YOUTH GENERAL ASSEMBLY

MEDICO LEGAL IN PAKISTAN

Written By

Fahad Shahbaz | Reem Khan

www.ygapakistan.com

Youth General Assembly (YGA) is an autonomous organization dedicated to providing a credible platform that fosters policy and strategy development, equitable administration, and non-traditional legislative activities. YGA empowers young individuals to engage in public discourse on social issues, preparing them to be future ambassadors and democratic leaders. Our mission is to inculcate the qualities of convening and engagement among the youth, expanding their perspective and knowledge of true democracy and parliamentary politics.

Printed in Pakistan

YOUTH GENERAL ASSEMBLY

+92 423 2299 924 **+92 334 1202064** **contact@ygapakistan.org** **www.ygapakistan.org**

TABLE OF CONTENTS

- Demonstrating Causation and Resulting Harm

9. **Law of Torts in Medical Malpractice**
    - Understanding Tort Law and its Application in Medical Negligence Cases
    - Key Elements: Duty, Breach, and Causation
    - The Difference Between Financial and Non-Financial Compensation
10. **Consumer Protection Acts and Medical Services**
    - How Consumer Protection Laws Apply to Medical Services
    - Analysis of Court Rulings in Pakistan and India
    - Balancing Consumer Rights with Medical Professionalism
11. **Criminal Liability in Medical Malpractice**
    - The Application of Qisas and Diyat (Sections 299-338C of the PPC)
    - When Gross Negligence Becomes a Criminal Offense
    - Precedents in Pakistani and International Courts
12. **Disciplinary Actions by Regulatory Bodies**
    - The Role of the Pakistan Medical and Dental Council (PMDC)
    - The Disciplinary Process: Investigations, Findings, and Penalties
    - The Role of Healthcare Commissions in Provincial Oversight
13. **The Role of Healthcare Commissions in Pakistan**
    - Punjab Healthcare Commission: Powers and Responsibilities
    - Khyber Pakhtunkhwa Healthcare Commission: Regulation of Public and Private Healthcare
    - Sindh Healthcare Commission: Improving Healthcare Quality and Accountability
14. **Conclusion and Recommendations**
    - Current Legal Framework: Strengths and Weaknesses
    - The Need for a Dedicated Medical Malpractice Law
    - Suggested Reforms for a More Transparent and Effective Legal System

MEDICO-LEGAL IN PAKISTAN

A Medico-Legal Case can be characterized as an "*instance of injury or disease, and so forth, in which Examinations by the law-implementing organizations are vital to fix the obligation in regards to theCausation of the injury or sickness".*

Medical legal reports are documents prepared by medical officer in response to a requisition of police officer. These reports are usually made in criminal cases. These reports have legal value in criminal cases. It is a clinical case with legitimate ramifications for going to specialist where subsequent to inspiring history and inspecting the patient, believes that some examination by policing is Fundamental. It is very well might be a lawful case requiring clinical mastery when brought by the police for assessment

1. ABSTRACT

The medical profession is a noble field that requires exceptional care and caution. However, complaints of negligence and medical malpractice are not uncommon. In Pakistan, the Law of Torts is invoked for civil remedies in medical malpractice cases. While medical professionals can also be tried under criminal liability, courts are generally reluctant to prosecute them under the Pakistan Penal Code, preferring to address such cases under civil liability.

Following Indian precedent, Pakistan has granted jurisdiction to Consumer Courts to handle such cases. However, including medical services under consumer protection laws is problematic. Additionally, there is inconsistency regarding compensation. Therefore, it is argued that a separate law should be formulated for medical malpractice, taking into account the specific needs and current practices of legal and healthcare systems.

2. INTRODUCTION

The medical profession is considered one of the noblest, bringing both wealth and social prestige to those who practice it. However, it also has the potential to generate complaints and grievances. These grievances may stem from the suffering and pain that a patient or their attendants endure, or they may be the result of negligence or even malpractice by a healthcare professional. Despite the high level of trust placed in medical practitioners, the Lahore High Court has noted that “medical issues require a mind that may mishandle an individual during treatment.” Such mishandling could result from either negligence or malpractice.

