

Reforming the legal rights of patients in pakistan



**ASSIGN
BUSTER**

“ If they are unwilling to understand your pain make them feel it.”

Kevin Schaller

THE PROPOSED LEGISLATION TO RECTIFY DEFICIENCIES IN THE LAW

Background

One sentence triggered me to work on the patient rights which is a Doctor be treated as patients to make them realize that how hard is it to be a patient'. In Pakistan the basic fundamental rights of patients globally acknowledged (Right to Information; Right to Consent; Right to Free Choice; Right to Privacy and Confidentiality; Right to Respect of Patients' Time; Right to the Observance of Quality Standards; Right to Safety; Right to Avoid Unnecessary Suffering and Pain; Right to Complain; and Right to Compensation; Right to Preventive Measures; Right of Access; Right to Innovation and Right to Avoid Unnecessary Suffering and Pain) have not been adequately secured by the law, especially rights breached through malpractice and negligence by the medical vocation and the main reason being the inability of the aggrieved patients to file ' Suit for the Recovery of Damages etc.' in court of law under tort being incognizance about these rights that have not been legislated and are predicated on the unwritten common law.

We overviewed the domestic legislation about the patients' rights that enabled us to point out gaps and deficiencies in the domestic legislation in the cannon of patients' rights which are being violated by healthcare providers. This work will enable the legislators in ameliorating the quality of

life of patients. The rectification if only possible if special legislation is made keeping in view the deficiencies, gaps and lapses in the domestic legislation. Thus, bringing the gaps and ambiguities, subsisting in the domestic legislation, in the lime light is additionally desideratum of hour if this country is solemnly wishes to amend the quality of human rights bulwark in patients care in Pakistan.

Due to absence of any statutory legal framework the healthcare provider's elaborate their own code, charter, code, rules and regulation with immunity or case law. While recognizing not only that doctors owe a fundamental duty of care to their patients but also that there is need to reform the present legal framework of the profession, it is essential to ensure that the focus of all reform is on distinguishing those doctors that act in good faith and to the best of their ability from those that are negligent, rash or reckless and on punishing only the latter with appropriate and objective severity. A solution lacking this balance will drive out any good doctors that may still remain in the country and leave the field open to their less vigilant peers to play with the lives of patients according to their whims.

The Proposed Title of legislation: (Special Code for Healthcare)

Therefore, to avoid legal conflicts, gaps, duplications, technical flaws, and vague norms found in current health care legislation discussed in the ' prompt action' domain of issues, unification, and codification of healthcare laws is desirable. Owing to significant influence from the continental legal system on patients' rights the Pakistani legal system offers an opportunity for such unification by the creation of what might be titled the ' Special Code

of Healthcare.’ This approach can eliminate the need for different definitions for identical or similar terms and concepts, and would help to avoid conflicts, inconsistencies, and other gaps currently found both in terms of legal procedure and content due to which the patients in Pakistan are enormously being violated without halt.

Therefore, making bases to this study, a package of legislative amendments was presented to the ministry of labor, health, and soon the Ministry will review the suggested amendments and orchestrating to issue orders to fine-tune deficiencies in the country’s health care legislation. The study has additionally accommodated as a reference guide for the Ministry’s legislative work, whose deliberations in this realm are underway, therefore, legislation to rectify the deficiencies, imperfections, gaps and lapses in the domestic legislation can be ascertained in two parts:

PART-I

Based on these findings, a number of recommendations follow and the problematic issues fall into three steps:

Prompt Action

Here we deal with technical legal flaws i. e. definitions of Right to Information; Right to Consent; Right to Free Choice; Right to Privacy and Confidentiality; Right to Respect of Patients’ Time; Right to the Observance of Quality Standards; Right to Safety; Right to Avoid unnecessary Suffering and Pain; Right to Complain; and Right to Compensation, ‘ informed consent’, ‘ the rights of a patient’s relative’, and ‘ implied consent’ can be

categorized as prompt action to act forthwith and without delay. Such problems do not need additional discussions about healthcare policy and for determining the rights we have discussed at length are supposed to be made available to all patients for which the recommendations offered are sufficient and adequate in order to make special legislation for administration of justice efficiently through setting up special courts and tribunals throughout Pakistan giving relief to aggrieved patients within the period of six months. As special banking, antiterrorist, consumers, labors etc courts are already set up in Pakistan in the interest of public.

The patient relative should establish the priority ordering of ascending and descending relatives, or at least adopt the procedural framework established by Muhamdan laws determining different stages of heir: stage-1, (decedent's children, spouse and parents, grandchildren, great grandchildren and great-great grandchildren), stage-2 (siblings of the decedent; nieces and nephews and their children) and stage-3 (grandparents; great grandparents), 4th class (uncles and aunts), 5th class (first cousins; their children).

