

**Review article:**

**Holding Health Care Accountable: A Solution to Mitigate Medical Malpractice in Pakistan**

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**Abstract:**

Medical malpractice negatively affects the health care across the globe, and the case of Pakistan is not a novel. Beyond the human consequences such as injuries, loss of lives, complete or partial impairment of limbs, including the factors of misery and violence against health care has far reaching, long-term consequences which affecting the patients trust on the health-care services that has negative and catastrophic impacts on the public health. Indeed, malpractice results from breach of duty on the part of medical practitioner that could be negligence attracting penalty in form of damages, or be recklessness, or deliberate misconduct call for imposition of fine, or physical punishment or both, which serve as detriment for health care provider and as a relief for the aggrieved. Assertively, in the absence of research studies, the present endeavor was to attract the attention of government and law makers towards this issue. And thus, for this purpose, the study was conducted in Peshawar district from July 17<sup>th</sup>, 2019 to October 1<sup>st</sup>, 2019. Consequently, the finding of this study reflected the magnitude of non-reporting of sentinel events, unawareness among masses of flaws and remedies that could be availed at the times of malpractice complaints, and key gaps in laws, system and policies of health care dealing with malpractice. The study further demonstrates that prevention as well as establishment of fair and unbiased system of accountability is the need of the day. Since, in this way, the policy and law makers will be enabled to bring reforms in health care system in order to mitigate medical malpractice in Pakistan.

**Keywords:** Medical malpractice, medical error, medical negligence, health care, patient's safety, Physician's accountability & Pakistani Law.

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**Introduction**

Patient safety is one of the top priorities of health care system.<sup>1</sup> Since, it is affected by medical errors which result in adverse consequences. A medical error, as defined by the Institute of Medicine (IOM), is "the failure to complete a planned action as intended or the use of a wrong plan to achieve an aim".<sup>2</sup> Thus, in this way, it is a mistake in action or judgment. Many medical errors are the result of negligence or malpractice on the part of medical practitioners. Medical malpractice occurs when a medical or health care professional deviates

from the standards in his/her profession, thereby causing injury to a patient.<sup>3</sup> Acts of negligence on the part of a healthcare professional can lead to severe injuries or even the death of the patient which gives rise to a medical malpractice claim. Such an event in health care is termed as adverse event or sentinel event.<sup>4</sup>

There is a perception that medical practitioners are not responsible for the errors, but, rather, the quality of health care and overall management lead to these errors. Thus, the focus must be on ensuring health care quality rather than blaming

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health care provider for adverse events.

In 2000, IOM published "*To Err Is Human*" which concluded medical errors are not caused by "bad people" but in general are caused by "good people" working in bad healthcare systems that must be made safer.<sup>5</sup> This is not true in most of the cases of medical malpractice where the adverse events are definitely avoidable if proper care is adopted by health care provider.

No doubt preventability must be the priority but providing immunity to medical practitioners from the clutches of accountability makes them reckless. In fact, fear of consequences forces society to be careful and not to breach the law. Just is the case with medical practitioners; while treating patients fear of punishments, physical or monetary or any other like administrative form, will force the medical practitioner to be very careful and to follow the standard of care required. Therefore, medical practitioner should be bound by Hippocratic Oath<sup>6</sup> to adhere strict duty of care. And if, in case, they deviate from the quality of care that is normally expected from them, they will be legally responsible, if the patient experience harm or injury. Because, the health provider deemed to be aware of probable danger, still neglected to follow the anticipated standard of care, and thus caused the preventable harm. This attitude is completely adverse to the objectives of health care hence attract accountability and penalization.

Medical negligence and malpractice are increasingly becoming a common exercise in Pakistan. Several cases involving medical neglect on the part of physicians and hospitals are witnessed by means of defective procedure techniques, lack of competent staff; such as, 'leaving instruments in abdomen', 'amputating wrong organ(s)', 'administration of inappropriate vaccines', 'use of expired drugs', 'making improper diagnosis', 'giving ill-treatment', 'directing erroneous amount of anesthesia', 'failure to wear gloves', 'use of used syringes' and etc, are the common causes.<sup>7</sup> Resultantly, the situation of health care system is devastating in Pakistan in which one of the contributing factors is medical malpractice. It has not only endangered those seeking health care but also health care providers. A research conducted in Peshawar, Khyber Pakhtunkhwa, Pakistan, during the year of 2017, which was explored that 51% of every second health care provider witnessed or experienced violence at hands of patients or their attendees. Almost half the health care personals

(49.8%) involved in the study experienced verbal violence from patients or their attendees. All of the participants gave some main common reasons behind the violence i.e. 'lack of communication', 'devoid of awareness among the general public', 'human errors', 'deficient laws and regulations', and 'unrestricted number of attendees allowed', etc.<sup>8</sup>

Unlike other countries Pakistan neglected this menace and no action is ever taken to mitigate this wicked practice. There is no comprehensive law(s) dealing with medical negligence and malpractice cases in Pakistan. However, there are some provisions incorporated in other Acts and Regulations dealing either with negligence in general or medical malpractice in particular. Such as, Section 304(A) and 318 of Pakistan Penal Code, 1860 (PPC); Section 1 of Fatal Accident Act, 1855, Section 11(B) of KP Consumer Protection Act, 1997, deals with negligence in general, and Section 30 of Pakistan Medical and Dental Council Ordinance 2019 (PMDC), and Section 13 of Khyber Pakhtunkhwa Health Care Commission Act, 2015 deals with medical malpractice discretely. Similarly, the Punjab Health care Commission, Act, 2010, and 26(2) of the Sindh Health care Commission, Act, 2013 are available to deal with the cases of medical malpractice.