Medical negligence is defined as “a situation where a patient suffers injury or dies due to improper treatment in a healthcare facility.” A healthcare provider may be found liable for medical negligence if the institution lacks essential human resources or equipment, or if it fails to exercise reasonable competence and skill. Medical malpractice is a broader term, defined as "a doctor's failure to exercise the level of care and expertise that a physician or specialist of the same medical field would employ under similar circumstances."

The right to medical care is fundamentally the protection of life, as guaranteed by various international instruments and the Constitution of Pakistan. Unfortunately, Pakistan lags behind in the delivery of healthcare services. As a former British colony, its basic healthcare structure closely resembles the UK's National Health Service (NHS). However, this extensive framework has not translated into effective healthcare delivery due to a lack of political will, poor management, weak regulations, and inefficient implementation. Despite some improvements in recent years, the legal framework for addressing complaints arising from medical malpractice still suffers from significant gaps and shortcomings.

Law does not exist in a vacuum; it is deeply intertwined with the social, economic, and political realities of society. Therefore, to better understand the medical malpractice law in Pakistan, it is crucial to examine the healthcare system, where the practice of medicine occurs and from which malpractice issues arise.

3. MEDICAL SERVICES SYSTEM OF PAKISTAN

Like other emerging nations, Pakistan is undergoing development and progress in various fields, including healthcare. Recent positive signs include increased compensation for doctors and actions taken against negligence by medical professionals and quacks, but much more is needed to establish an efficient healthcare system. Both the healthcare system and its regulatory framework remain weak.

Before the 18th Amendment, authority in the healthcare sector was shared between the federal and provincial governments. The amendment abolished the Concurrent Legislative List, giving provinces greater autonomy. As a result, it became the primary responsibility of provincial governments to provide health services, including planning, financing, administration, regulation, and medical education. However, the Ministry of National Health Services, Regulation, and Coordination was later reinstated at the federal level and tasked with several responsibilities, including national and international coordination in public health. Its mandate includes:

- Oversight of regulatory bodies in the healthcare sector,
- Coordination of population welfare programs,
- Enforcement of drug laws and regulations,
- Coordination of national preventive programs (such as TB, HIV/AIDS, malaria, hepatitis),
- Fulfillment of international commitments, including the Millennium Development Goals (MDGs),
- Quarantine measures for infectious diseases at ports,
- Coordination of Hajj medical missions, and
- Provision of medical facilities to federal employees in the provinces.

Pakistan has a mixed healthcare system, comprising both public and private healthcare facilities. The public healthcare system is based on the British model and is funded through development aid and tax revenues, providing free services to citizens. It operates a three-tiered delivery system: primary, secondary, and tertiary care.

In terms of infrastructure, Pakistan has an extensive healthcare system, including over 5,000 Basic Health Units, 600 Rural Health Centers, 7,500 first-level care facilities, and more than 100,000 Lady Health Workers. Secondary care is provided by hospitals at the tehsil and district levels, while tertiary care hospitals are mostly located in large cities and affiliated with teaching and research institutions. In total, there are 989 public hospitals in Pakistan. The country has 169,696 registered general practitioners (holding an MBBS degree), 19,539 dentists (holding a BDS degree), and 1,090 practitioners with a Licentiate State Medical Faculty qualification. There

are 210,490 registered doctors and specialists, while the number of registered dentists stands at 21,406. However, the number of nurses, pharmacists, and paramedical staff remains comparatively low.

In addition to the public healthcare system, the private sector plays a significant role in Pakistan's healthcare landscape, especially in urban and densely populated areas. The private healthcare sector operates in both 'for-profit' and 'non-profit' models, and the quality of services varies greatly. While some hospitals in the private sector are highly sophisticated, the majority do not meet international standards.

Non-profit healthcare is provided by a range of entities, including NGOs and trust-funded organizations. Some notable examples are the Edhi Foundation, Shaukat Khanum Memorial Cancer Hospital, Sindh Institute of Urology and Transplantation, Indus Hospital Karachi, and Layton Rehmat Ullah Benevolent Trust. There are over 1,200 hospitals, more than 5,800 dispensaries, and 700 maternity and child welfare centers, providing an aggregate of over 116,000 beds. Additionally, there are numerous clinics across the country. Apart from entirely charitable hospitals, some 'for-profit' private hospitals also run significant charitable operations. The Armed Forces health system, along with the Fauji Foundation, also contributes significantly to the healthcare sector. These institutions have their own financing, infrastructure, and governance systems.

