

MEDICAL LAW REGIMEN IN PAKISTAN

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The recent debate about the medical malpractices and the legal framework there for was triggered by the tragic death of Huma Wasim Akram, Imanae Malik and Faiz Muhammad Khan.¹ Some high profile hospitals were accused of gross negligence and the issue hit the headlines for months. The matter was taken cognizance of by the National Assembly Standing Committee on Health in December 2009.² Pursuant to unanimous recommendation by the Committee, the PMDC suspended registration of some of the medical professionals and ordered closure of emergency services in one of the leading hospitals at Lahore. It was in this backdrop that the need to revisit the effectiveness of prevailing medical law regimen was felt across the board.

The duty of a doctor 'to take care' finds its basis in a globally recognized 'Right to health'.³ It presupposes that a person who offers medical advice and treatment implicitly confirms that he has the skill and knowledge to do so.⁴ In order to enforce this duty and to arrest the instances of its breach, a comprehensive medical law regimen is required to be in place. Most of the developing countries have the advantage of having improved legal framework wherein instances of medical negligence are documented and redressed. The concept of professional liability insurance has been introduced to offset the risk of claims brought against doctors for professional negligence. In Pakistan, however, the scenario is not encouraging enough, where safe medical practice has never been a priority issue in national development policies.⁵ Not only that the budgetary allocation made for health sector is inappropriate⁶ but the establishment of a predictable, transparent and effective legal system that governs medical negligence has also been ignored.⁷

Pakistan is lagging behind in key health indicators. It is ranked as 136th among 177 countries on the basis of Human Development Index. It is one of the countries with lowest public expenditure in health sector. Its budget outlay for health sector was 0.57 % of its GDP in 2006-07.⁸ This state of affairs has far reaching implications for healthcare in general and the protection and promotion of health as a human right, in particular.

The recent incidents of medical negligence reported from different parts of the country testi-

fied that the regulatory bodies and the legal framework available for the purpose were deficient on many counts. The Pakistan Medical and Dental Council (PMDC) and the Pakhtunkhwa Health Regulatory Authority are the only regulatory bodies that deal with the registration of medical practitioners, with an ineffective mechanism for checking instances of professional misconduct. At present, there is no statutory law that determines the culpability of medical negligence rather the tortuous acts are dealt with under Islamic provisions of general penal law. Deep analysis of the text of Pakistan Medical and Dental Council Ordinance, 1962⁹ and the Pakhtunkhwa Medical and Health Institutions and Regulation of Health Care Services Ordinance, 2002¹⁰ confirms that the medical law regimes in developing countries are neither sufficient nor strong enough to help resolve broader issues pertaining to right to health.

Though, Pakistan is signatory to so many human rights instruments like the International Convention on the Elimination of All Forms of Racial Discrimination of 1965,¹¹ the Convention on the Elimination of All Forms of Discrimination against Women of 1979¹² and the Convention on the Rights of the Child of 1989 (CRC)¹³ but still the realization of the right to health is a pending issue. Some crucial dimensions of health services, ranging from infant/child health to the impact of environment and industrial hygiene, prevention, treatment and control of epidemic, endemic, occupational and other diseases are supposedly dormant.

This is perhaps because of this poor health care profile that the incidents of medical negligence were mishandled and the situation always went against medical practitioners. Had the regulatory bodies and the legal framework been sufficient and effective, the aggrieved would not have resorted either to extra legal measures or invocation of penal provisions.

It is by now established that this insufficiency of policy interventions by the State have always resulted in earning embarrassment for the medical fraternity and is constantly lowering the profession in the estimation of public. An effective medical law regimen with efficient regulatory bodies is, therefore, needed not only to ensure the realization of healthcare as a human right but also to strengthen the profession.

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