Certainly, in point of fact, the problem of concern is that whether the current laws are sufficient and efficient to bring medical practitioners under the umbrella of accountability, to provide sense of security to patients, and legal course of action or way to those alleging negligence or malpractice on the part of health care provider. Is the law sufficient to safeguard the rights and safety of health care providers as well as the patients?

### **Background of the Study**

Medical negligence and malpractice are an evil prevalent across the globe. The investigators for the Harvard Medical Practice Study reviewed more than 30,000 records from patients discharged in 1984 from 51 hospitals across the state of New York.<sup>9</sup> Adverse events occurred in 3.7% of these hospitalizations, most of which were preventable.<sup>10</sup> If generalized to all hospitals in the United States, this incidence translates to more than one (1) million people experiencing an adverse event and approximately 180,000 patients dying from an adverse event every year.<sup>11</sup> Medication-related incidents were the most common type of adverse event, at a rate of 0.7 adverse drug events (ADEs)

per 100 admissions.<sup>12</sup> The IOM released its landmark report “*To Err is Human*” at the end of 1999, heralding a new age for the field of patient safety. The report estimated that 44,000 to 98,000 patients die from medical errors annually in USA. Globally, it is estimated that 142,000 patients died in 2013 from adverse effects of medical treatment; this is an increase from 94,000 in 1990.<sup>13</sup> However, a 2016 study of the number of deaths that were a result of medical errors in the U.S. placed the yearly death rate in the U.S. alone at 251,454 deaths, which suggests that the 2013 global estimation may not be accurate.<sup>14-15</sup> The UK Department of Health, in its 2000 report, an organization with a memory, estimated that adverse events occur in around 10% of hospital admissions or about 850,000 adverse events a year. The Quality in Australian Health Care Study (QAHCS), released in 1995, found an adverse-event rate of 16.6% among hospital patients. The Hospitals for Europe’s Working Party on Quality Care in Hospitals estimated, in 2000, that every tenth (10) patient in hospitals in Europe suffers from preventable harm and adverse effects related to his or her care. The New Zealand and Canadian studies have also suggested relatively high rates of adverse events: around 10%.<sup>16</sup>

It is commonly reported that around 1 in 10 hospitalized patients experience harm, with at least 50% preventability. Approximately two-thirds of all adverse events happen in low-and middle income-countries but reported from highly developed countries as well. The most common adverse safety incidents are related to surgical procedures (27%), medication errors (18.3%) and health care-associated infections (12.2%). Yet, in many places, fear around the reporting of errors is manifested within health care cultures.<sup>17</sup>

### ***Measures Adopted to Mitigate Medical Malpractice***

The history of medical negligence laws can be traced back to the Code of Hammurabi (the oldest codified law) which was developed by Babylon’s King Hammurabi in 1754 BC. The code fixed fee for treatment and penalty for improper treatment.<sup>18</sup> Also, the ancient Mosaic Law which was based on principle of ‘eye for eye’ and ‘tooth for tooth’ applied the same on medical errors. Egyptian law and Roman Civil Law provided for punishment of medical wrong doer. Medieval law was also very strict on medical practitioners.<sup>18</sup> Islamic law holds the medical expert or professional

liable if he is negligent.<sup>19</sup> In early civilizations medical malpractice was considered as crime. No compensation or damages was awarded to the patient.

Factually, when the issue of medical malpractice was brought into the notice of the world through various researches and surveys, measures were soon adopted to mitigate this menace. In 2003, the World Health Organization (WHO) passed a resolution supporting a strategic global agenda for achieving patient safety.<sup>20</sup> In USA medical malpractice litigations are enormous and are decided under the law of torts. In 2011 reforms were brought in medical malpractice laws i.e. tort laws in US by the National Conference of State Legislatures (NCSL). The NCSL reforms sought to address three major areas: limiting the costs associated with medical malpractice, deterring medical errors, and ensuring fair compensation for patients who are harmed. The reforms were successful in its outcome. There is also an option of alternate dispute resolution (ADR) where the patient and physician settle their dispute without approaching the court. A reform was also introduced by developing Communication and Resolution Programs (CRP). These programs encourage open communication and transparency with patients and their families and facilitate restitution for injured parties when appropriate. They also support physicians in disclosure conversations with patients. After full implementation of the CRP, the average monthly rate of new claims decreased from 7.03 to 4.52 per 100,000 patient encounters, the average monthly rate of lawsuits decreased from 2.13 to 0.75 per 100,000 patient encounters, and the median time from claims reporting to resolution decreased from 1.36 to 0.95 per year. Moreover, the average monthly cost rate decreased by at least 50% for ‘total liability’, ‘patient compensation’, and ‘no compensation-related legal cost’.<sup>21</sup>