While allopathic medicine is the most common form of treatment in Pakistan, other forms of medicine, such as Tibbs-e-Unani, homeopathy, herbal medicine, and spiritual healing, remain popular. Many people still seek treatment from bonesetters and spiritual healers.

Overall, Pakistan's healthcare system has a strong post-colonial imprint and, with improvements, could be upgraded to a much higher standard.

4. LEGAL FRAMEWORK IN PAKISTAN

Similar to its healthcare framework, Pakistan inherited its legal system from its British colonial rulers. The origins of this system can be traced back to the 17th century when the East India Company established a trading post in the port of Surat, having obtained rights from the Mughal Emperor. Subsequently, the company set up additional factories in Madras (now Chennai) and Bombay (now Mumbai) in 1640. The East India Company's charter granted it the authority to administer its own employees, including the power to adjudicate civil and criminal matters involving the people working for the company. However, these courts derived their authority from the East India Company, not directly from the British Crown.

MEDICAL SERVICES SYSTEM AND MEDICAL MALPRACTICE LAW IN PAKISTAN

After the establishment of the East India Company, the company requested the ruler to grant a charter, providing it with special judicial powers. As a result, Mayor's Courts were established as royal courts, deriving their authority directly from the Crown rather than the company. These courts were not given specific regulations to follow but were instead expected to resolve cases based on 'justice and equity.'

Following the Battle of Plassey, the judicial authority of the East India Company expanded significantly, and its courts were no longer confined to just three cities. Gradually, the company's legal system replaced the Mughal legal framework, particularly in Bengal, where the company's rule was firmly established. Over the next two centuries, the entire judicial system was transformed into a modified model of Common Law.

The Indian Independence Act of 1947 divided British India into Pakistan and India and validated pre-partition laws. This continuity was maintained in all subsequent constitutions of Pakistan. Article 268 of the current Constitution upholds the same principle, which means several pre-partition laws are still in effect today. One such law is the Law of Torts, which has been invoked in most medical malpractice cases in Pakistan to date. However, this is not the only legal remedy available. Several other mechanisms can hold medical professionals accountable for their malpractice.

5. DOCTOR'S DUTY IN MEDICO- LEGAL CASE

- Every doctor is legally bound to provide medical care to a patient, regardless of the circumstances, and cannot refuse treatment, especially in medico-legal cases.
- Doctors must comply with specific legal requirements, either voluntarily or under compulsion, as defined by the law, ensuring the protection of patients' rights and the integrity of medical practice.
- The examination and reporting of a medico-legal case (MLC) is one of the legal responsibilities of all doctors working in a hospital. These reports are essential in determining the nature of injuries, cause of death, or other critical medical details that may have legal implications.

- Proper documentation and timely reporting are crucial, as medico-legal reports can play a pivotal role in judicial proceedings, influencing criminal investigations and court decisions.

6. TYPES OF MEDICO-LEGAL CASE

- All instances of injuries and burns, where the circumstances suggest the commission of an offense by someone (regardless of suspicion of foul play).
- All vehicular, industrial, or other unnatural accidents, especially where there is a possibility of the patient's death or grievous harm.
- Cases of suspected or evident sexual assault.
- Cases of suspected or evident criminal abortion.
- Instances of unconsciousness where the cause is unclear or does not appear to be natural.
- All cases of suspected or evident poisoning or intoxication.
- Cases referred by a court or other authorities for age assessment.
- Cases where a patient is brought in dead with an unclear or suspicious history, raising doubts of foul play.
- Instances of suspected self-inflicted injuries or attempted suicide.
- Any other cases not falling under the above categories but having legal implications.