The ambiguity and vagueness of the terms and rights of Patients could be addressed by eliminating the word " etc." or any other word creating doubts while interpreting it. Therefore, the new proposed legislation must ensure by clearly defining the terms ' implied consent' by providing an exhaustive list of the situations and legal triggers when implied consent can be invoked. As for as, the term medical malpractice is concerned the issue of unacceptably restrictive scope could be resolved by using the term " healthcare provider" instead of " physician etc" in defining the term " medical malpractice" because " healthcare provider" extends liability to other individuals and

institutional entities involved in the provision of healthcare. To resolve the ambiguities, the legal definition of medical malpractice could be formulated as follows:

“ Medical malpractice shall be an unlawful action or act of omission of a healthcare provider, which has resulted in a patient’s death or disorganization of health, or has inflicted moral and/or material damage to a patient.”

Likewise, in the realm of confidentiality, the proposed special law should be prepared so that a patient’s information be made available to third parties, including investigative bodies subject to provision of a court order. The proposed law must also specify when it is justified to disclose patient information for forensic medical examination purposes and either a court order or the consent of the patient or his or her legal representative must be required for disclosing the information.

The proposed law on the Rights of Patients must expand the characterization of cases when information should be provided to next of kin or guardians of incapacitated individuals and it should also specify that patients possess the right to receive any other medical information related to their medical histories, treatment procedures, and personal identity. The obligations of medical professionals and institutions to provide information in such cases must be clearly delineated.

Public Policy

There is a rather large group of issues where legislative action can be taken only after choices and priorities are first determined in public policy arena and the issues falling under this category, recommendations of technical legal analysis are not sufficient for remedial legal framework; however, these findings do help flag legislative norms that must be fleshed out or otherwise amended. These ‘ public policy’ issues include the scope, limit and circumstance under which ‘ medical malpractice’, ‘ confidentiality of information’, and ‘ patients’ right to information etc can be determined. The situation is more complex regarding the issues in this domain, as decisions need to be made in the public policy area first and only then can these decisions be reflected in legislative reforms. Furthermore, ambiguities and controversies in the healthcare policy arena need to be resolved and priorities defined before legislative action.

Deliberation Extensively Required

The thesis has identified several topics i. e. as patient safety, rights of healthcare providers etc with respect to which there is neither any legislation nor there is any clear approach in the domestic legislative canon in Pakistan which requires conceptual consideration and synthesis of approaches. Only then, after those policy decisions have been made it will be possible to bring the legal framework into compliance with the requirements of a healthcare system emphasizing human rights in patient care. Hence, with regard to the issues in ‘ deliberation extensively required’ as compared to the other categories, there is a longer road ahead before legislative amendments can be made to effectively address these issues.

In the area of patient safety, Pakistan first needs to formulate a state policy on the topic and then bring the legislation into compliance with such policy. The work determines different stages of heirs mentioned above. The approach towards this issue should include at least two areas: regulation and implementation. For regulation, legislation needs to be improved with respect to patient rights and patient safety. For implementation, the competent and impartial authorized agency or authority be established to determine policy and safety standards etc at national level for enforcing these concepts in true letter and spirit. In addition, it is necessary to implement projects and activities aimed at eliminating specific risks that pose a danger to patient and provider occupational safety.

To accomplish needed progress in the rights of healthcare providers, we recommend that a special section in the healthcare legislation of Pakistan be dedicated to regulating and guaranteeing the rights of healthcare providers as well. At least, legislative amendments must cover issues such as contractual rights of healthcare providers and protections covering faith and religion because here in Pakistan a general tradition is that people attribute any calamity or loss during the process of medical treatment as ' Act of God or destination'.

Part-II

- PM & DC Reformation

The role of the council is replete with criticism because of multiple reasons which we have already discussed earlier. Therefore, at this stage the following suggestions are given:

1. The Council must function under strict check and balance system empowering and authorizing the same to reevaluate the registration, performance, terms and conditions of licenses of the healthcare professionals on annual basis by making required amendments and alteration in section 31 of the PM & DC Ordinance, 1962 which empowers the council to cancel the registration of a negligent doctor, reads as, *“ The council (PM & DC) in its discretion may refuse to permit the registration of any person or direct the removal altogether, for a specified period, of the name of any registered medical practitioner or dentist who has been convicted of any such offence; has been held by the council guilty of infamous conduct in any professional respect or who has shown himself to be unfit to continue in practice on account of ill mental health or other grounds.”*
2. Secondly, through a cumbersome procedure a complaint is supposed to be filed by the aggrieved patient before the registrar or the legal head of the PM & DC or the president regarding any negligence of doctors[1]but what would be the outcome or timeframe of such hectic procedure strictly followed by the aggrieved patient regarding the injury or loss he suffered through medical malpractice? Law is silent.
3. Whether this council is authorized to take action against any private hospital? The ordinance is also silent about this as well. Here, on this point again the PM & DC laws are completely silent which calls for overall reform of the Pakistan Medical & Dental Council Ordinance, 1962 in line with international standards where many countries tried to reduce the risk of malpractice which cannot be eliminated 100%

because the risk of mistakes and errors of judgment will always be there even if factors like self-interest are removed completely but in some hospital strict standard operating procedures that are checked and evaluated by third parties like, professional bodies of doctors, medical staff, state authorities and insurance companies.

4. Since its establishments, the Council is being run and administered by medical practitioners for personal gains or joins the executive body as tool to run their private medical entities, units or set up and not for the benefit of the profession, the patients to diligently improving the standard of medical education, training and licensing and likewise, the body has almost no power to restore the license of a medical practitioner once it has been revoke.
5. The basic and derived patients' right (non-enforceable rights) also called ethical codes be incorporated along with the basic rights. The critics, objects this point because of its nonbinding character as these ethical codes have no statutory base, therefore, cannot be legally enforced. Voluntarily and non-enforceable basis of non-statutory code has drawbacks which could only be avoided through legislation.

- Part-III Amendments in PPC

More so, a remedy through courts is always there but it adds more salt to the wound of aggrieved patients who is already suffered facing the prospect of losing a limb or his life. Therefore, the penalties for medical malpractice or negligence be introduced to prevent negligence from occurring if healthcare intentionally does anything with *actus rea* and *mins rea* the concerned be

booked under penal code as well and all those laws giving them immunity be repealed.

The quackery can't be eliminated from our society unless with this regards some amendments are not introduced in PPC. S. (XXIX) of The Punjab Healthcare Commission Act, 2010 defines " quack" a pretender providing health services without having registration of the Medical and Dental Council, Council for Tibb, Council for Homeopathy and Nursing Council and saved its skin from criminal jurisdiction. Section 40 PPC defines word a thing made punishable by PPC, and further defines in section 44 word " injury" as any harm illegally caused to any person, in body, mind, reputation or property and section 416 personation, a person is said to " cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is while section 419 deals with Punishment for cheating by personation: Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. Unfortunately, quackery can be made an offence by making a slight amendment in PPC in the sections mentioned above but domestic trends protect this menace under the garb of technicalities. The question arises why so far against quackery none has been booked under penal code?

- Part-IV Miscellaneous Steps

Awareness through electronic and print media:

Average patients don't know about their rights exactly what kind of service or limitations of their expectations.

Separate Road Track for Emergency Services

National Highway Authority must ensure that a separate track is lying on all roads for emergency. At government level, the general public be trained through celebrating ambulance week periodically for educating the masses about handling the emergency situation.

Rules for Prescription Format

The researcher as precautionary measures suggest that there must be a prescribed format for prescription and overleaf written all the basic rights and remedies of patients, with mandatory additional note:-

I have diagnosed on _____ the Day of _____ and fully understood the nature of the ailment of Mr / Ms. / _____ and I feel fully competent to deal with the nature of ailment, hence, don't refer to any other specialist doctor.

The rules for prescription must be modernized through review keeping in view the Article 11 of the EU Directive on Patients' Rights

Rules for Pharmacies

At national level all drugs and medicines classified as either the 'Over the Counter Drugs' or 'Prescription only Drugs'; the prescribed drugs must only be sold by the pharmacies on the prescription of registered medical practices by PM & DC.

Social Security Framework:

Can we replace tort compensation with a social security framework that serves victims patients like in 1972, New Zealand introduced the first ‘ Universal No-Fault Insurance Scheme’ that provide compensation by the government-run Accident Compensation Corporation irrespective of negligence or malpractice whose goal may be to achieve equality of compensation and reducing different costs of litigation. In the 1970s, Australia and the United Kingdom drew up proposals for similar no-fault schemes but they were later abandoned but in Pakistan with certain amendments in this sector the goals can be achieved.

[1][www. dawn. com/news/711896/cases-of-medical-negligence-on-the-rise-2](http://www.dawn.com/news/711896/cases-of-medical-negligence-on-the-rise-2),
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