The focus of medical liability in England and Wales is under the law of tort, specifically negligence. In cases of clinical negligence National Health Service Trusts and Health Authorities are the bodies that are sued, rather than individual clinicians. Under this practice, NHS Trusts and Health Authorities are vicariously liable for the negligent acts and omissions of their employees—including doctors, nurses, and clinicians. This liability arises from the duty of care that the NHS Trusts owe to their patients. This application of

vicarious liability has resulted in a government policy known as NHS indemnification, which arises when an employee of the NHS in the course of their work, is responsible for a negligent act or omission (commonly referred to as “clinical negligence”) that results in harm to an NHS patient or volunteer.<sup>22</sup> Around 12,000 claims payment by NHS were made during 2013-2014. This system ensures the quality of health care and encourages public to trust government hospitals. Private hospitals and clinics are sued separately in courts for breach of contract or breach of legal duty.<sup>23</sup>

In Australia medical malpractice was and is dealt under law of tort. In 2006 the Australian Commission on Safety and Quality in Health Care was established for various initiatives including better communication between patient and physician. Recently, in 2017 Australian Public Hospital were decided to be penalized for eight sentinel events. These measures incredibly reduced the chance of sentinel events to 0.000201% of the 53 million patients each year.<sup>24</sup>

### **Medical Malpractice Laws in Pakistan**

In Pakistan there is no codified law which deals with medical malpractice. Generally, some attempts are made to give relief to the victims of medical negligence under the general laws. The legal system of Pakistan is inherited from the British legal system; therefore the principle of tort is accepted by Courts in Pakistan. However, the principle of tort is not in the form of codified law, and hence not binding. But, suit may be filed for damages where a person sustains injuries resulting from negligence of another person. Thus, in this way or other, medical malpractice cases may be brought under Pakistan Penal Code, 1860, under Sections dealing with *qatl-i-khata* and hurt by negligence. The damages may be claimed by patient under Consumer Protection Act, 1997, in cases where the danger associated with services is not disclosed to the patient. The claimant may also complain to the Health Care Commission, Health Department and PMDC. It has the power to cancel the license of medical practitioner. Further, details of these provisions related to medical malpractice are as under:

#### **1. Pakistan Penal Code**

Section 304-A of Pakistan Penal Code, 1860, states that, “*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*”.<sup>25</sup> Similarly, section 318 of PPC deals with *qatl-i-khata*, the section implies that “*whoever, without any intention to cause death of, or cause harm to, a person causes death of such person, either by mistake of act or by mistake of fact, is said to commit qatl-i-khata*”.<sup>25</sup> While, section 319 provides punishment for *qatl-i-khata* that is *diyat* (blood money) but special proviso is given in the section for *qatl-i-khata* committed by rash or negligent act other than negligence driving than in addition to *diyat*, the offender may also be punished with imprisonment for up to 5 years. Under this section a medical practitioner when causes death to a person by negligent act, then he will not only be liable for payment of blood money but also be physically punished.<sup>25</sup> Section 337-H, maintained that, “*whoever causes hurt by rash or negligent act, other than rash or negligent driving, shall be liable to arsh (compensation fixed by Pakistan Penal Code) or daman (compensation to be determined by court) specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir*”.<sup>25</sup> And, section 337-I prescribe punishment for hurt caused even by mistake, it maintains that, “*whoever causes hurt by mistake (khata) shall be liable to arsh or daman specified for the kind of hurt caused*”.<sup>25</sup> All these sections can be invoked in cases of medical negligence or malpractice.

#### **2. Fatal Accident Act 1855**

Section 1 of Fatal Accident Act, 1855, provides remedy to compensate the family of a person whose death is caused by wrongful act, default, or neglect and the act of neglect or default is such if the death had not being caused, the person injured would have been entitled to maintain suit and recover damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.<sup>26</sup> This section could also be invoked in cases of medical negligence or malpractice. Where the death is caused by neglect or default than the family of deceased, besides other remedies, may also claim compensation.

#### **3. The Khyber Pakhtunkhwa Consumer Protection Act, 1997**

Section 7-A:(2) of KP Consumer Protection Act, 1997, requires the disclosure of any material information regarding the services

provider or products intended to be used when such information is material to the decision of consumer to enter into contract.<sup>27</sup> Thus, when the duty of disclosure is breached then complaint may be made to the consumer court under Section 13.<sup>27</sup> But, if where the right of consumer is infringed, the person responsible for infringement may be punished with rigorous imprisonment which shall not be less than seven days or with fine which shall be extended to fifty hundred thousand (50,000) rupees but not less than ten thousand rupees or with both and shall also be liable to provide such compensation or relief to the consumer as may be determined by the Court, under Section 16.<sup>27</sup>

#### 4. *Pakistan Medical Dental Council Ordinance, 2019*

Under Section 30 of PMDC, 2019, if any registered medical practitioner is found guilty of misconduct or professional negligence or incompetence or violation of the code of conduct or who failed to maintain minimum standard of the national continues medical education, the council may direct the registrar to, permanently or for some specific period, remove his name from the roll of register.<sup>28</sup> The complaint, under this ordinance, of misconduct or professional negligence may be made to the committee of council. The committee of council, for the purpose of inquiry and disposal, will be having power of Civil Court.<sup>28</sup>

#### 5. *Khyber Pakhtunkhwa Health Care Commission Act, 2015*

Section 13, of the said act, maintain that a person aggrieved may, within sixty days from the date of knowledge of the cause of action, file a complaint against a health care service provider or health care establishment for 'malpractice', 'negligence' or 'failure to provide standard care with commission'.<sup>29</sup> However, an anonymous or pseudonymous complaint against a private health care service provider or healthcare establishment could not be entertained.<sup>29</sup> Under Section 6, the commission got the power to cancel licenses of the medical practitioner if found guilty of malpractice.<sup>29</sup>

### Methodology

#### *Hypothesis*

Present laws dealing with medical malpractice failed to mitigate and alleviate medical malpractice in Pakistan. Therefore, there is an immense need for specific legislation to penalize medical malpractice. Thus, holding health care accountable

will ensure health security, consequently, improves overall health system.