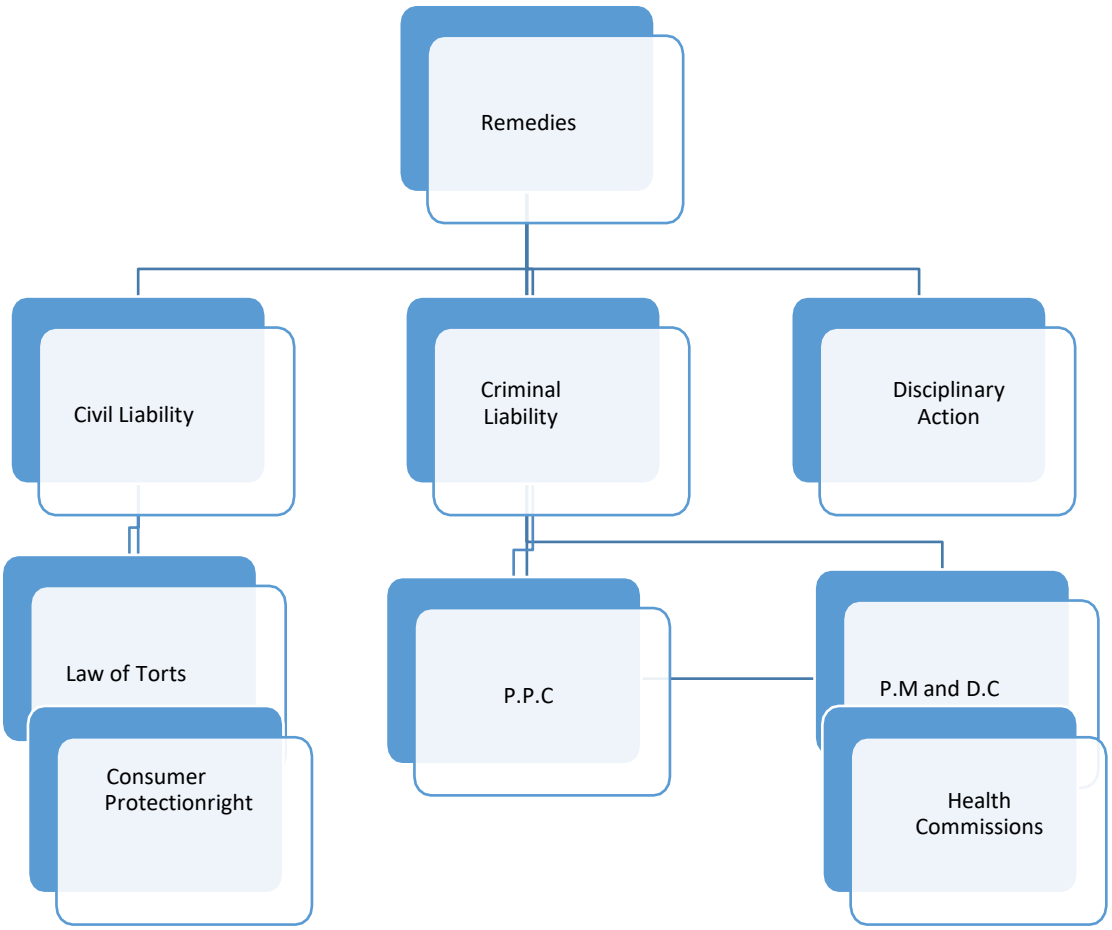
7. PROCESS FOR REGISTERING A MEDICO- LEGAL CASE

1. **Immediate Treatment**
    - All legal formalities are to be suspended until the patient is stabilized and revived. The patient's well-being is the primary concern, and life-saving treatment should be provided without delay.
2. **Identification**
    - It must first be determined whether the case falls under the category of a Medico-Legal Case (MLC) based on the nature of injuries or circumstances.
3. **Intimation to Police**
    - If the case is identified as a Medico-Legal Case, the doctor must register it as such and inform the nearest police station, either by phone or in writing. Timely communication is essential to ensure legal procedures are initiated promptly.
4. **Acknowledgment of Receipt**
    - The police will issue an acknowledgment of the intimation, which must be recorded for future reference

8. PROVING MEDICAL MALPRACTICE: KEY ELEMENTS

To hold a doctor liable for medical malpractice, the following three elements must be established:

1. **Duty of Care**
    - The defendant (doctor) must have a legal duty to care for the patient. This duty arises from the relationship between the doctor and the patient, making the doctor responsible for taking reasonable care in treating the patient.
2. **Breach of Duty**
    - The defendant must have breached that duty by failing to meet the standard of care expected from a medical professional skilled in that particular field. Falling below this standard would constitute a breach.
3. **Causation and Harm**
    - The breach of duty must have directly caused harm or injury to the patient. The doctor will only be held liable if their negligent actions or omissions resulted in the patient's injury or worsened condition.



