act, s 17.

²⁸ *Dr. Shamshad Hussein Syed v District Consumer Court*, Lahore PLD 214.

²⁹ No person shall be deprived of life or liberty saves in accordance with law.

eventually, the protection from medical negligence. But the interpretation of this right provides room for an alternative argument.

As defined in the *Shehla Zia Case*³⁰ the word 'life' covers all facets of human existence as the concept is not only restricted to human life from birth till death but includes all necessities which are essential to human existence.³¹ Right to a healthy life as well as basic health facilities are therefore part of the right to life. This incorporates access to health facilities without being discriminated against. As referred to above, the Constitution of Pakistan also guarantees the right to dignity of an individual.³² Therefore, negligence on the part of medical facilities and professionals amounts to a violation of the right to life and dignity of a person, which are both constitutional rights. This adds to the state's responsibility for protecting these rights and makes access to healthcare a greater cause for concern.

D. Problems with the current legislative framework

The current legislative framework provides basic rules and lays down basic penalties regarding medical negligence. A maximum sentence of two years and a maximum fine of 100,000 rupees is what can be imposed for instances of medical negligence.³³ But these penalties do not reflect the gravity of the protection which these rules have been put in place to ensure. A maximum sentence of two years cannot reflect the value of human life, as it is this very entity which the state exists to protect. Penalties reflect the attitude of the state and the legislation towards the protection they try to offer. If minor punishments are enacted, such as those which exist for medical negligence currently, those who are bound by these rules are less likely to follow through with them.

Aiding this is the lack of litigation taken up for cases of medical negligence. Cases are such a rarity that the likelihood of one being sued for

³⁰ *Shehla Zia vs. WAPDA* PLD 1994 SC 693.

³¹ *ibid.*

³² Article 14 makes the dignity of an individual, inviolable.

³³ Punjab Consumer Protection Act, s 32.

medical negligence is highly unlikely. While the larger device of the justice system in Pakistan is partly to blame for this, it must be remembered that it is the state's responsibility to enact laws which not only educate its subjects on their rights but enable them to access these rights easily. This is not a concern addressed by laws of medical negligence in Pakistan or by the bodies instated to enforce them. Low rates of literacy are also effective contributors to this. Official complaints are routed through tedious process which involves a lot of paperwork. This includes the complete account of the incident which must be attested by a magistrate first class and attested by two witnesses, along with documentary proof of the occurrence. An undertaking also has to be signed stating that the complainant will appear before the disciplinary committee, at his own expense, to record his statement. After receiving the complaint from the complainant the council forwards it to the accused individual for comments. Those comments are then are sent to the complainant. If the complainant is still dissatisfied with the reply made by the doctor, he may file a case before the disciplinary committee for hearing.³⁴ The procedure is unnervingly lengthy, which adds to the time and the cost involved and a victim often ends up lost in its formalities, without a real chance of redress.

For crimes like malpractice the penalty provided by Punjab consumer protection act is so trivial that it is unlikely to motivate professionals to comply. As the medical and dental practitioners are registered under the Pakistan Medical and Dental Council, the disciplinary committee can suspend the registration³⁵ of doctors if they are found guilty of malpractice. But evidential concerns and lack of encouragement for victims to report such issues are likely to impede the deterrence offered by this punishment. As mentioned earlier, Pakistan is not a country where litigation in courts is considered to be a method by which relief can be attained for wrongs done to oneself. Further discouraging this exchange is the lack of active institutions dedicated to disciplinary action against malpractice. In addition to this, health facilities employing medical professionals are unlikely to insist on strict codes of conduct or disciplinary

³⁴ 'Part V: Complaint Against Medical or Dental Practitioner and Action Thereon' (PMDC) <<http://www.pmdc.org.pk/Ethics/tabid/101/Default.aspx>> accessed 11 February 2018.

³⁵ PMDC Code of Ethics, art 50.

action in case of malpractice as they are rarely ever made subject to vicarious liability for the negligence of their employees.

E. Suggestions for Reform

The practice of medicine in Pakistan requires serious guidelines accompanied by stricter penalties for malpractice or non-compliance. The following suggestions can offer areas which need to be thoroughly reviewed to enact reform.