#### *Objectives of Research*

The main objective of this research is:

- i. To determine whether the laws dealing with medical negligence is enough and efficient to hold health care accountable in Pakistan.
- ii. To find out whether the present laws are enough to provide security and assurance to those feeling aggrieved from services of health care that justice will be served upon them.
- iii. To explore the awareness of general public about these laws.
- iv. To explore ways that would contribute in mitigating medical malpractice, and
- v. To find out loopholes in the present laws.

It is hoped that by achieving these aims, this research will attract the attention of law makers towards this serious issue and will be helpful in future legislation on malpractice. By this research it is intended to find a solution to curb the growing menace of malpractice in Pakistan.

#### *Research Questions*

This research study seeks to answer the following questions:

- a. Which laws deal with medical negligence in Pakistan?
- b. Are the laws presently dealing with medical malpractice efficiently redress the grievances of victims of malpractice?
- c. Are the public aware of the present remedies available to them in case they experience medical negligence?
- d. Do these laws hold health care accountable?
- e. Does holding health care accountable mitigate medical malpractice?

#### *Study Design and Settings*

This research study is conducted during July 17<sup>th</sup>, 2019 to October 1<sup>st</sup>, 2019, in Peshawar district of Khyber Pakhtunkhwa. Both quantitative and qualitative methods of data collection were adopted in this study. The data were collected from three main government hospitals namely, Lady Reading Hospital (LRH), Khyber Teaching Hospital (KTH), and Hayatabad Medical Complex (HMC), Peshawar. The selection is based on judgmental or purposive sampling method. The reasons for selecting these three hospitals are; *firstly*, these are government hospitals, staff employed is expected

to be well qualified and skilled, large number of general public visit these hospitals for health care, surgeries and other treatments are done on daily basis. *Secondly*, these hospitals run an emergency round the clock (24 hours) on regular basis and also in time of natural or human-instigated disasters.

**Total Sample Size**

In fact, total sample size was 150 participants. 50 attendants were selected through quota sampling considering only adult participants from each of the three tertiary hospitals and the hospital was divided into five section, collecting data from 10 participants from each section. Keeping in view that most of the public visiting these hospitals are not educated enough to understand and answer questionnaire, therefore, structured interview was selected as data collection tool.

The records of medical malpractice complaints were obtained from hospitals mentioned above, Khyber Pakhtunkhwa Health Care Commission, Pakistan Medical and Dental Council, and Health Department Peshawar. The records obtained are of January 2018 to June 2019. Moreover, to achieve other objectives attracting qualitative study methods multiple case study approach was chosen. Health-care personnel including doctors, nurses, administrative officers, lawyers and police were included for exploring perceptions regarding health care accountability, effectiveness of present laws, and reason for growing cases of malpractice and suggestions to mitigate the menace of medical malpractice. Interviews were conducted from total twenty participants. In addition to primary data secondary data were also collected. Research materials used in this paper is legal books, statutory laws, articles, reports, journals, and other on internet, *inter alia*.

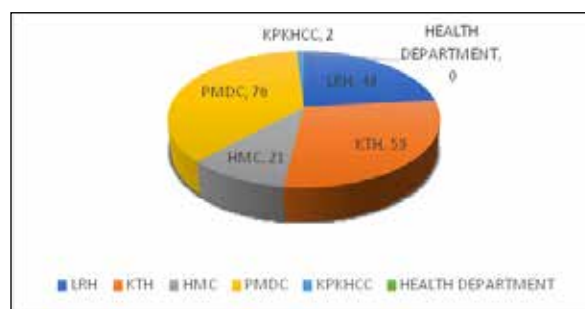
**Findings**

**Quantitative Results: The Complaints of Malpractice**

The records of medical malpractice complaints were obtained from Lady Reading Hospital (LRH), Khyber Teaching Hospital (KTH), Hayatabad Medical Complex (HMC), Khyber Pakhtunkhwa Health Care Commission (KPKHCC), Pakistan Medical and Dental Council KP (PMDC-KP), and Health Department Peshawar. The record obtained is of January 2018 to June 2019. According to the record obtained there were 48 complaints in LRH, 59 in KTH, and 21 complaints in HMC. PMDC received 76 complaints some forwarded

by hospitals and by complainants directly. While, KPKHCC received only 2 complaints from the individuals patients affected by malpractices of physicians. Interestingly, Health Department Peshawar maintained that no such complaints are made as it only deals with cases where complaint of non-action is made against hospital(s) or PMDC.