Details of these laws and remedies are mentioned below;

9. LAW OF TORTS IN MEDICAL MALPRACTICE

Medicine is not only a science; it is also an art. Therefore, despite best efforts, things may sometimes go wrong. However, this does not necessarily imply that the doctor was negligent. To prove that a doctor committed malpractice, the patient must establish the following elements:

1. **Duty of Care**
    - The defendant (doctor) must have a legitimate duty of care toward the patient. Duty of care is a key principle in determining the scope of liability for negligence. There must be a legal relationship between the parties that obligates the doctor to take reasonable care in treating the patient.
2. **Breach of Duty**
    - The defendant (doctor) must have breached that duty by failing to meet the minimum standard of care expected from a medical professional skilled in that particular field. Falling below this standard constitutes a breach of duty.
3. **Causation and Harm**
    - The breach of duty must have caused harm or injury to the patient. The doctor will only be held liable if their negligent act or omission directly resulted in the patient's injury or worsened condition.

To succeed in a medical negligence case, the plaintiff must establish these three elements—duty of care, breach of duty, and causation resulting in harm.

10. CONSUMER PROTECTION ACTS AND MEDICAL SERVICES

A competent professional practicing and claiming to have specialized expertise is not deemed negligent if they acted in accordance with the accepted practices at the relevant time, as recognized by a competent body of medical opinion. This holds true even if other doctors might have adopted different approaches in similar situations.

An analysis of cases decided by the courts in Pakistan reveals that the country's judiciary follows English tort law and is well-acquainted with the concept of negligence. The courts frequently cite English legal texts and case decisions for clarification of legal principles, though Indian case law is also occasionally referenced. The courts apply the standard of "negligence" and impose damages on doctors when they are satisfied with the evidence showing that the doctors were negligent in their treatment of the patient. Conversely, they dismiss cases when the plaintiff fails to provide sufficient proof.

For financial compensation, English courts follow the fundamental rule in tort law for assessing damages, which is to restore the claimant to the position they would have been in had the negligence not occurred. This principle was established in the case of **Livingstone vs. Rawyards Coal Company**. While this rule is appropriate for financial losses, it is not suitable for non-financial losses, such as the death of a loved one, the loss of an organ, or the pain and suffering endured by the patient. No amount of money can truly compensate for such losses. In such cases, courts apply the standard of what is "reasonable" and "fair." This is a difficult standard to apply, as determining what is just and reasonable in such cases can be subjective. Courts often follow precedents set in similar cases, which helps create a degree of consistency in awarding damages.

However, according to a survey, nearly 70% of patients in the UK are completely or very dissatisfied with the current system for awarding damages. Indian courts face a similar issue. The Supreme Court of India noted: "The lack of consistency and uniformity in awarding compensation has been a matter of grave concern. If different tribunals calculate compensation differently on the same set of facts, the claimant, the litigant, and the common man will be confused, bewildered, and frustrated. Significant discrepancies among tribunals in determining the quantum of compensation on similar facts will lead to frustration and distrust in the system."

In the UK, there have been various proposals for reform to address medical complaints, such as through amendments to the **NHS Redress Act, 2006**, though these proposals have not yet been fully implemented. Similarly, the situation in Pakistan regarding damages is not particularly encouraging and requires serious attention as well.

CUSTOMER PROTECTION ACTS

Following the decision of Indian courts that medical services fall under the jurisdiction of consumer courts and are covered by the **Consumer Protection Act**, Pakistan also adopted this precedent by including medical services within the scope of its own Consumer Protection Act. All four provinces, along with federal law, have now incorporated healthcare services within the ambit of consumer law. Although the jurisdiction of consumer courts is explicitly mentioned in these Acts, leaving little room for legal dispute, the matter of jurisdiction remains contested.