- a. Training of the medical staff:
There is a dire need to train the medical staff like nurses and attendants regarding the health and safety of a patient. Hygiene is a real concern for the practice of medicine in Pakistan and there are no effectively penalizing provisions for non-compliance.
- b. Reforming the procedures of the PMDC:
The procedure for making a complaint in PMDC is quite lengthy. It should be simplified and the steps involved should be reduced. This can be done by establishing a separate organization dealing with accusations of malpractice, under the purview of the PMDC.
- c. Encouragement of Litigation
Healthcare is not a right for which much contest has been seen by the courts in Pakistan. Pakistanis need to be made aware of this right so that they may aid in its protection as he beholder of the right and the prime enactors of change. This would encourage litigation which is likely to not only further local jurisprudence on the matter, but also to make examples of some, to demonstrate the authority of the law against poor practices. Stress will also be added to the requirement to adhere to SOPs and to discharge the deterring effect of penalties enacted to combat medical negligence.

d. Internal discipline

The need for internal discipline within health facilities needs to be stressed upon. This can be done by issuing standard disciplining procedure which carries penalties, if a complaint is made against an employee. This can be stressed upon during the training of medical staff and as part of hospital policy. Making immediate superiors responsible for such cases is likely to deter malpractice much faster than any ex post facto complaint can.

Conclusion

The discussion above shows that penalties have been issued by the relevant legislation, for medical negligence. Despite this the current system of healthcare continues to operate without being wary of negligence. While the problem of inefficacy does exist due to the disparity between the conduct and the issued punishment, a large contributor to this is the system in place to enforce these rules. In order to inhibit further lives from falling prey to medical negligence, it is necessary that the system in place is revised and replaced by an approach which leads by prioritizing human life.

Bibliography

‘HIV/AIDS in Pakistan’ (*The World Bank*, 10 July 2012)
 <<http://www.worldbank.org/en/news/feature/2012/07/10/hiv-aids-pakistan>>
 10 February 2018

‘Pakistan Population’ (*Country Meters*)
 <<http://countrymeters.info/en/Pakistan>> accessed 10 February 2018

‘Part V: Complaint Against Medical or Dental Practitioner and Action Thereon’ (*PMDC*)
 <<http://www.pmdc.org.pk/Ethics/tabid/101/Default.aspx>> accessed 11 February 2018

Blyth v Birmingham water co (1856) 156 ER 1047

Caplan J., ‘Cause of Death: Sloppy Doctors’ *Time* (15 January 2007)
 <<http://content.time.com/time/health/article/0,8599,1578074,00.html>>
 accessed 9 February 2018

Chaudhry A., ‘PMDC holds hospital responsible for Imanae’s death’ *Dawn* (Lahore, 7 May 2015) <<https://www.dawn.com/news/1180488>> accessed 10 February 2018

Constitution of Pakistan 1973

Dr. Shamshad Hussein Syed v District Consumer Court, Lahore PLD 214

Indian Medical Association v V.P. Shantha & Ors 1996 AIR 550

Islam S., ‘Precaution gone wrong?: ‘Polio vaccine, doctors’ negligence’ kills child’ *The Express Tribune* (Faisalabad, 3 November 2011)
 <<https://tribune.com.pk/story/286901/precaution-gone-wrong-polio-vaccine-doctors-negligence-kills-child/>> accessed 12 February 2018

Pakistan Medical and Dental Council Code of Ethics of practice for medical and dental practitioners

Pakistan Medical and Dental Council, ‘Statistics’ (*PMDC*)
 <<http://www.pmdc.org.pk/Statistics/tabid/103/Default.aspx>> accessed 13 February 2018

Punjab Consumer Protection Act 2005

Raza U. A., Khursheed T, Irfan M, Abbas M, Irfan U. M., 'Prescription patterns of general practitioners in Peshawar, Pakistan' (2014) 30(3) Pak J Med Sci 462

Shehla Zia vs. WAPDA PLD 1994 SC 693

The Punjab Healthcare Commission Act 2010