**Figure 1:** Complaints of medical malpractice during



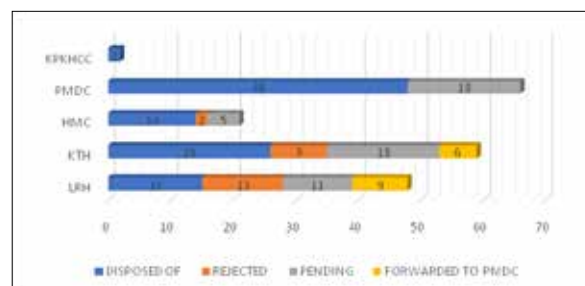
the period of January 1<sup>st</sup>, 2018 to July 30<sup>th</sup>, 2019.

**Action Taken on the Basis of Complaints**

Data was also obtained about the fate of complaints. That out of these complaints how many were

- a) Rejected,
- b) Under inquiry,
- c) Concluded,
- d) Forwarded to PMDC.

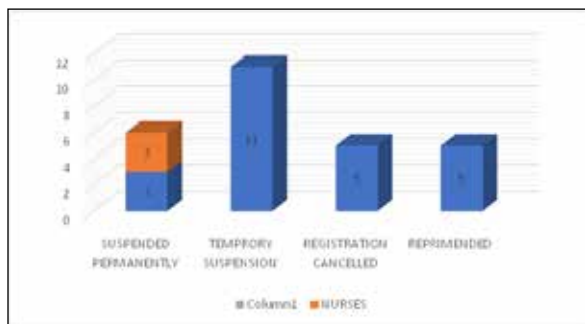
According to the records provided out of 48 complaints filed in LRH; 11 complaints are pending, 15 were disposed of, 13 were not maintainable thus rejected and 9 were forwarded to PMDC. In KTH, out of 59 complaints 26 were disposed of, 9 rejected, 18 under inquiry and 6 were forwarded to PMDC. According to HMC data, 5 complaints are under inquiry, and 2 were rejected, 14 disposed of. PMDC data provide that out of 76 complaints; 18 are under inquiry and 48 disposed of. KPK Health Care Commission disposed of both cases.



**Figure 2:** Number of complaints under inquiry, concluded, forwarded, and rejected.

### Action Taken against Medical Practitioner Accused of Medical Malpractice

During January 2018 and June 2019, PMDC suspended licenses of three physicians and three nurses permanently, while eleven physicians had been temporarily suspended. The registration of five physicians was canceled and further five were reprimanded.



**Figure 3:** Number of cases action has been taken against health care provider accused of medical malpractice.

### How Many Complainants/aggrieved were Compensated?

According to the records obtained, no complainant was compensated in term of monetary compensation. The three tertiary hospitals, PMDC and Health Care Commission take action against physicians only. Since, these authorities do not compensate the damages done; the aggrieved has to invoke civil court for damages.

### Data collected to explore perception of general public and awareness among public of malpractice laws:

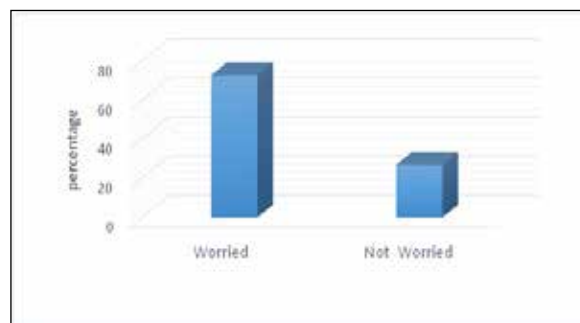
#### 1. Demographic & Characteristics of Study Population

Table 1 shows the demographic and characteristics of participants and their association with gender. Of the total 150 individuals, 21 (14%) were women and 129 (86%) were men. While more than half of male were literate, the female were mostly illiterate.

VARIABLES	OVERALL	MALE	FEMALE
N, (%)	150(100)	129(86)	21(14)
N: number of individuals, %: percentage	(Out of 100)	N: 129, 86%	N: 21, 14%
VARIABLES	AGE AND NO	MALE	FEMALE
Age (No.)	M & F: 36(10)	59 (9)	55 (9)
A: Age in years, NI: number of individuals	M&F=18x2, NI: 10	A: 59, NI: 9	A: 55, NI: 9
VARIABLES	OVERALL	MALE	FEMALE
Literate (No.)	150 (100)	106 (79)	44 (21)
TI: total individuals, LF: literate in figures	(Out of 100)	TI: 106, LF: 79	TI: 44, LF: 21

#### 2. Concern about Negligence in Hospitals

Participants were asked whether they are concerned about negligence or malpractice that could result in harm to them or their loved ones while receiving health care. About 73% were worried and the remaining 27% said that they were not worried at all. This data were collected in order to determine the trust or confidence of people in health care provider.



**Figure 4:** Responses to the question: 'Are you worried about negligence or malpractice on part of health care provider?'

#### 3. Response to Negligence or Malpractice

Respondents were asked about their response to negligence or malpractice if they ever experienced it. The participants answered differently. 24% (36) answered that they will file FIR against the health care provider. 18% (28) said that they will file a complaint with hospital. 34% (51) answered that they will protest until action is taken against the health care provider accused of malpractice. 8% (12) replied that they will take legal assistance of a lawyer and will take action on his/her advice. 12% (18) answered that they will file complaint with PMDC. 3% (5) said that they will leave the matter to Allah almighty and will do nothing.