In a landmark case before the Lahore High Court, **Dr. Shams Akhtar vs. Local Consumer Court Lahore**, the learned court dealt with this very issue. The case challenged the jurisdiction of the consumer court over medical services, reflecting the ongoing debate on the application of consumer laws to healthcare in Pakistan.

MEDICAL SERVICES SYSTEM AND MEDICAL MALPRACTICE LAW IN PAKISTAN

In a significant ruling, it was stated: *"It is, therefore, clear that respondent No. 2 is a consumer, and the petitioner provided services to the said respondent. The internal arrangements between the petitioner and the GCC states in no way affect the jurisdiction of the Consumer Court. Respondent No. 2 availed medical services after paying for them and is, therefore, considered a consumer under the Act. Consequently, the Consumer Court has jurisdiction to hear the complaint of respondent No. 2."*

Thus far, this has been a driving force in discussions for legal redress in medical malpractice cases. However, it remains concerning to fully accept the medical profession as a commercial enterprise and allow it to be governed by the principles of commercialization, as is done in other businesses. Medicine is a noble profession, meant to serve humanity, and its sanctity should remain intact. Therefore, the commercialization of medicine should be limited and treated with caution.

Another consequence of medical negligence may involve the imposition of penalties as part of disciplinary action, ensuring that doctors and healthcare providers are held accountable for their professional conduct.

11. CRIMINAL LIABILITY IN MEDICAL MALPRACTICE

Under the **Pakistan Penal Code (P.P.C.)**, apart from the **Law of Torts** and the **Fatal Accidents Act, 1885**, medical professionals can also be tried under criminal law, specifically through sections related to **Qisas and Diyat (Sections 299-338C)** for gross negligence and misconduct. These sections are not directly linked to medical malpractice but rather address the general law of **Qatl-e-Khata** (manslaughter). Relevant provisions for medical negligence include those related to **Qatl-e-Khata**, **Daman**, **Diyat**, and **Arsh**.

Section 318 of the P.P.C. defines **Qatl-e-Khata** as *"Whoever, without any intention to cause the death of, or grievous hurt to, any person causes the death of such person, either by mistake of act or mistake of fact, is said to commit Qatl-e-Khata."*

Thus, a medical professional may be held criminally liable under the P.P.C. for medical malpractice if they, through either mistake of action or fact, cause harm or death. However, courts in Pakistan have been notably hesitant to prosecute doctors for negligence under criminal law. In the case of **Muhammad Aslam vs. Dr. Imtiaz Ali Mughal**, the court held that the degree of negligence must be significantly higher for it to constitute a criminal offense, specifically gross negligence or recklessness. As a result, Pakistani courts generally discourage charging medical professionals under the Pakistan Penal Code, and instead advise seeking remedies through civil liability, such as under the **Law of Torts** or the **Fatal Accidents Act, 1885**. However, if a doctor's negligence reaches the level of "gross negligence," as outlined in the aforementioned judgment, the Pakistan Penal Code can be invoked.

In this case, Justice Munib Akhter referred to the Indian case **Jacob Mathew v. State of Punjab and Others**, where the court defined "gross negligence" for criminal liability, stating: *"To prosecute a medical professional for negligence under criminal law, it must be shown that the accused did something or failed to do something that no medical professional, in their ordinary senses and prudence, would have done or failed to do. The risk taken by the accused doctor should be of such a nature that the resulting injury was imminently foreseeable."*

While Pakistani courts have not yet fully developed case law where a doctor has been criminally charged for gross negligence, such precedents do exist in the **United Kingdom (UK)**. Between

2006 and the end of 2013, six doctors were convicted of **medical manslaughter** in the UK for acts of gross negligence. Similarly, Indian courts have also dealt with this issue, applying a higher threshold for gross negligence in criminal liability.

In conclusion, while Pakistani courts have followed a similar approach to other common law jurisdictions, requiring a higher standard of "gross negligence" for criminal charges against medical professionals, further case law and legal precedents need to be developed in Pakistan to fully define and address what constitutes gross negligence in the country's legal and medical context.