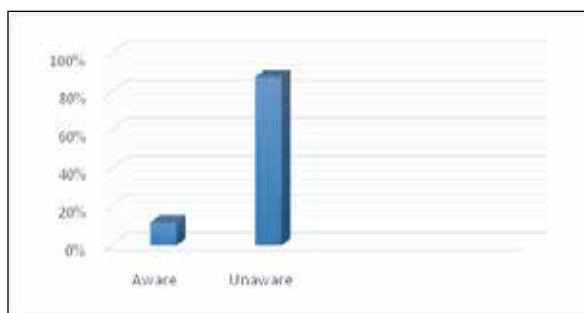


**Figure 5:** Responses to the question: 'In case of malpractice, what would you do if damage is caused by neglect of health care provider to you or your family?'

#### 4. Awareness of Malpractice Laws

Participants were asked whether they know about any authority to which complaints malpractice or negligence on part of medical practitioner can be made. 88% (132 out of 150) said that they know

nothing about such authority. 12% (18) answered that they are aware of it.



**Figure 6:** Awareness of malpractice laws.

### Qualitative Data Results

For the qualitative part, multiple case study approach was chosen. Health care personnel including physicians and nurses, public health professionals, media personnel and police were included for exploring perceptions regarding accountability of health care personnel. Two focus group discussions and structured interviews were conducted with a total of 20 participants.

To maintain integrity using qualitative methods, the consolidated criteria for reporting qualitative research was used when planning the focus group study.<sup>30</sup> In addition, Guba and Lincoln's criteria for judging the quality of qualitative evaluation were followed. The outlined criteria are credibility, transferability, dependability and conformability.<sup>31</sup> Credibility is parallel to internal validity and was achieved through building rapport with the stakeholders. Transferability is parallel to external validity, which must be evidenced in future studies, but was accommodated by using participants from a wide sample of representative areas. Dependability is parallel to reliability, concerned with stable data over time. By outlining the data collection methods, replication may be achieved, and dependability is supported. Finally, conformability is parallel to the criterion of objectivity and was achieved through the use of direct quotes displayed in the following section.

More than 30 open codes were identified using open coding technique, one of the processes for analyzing textual contexts. It included labeling concepts, laying-down and developing categories. The categories were later classified into sub-themes and their respective super-ordinate themes. Four distinct recurrent themes emerged from the responses of different stakeholders. These were: 1) Causes of malpractice or negligence; 2) Stress on accountability; 3) Loopholes in present

system of accountability; 4) Recommendation for reforms. Thus, each of these themes was further categorized into sub-themes.

#### **Theme 1: Causes of malpractice or negligence**

**Sub-themes:** For this theme, further sub-themes were identified. These are; a) Malpractice cannot be justified; b) Nepotism and favoritism (lack of skill); c) Lack of administration; d) Lack of fear of accountability; e) Burden of work on health care provider; f) Non reporting of cases; g) Unawareness of general public.

Accordingly, the first theme of the qualitative study indicated that though there are multiple causes that can result in sentinel event, it cannot be justified. The categories describing causes/ contributing factors of malpractice.

Resultantly, in the present study it was explored that one of the causes of malpractice is the 'unskilled staff' which are recruited/employed by means of nepotism or favoritism. These unskilled staff is usually the perpetrator of malpractice. Such medical practitioners do not disclose their error on time which further exacerbates the damage thus result in irreparable loss to patients. According to a physician interviewed, said that;

➤ *"If the medical practitioner started getting punished for their errors, no one would dare to practice in such a consequential field without having enough skill and knowledge of their respective work".*

Different stakeholders provided their opinions regarding the causes and contributing factors of malpractice or professional negligence on part of health care providers. They believed that absence of stringent policy, lack of laws, and inadequate management by administration and lack of collaboration among staff at health care institutes, followed by delayed attention or long waiting time and burden of large number of patients on limited staff create a chaotic workplace environment resulting in improper service delivery. Patients were desensitized to incidents of malpractice and considered them as a part of health care routine.

Majority of stakeholders were of the opinion that lack of accountability is the most important cause of negligence in the health care facilities. They think that lack of accountability is lack of fear which results in negligence and recklessness. As a result the medical practitioners loss caution in absence of fear of consequences. But they stressed that there must be law which not only safeguard



patients but also health providers from all kind of psychological pressure and exploitation.

➤ *“Lack of accountability is the major cause of such incidents. People do not understand how to report such incident; therefore, the health care providers remain unaccountable. The incidents occur routinely. I think we are desensitized to such incidents now”,* said a physician.

The present study identified that, such incidents of malpractice had an injurious impact on individual's health and institution's integrity. Victims suffered from medical practitioner's negligent acts and remained silent most of the time. They said that such incidents affected patient care and overall health system.

**Theme 2: Loopholes in present accountability system**

**Sub-themes:**a) No special and holistic law; b) No transparent investigation; c) Impartiality not assured; d) No difference between civil and criminal incidents; e) No compensation for victims of malpractice; f) No vicarious liability; g) Complainants responsibility to provide evidence of malpractice; h) No penalization in term of incarceration or fine.

The respondents were of the view that there was no single legislation that specially and holistically deals with malpractice cases. They maintain, all the laws mentioned that deals with health care contain small number of provisions dealing with malpractice cases. The present laws do not provide mechanism for conducting investigation, insuring impartiality and transparency, differentiating between sentinel events that attract tort or civil laws and those which are criminal in nature nor give a time frame in which the complaints will be disposed of.

Some respondents were of the view that the weakest role in this regard has been played by the PMDC. Victimized patients having admittance to information and still find them-selves twisted in the procedural requirements constructed by PMDC's rules and regulations.

Medical litigation experts provided that in proceeding before PMDC, the burden of proof is on the complainant which means that the complainant has to provide all the evidences to prove medical malpractice. Thus, it is difficult for complainants to prove malpractice, since it is matter that must be investigated by expert

of medicine and the documents such as reports, etc., are retained by physicians or hospital as the case may be, thus make it more complicated for complainants to prove.

One legal expert pointed out another crucial issue which is pertinent to lays eyes on is that even where such complaints are being investigated by the PMDC, it is often alleged that such investigations are biased. The likelihood of a fair trial is minimal as inquiry committee compromises of physicians investigating physicians. Those enquiring into his illegal behavior are his own fellow colleagues.

Apart from that, some interviewees expressed concern that there is no provision for vicarious liability due to which hospitals and other health care centers are not held responsible for any wrongdoing.

According to one public health specialist, PMDC punish the wrongdoer by cancelling license only. It does not have any authority to compensate the aggrieved person for loss incurred to him/her as a result of malpractice. Therefore, for compensation the complainant has to file suit under tort or civil law separately. Some members of legal fraternity said that there were no mentions of cases of criminal nature such as conducting unnecessary surgeries just for material gains, etc. In such cases one has to file First Information Report (FIR).

The majority of stakeholder opined that a layman, especially in our society where large numbers of people are illiterate, will be definitely confused in choosing from a buffet of laws, even they are not aware of any such authority.

➤ *“Lack of awareness and knowledge among the general public about their health rights is at the lowest level. Even, the educated class is unaware of their very basic healthcare rights”,* said media personal.

➤ According to one of the lawyers interviewed said that, *“Due to long delay in cases and heavy costs incurred on litigations very small number of people file suit in courts”.*

A police officer stated that in state of such bewilderment, unawareness and trust deficit people will take law in their own hands in form of mob lynching or other kind of aggression which endanger the life of not only the medical health provider accused of malpractice but also the life of other patients and attendees in hospital, which is evident from incidents of violence happening on daily basis as the people feels aggrieved but find

no other way that would give them justice. He said that such incidents are reported to police on daily basis.

The present study identified that the present laws and system of accountability are not effective enough to mitigate malpractice and ensure health care safety as well as assure both patients and health care providers that justice will be served upon them.

**Theme 3: Solution to mitigate menace of malpractice; a new system of accountability**

**Sub-themes:** 1) Future without preventable errors; 2) Establishment of system of health care accountability; 3) Awareness of general public; 4) Transparency in investigation; 5) Impartiality assured; 6) Health care providers must be encouraged and incentivized to not conceal error but disclose it so that further damage is prevented; 7) There must be stress on laws and liability.

The third theme emerging from the study described the various strategies for prevention of malpractice. These include strategies for prevention of medical errors in future, ensuring safe health care and making health care provider responsible for their conducts. The current study suggested that separate legislation in line with World Health Organization (WHO) guidelines is necessary for curbing this rapidly growing menace. There must be such laws that make the future without preventable errors.

➤ *“There are separate laws aimed at curbing prevailing evils in a particular society. Each law separately deals with that problem keeping in view the special characteristics of each case. Medical malpractice is one of such issue which is in dire need of attention of law makers”,* said a lawyer.

Most of the participants evinced that the health care must be made accountable. Unless and until there is sense of legal responsibility and fear of accountability, patients will be at mercy of medical practitioner. There is dire need of special legislation which would cover all cases of negligence and will provide such mechanism that will give surety to all those who feel aggrieved that these allegations will be thoroughly and impartially investigated, and justice would be served upon them. There will also be a sense of responsibility and fear of accountability on part of medical health providers which will make them more cautious and responsible. All other provision related to medical malpractice in present Acts

should either be incorporated in new special law or removed as a whole. The new law when enacted should prevail on all other general laws.

A legal expert suggested that the investigation in malpractice must be impartial and for this purpose there must be a committee which not only have medical professionals but also have retired judges and involve police officers for investigation purpose in order to insure impartiality. It was also suggested that the investigation must be conducted by investigation team and burden of proof must be on investigation team not on complainants.

Furthermore, it was suggested that the new law must differentiate between civil or tort cases and cases that attract criminal liability. There must be clear list of all preventable errors which evoke one or the other liabilities. It was also recommended by some specialists of public health that the hospital and other medical institutions should be brought under the umbrella of accountability. The medical practitioners must be encouraged and incentivized that they must not conceal medical errors committed by them but take immediate action to cure and prevent further damage. They should be incentivized to do so by ensuring them and giving them sense of security by practical examples that if they do not conceal their mistake then the law will be easy on them.

One doctor recommended coordination between hospital and staff, also between staff and patients in order to build trust among all.