12. DISCIPLINARY ACTION BY REGULATORY BODIES

Pakistan Medical and Dental Council (PMDC)

Another option available to an aggrieved party in cases of medical negligence is to file a complaint with the **Pakistan Medical and Dental Council (PMDC)**. The PMDC has established a code of ethics, which serves as a set of guidelines for medical professionals in Pakistan. When a complaint is made to the PMDC regarding misconduct or malpractice by a medical professional, these guidelines act as the standard by which the doctor's conduct is evaluated.

If the PMDC finds that the medical professional has violated these ethical standards, disciplinary action may be taken, which could range from warnings to suspension or revocation of the doctor's license, depending on the severity of the negligence.

Disciplinary Action under PMDC

Section 27 of the code outlines the procedure for addressing issues related to medical negligence by doctors. It states that the disciplinary board of the **Pakistan Medical and Dental Council (PMDC)** will investigate the matter by reviewing the relevant records and obtaining information from the involved individuals. If the board is satisfied that the code of ethics has been violated and the issue is serious enough to warrant disciplinary action, it will forward its report to the executive committee for a final decision.

Once the executive committee receives the report, it may either agree with or reject the findings. The committee may request further investigation or accept the report without amendments and

issue a disciplinary ruling against the medical professional. Disciplinary actions vary on a case-by-case basis, ranging from simple warnings to temporary suspension, and in severe cases, permanent removal from the PMDC register. If a doctor is permanently removed, the local health authorities are notified, and the decision is published in the PMDC's official journal.

13. ROLE OF HEALTHCARE COMISSIONS

1. **Punjab Healthcare Commission (PHC)**

   Patients in Punjab who experience medical negligence can file a complaint with the Punjab Healthcare Commission. Section 2, Clause (xxii) of the Punjab Healthcare Commission Act 2010 defines medical negligence as: *"a situation where a patient suffers injury or death due to improper treatment in a healthcare institution, as determined based on a medical post-mortem report."* The PHC acts as a quasi-judicial body that can investigate matters related to maladministration, malpractice, or failure by healthcare providers or employees. It has the authority to summon individuals, require testimony under oath, and demand the production of records. The PHC can also enforce its rulings through executive authorities and law enforcement agencies.

2. **Khyber Pakhtunkhwa Healthcare Commission**

   Public and private healthcare services in the Khyber Pakhtunkhwa province are regulated by the Khyber Pakhtunkhwa Healthcare Commission, established under the Khyber Pakhtunkhwa Health Care Commission Act 2015. This commission was formed on January 27, 2015, as a replacement for the Health Regulation Authority, which was created in 2002 but failed to deliver satisfactory performance. The healthcare commission ensures the regulation of healthcare services in the province.

3. **Sindh Healthcare Commission**

   The Sindh Healthcare Commission was formed in 2015 through the Sindh Healthcare Commission Act, 2013, which was passed on February 24, 2014, and enacted on March 19, 2014. The commission's primary objectives are to improve healthcare quality, safeguard

patients' rights, ensure the security of medical professionals, regulate and monitor public and private healthcare facilities, and eliminate medical fraud.

14. CONCLUSION AND RECOMMENDATIONS

Pakistan's legal system offers multiple remedies for addressing medical malpractice. The **Law of Torts** is frequently invoked in cases of medical negligence. In any medico-legal case, it is the legal obligation of the attending doctor to report the case to the nearest police station after providing essential life-saving medical care. The intent behind this prompt reporting is to ensure that official procedures are initiated as early as possible, allowing the police to gather maximum evidence. Swift action by the police also helps prevent the destruction or tampering of evidence by the treating doctor.

Despite these provisions, this area of law has not seen significant development. Provincial laws, such as **Consumer Protection Acts**, also allow for medical professionals to be tried for malpractice, which provides a practical alternative to other legal remedies. However, this approach has been criticized for promoting the commercialization of the medical profession.

In light of these facts, it is recommended that a specific law addressing medical malpractice, such as a **Medical Malpractice Act**, should be developed in Pakistan. This law should clearly codify the accountability and liability of medical professionals for negligence, providing a structured and transparent legal framework for addressing such cases.

YOUTH GENERAL ASSEMBLY