All the participants agreed that awareness of laws and possible remedies among general public is crucial for both accountability and also for preventing violence in hospital. Consequently, both patients and doctors would be secured. There is a desperate need that the general public of Pakistan must understand that the medical negligence cases must not go unreported. It is obligatory upon every citizen particularly the victims of medical negligence and their families at least to write a complaint to the authority.

➤ *“People should be made aware about the possible remedies which they could avail to get compensation for wrong and also to seek punishment for wrongdoer”,* said a coordinator health reforms.

**Conclusion**

Consequently, the research data of malpractice complaints were collected from LRH, KTH, HMC, PMDC, and KPK HCC. The data also include

attendees and patients in the major tertiary public health care facilities in Peshawar district of KP. The health care experts, lawyers, police officers and media personal were included in data collection and quota sampling was employed for selecting participants of the study. Resultantly, a number of complaints to the concerned authorities were explored which was total, 206 during: January<sup>1<sup>st</sup></sup>, 2018 to July 30<sup>th</sup>, 2019. Out of these complaints, 105 complaints were disposed of, 24 complaints were rejected, while 23 complaints are pending. During the same year, action was taken against 27 health care providers on the grounds of misconduct. The study reveals that, even not a single, complainant was compensated by neither hospitals nor PMDC. From the qualitative arm it was revealed that the procedure of complaint is complex and involves number of formalities due to which people do not report incidents. Evidently, there is lack of information; to whom the cases of incident may be reported. Thus, the findings reflected that the cases of malpractice reported are far less than the actual magnitude of medical malpractice which is evident from media reports as well as in comparison with other developed countries such as United States, Switzerland, UK, etc., Accordingly, the issue identified by the study is that cases of malpractice go unreported most of the time. The study further revealed that 74% of people do not trust health care system in Pakistan. The prevalence of unawareness of present laws of medical malpractice among general was explored through the study. And hence, it was founded that only 12% were aware of authorities to whom malpractice could be reported. The other 88% had no acquaintance. During the study, health care personnel, lawyers, media personnel and police officers were able to identify key gaps in present system of medical malpractice dealing and made recommendations for its prevention. The majority of health professionals surveyed responded in the affirmative when asked if the event could have been prevented. They were able to identify 'lack of awareness among the general community', 'complex procedure of complains', 'lack of surveillance', 'deficient coherent laws', 'in-attention by government', 'no compensation', 'no-fear of accountability', 'absence of vicarious liability', 'non-difference in criminal' and 'tort liability', etc. Therefore, 'enhancing the provision of health care services', 'raising awareness in the general community', 'enacting special laws', 'making health care provider accountable

for wrongdoing', 'appropriate system of investigation', and 'adjudication according to principles of natural justice' were listed as the key recommendations to curb medical malpractice in Pakistan.

### **Recommendations**

Medical malpractice in hospitals of Peshawar district should be considered a serious public health issue. As demonstrated by the results of the present study, the prevalence of malpractice issue is neglected by the government. The absence of an organized effort to curb this serious humanitarian concern is alarming. Safety of the patients is important for provision of essential services. Therefore, a holistic effort is needed to ensure that the patients have access to such health care which relieve their suffering not exacerbating them, but consequently; safe and secure. It is also evident from the findings of the study that tackling this issue is not just the health care community's concern, but also needs the support and facilitation from government, civil administration, lawmakers, law enforcement agencies, civil society, and international organizations. Following are the recommendations to prevent medical malpractice through the process of accountability:

1. Conduct a national representative study to know the full magnitude, patterns and dynamics of medical malpractice in Pakistan.
2. Medical malpractice is a pressing public health issue and should be advocated for as such. While the realization of the problem exists within certain quarters, facilitation from health care community, health-care administration, law enforcement authorities, civil society, international organizations and media is required to ensure initiation of conscious and sustained efforts for safeguarding health care and ensuring safe health care.
3. There is a need to adopt legal framework for ensuring the protection of patients. In the context of KP, this means developing and promoting legislation protecting the rights of patients and forcing medical practitioners to perform their duties in line with standard of care. A new Bill is required to be passed by legislature to hold the health care provider accountable and to preserve free and fair inquiry as well as adjudication, not only to protect patients but also health care provider.
4. There is dire need of an independent body which acts as a quasi-judicial body to

order investigation and decides cases of malpractice. Such a body like any other court should act on basis of law and principles of administration of justice. This body should dispose of complaints of malpractice without delay. Most importantly, impartiality must be ensured.

5. The knowledge of existing legislation and new legislation when enacted protecting health care should be spread among all the stakeholders, i.e. law enforcement authorities, civil servants, health care personnel and the general public.
6. The KP government should regularly collect data on medical malpractice and take preventive measures based on the data. Institutional incident reporting systems and response mechanisms need to be developed and implemented in health care facilities.
7. Seminars and conferences must be held to remind the health care personnel of their responsibility towards patients.
8. Experiences and best practices with proven effectiveness need to be incorporated in the KP healthcare system.
9. Government of KP needs to ensure provision of health care services suitable for the needs of the population and to ensure that the

workload of personnel is in conformity with the recommended standards.

10. Continuous engagement with the media to promote responsible, balanced and informed reporting on health care.
11. The rights, roles and responsibilities of all stakeholders should be promoted on all fronts.

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