

## **A Study of Unethical Medical Malpractices – A Legal Perspective**

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### **ABSTRACT**

Health involves essential worry to all of us. Inferable from the way that sound economy and prosperity of any general public, exclusively relies on wellbeing and prosperity of its kin. Maybe, this is the explanation medical services conveyance is interpreted as a basic portion of each friendly framework. In the event that we see from our own social and monetary viewpoints, medical services situation gives a terrible picture confusing meanings. Medical care generally incorporates the mortality future and admittance to present day drug administrations and it's firmly identified with people. It is apparent that this field is of foremost interest for each cast and doctrine and healthy image of this calling requests the assurance for each resident. Right to wellbeing cover numerous rights in it like arrangement of clean climate, assurance against unsafe, infection anticipation and free clinical assistance. The two issues being looked by the patients is that no enactment exclusively planned to counter instances of clinical carelessness and disparity in measure of pay paid. Along these lines, ample opportunity has already past to set up a council to manage the instances of clinical carelessness. What's more, these courts ought to be going by lawful and clinical specialists. Specialists are experts and it is their obligation to fare thee well. Yet, in circumstances of health related crises, specialists do confront hazards which are probably the main motivation of clinical carelessness activities. These activities influence the two specialists and patients in wording that the position and vocation of specialist is minimized and life of patient is in danger alongside monetary misfortunes, misery, wellbeing and so on. The insurance agencies additionally organize legitimate guide for the specialist. A demonstration of clinical carelessness on piece of specialist influences him in two different ways monetary and social. The protection gives security of cash however it can never cover the standing lost. In this way, the protection cover can save specialists structure rising number of instances of clinical carelessness.

**KEY WORDS:** Medical malpractices, Unethical, Medical negligence, Doctors.

### **INTRODUCTION**

Right to wellbeing assumes a significant part in each country. It is an issue of principal significance in each general public. The duty to ensure, regard and care lies on clinical calling as well as it involves public functionaries. Customary marvel of medical care was individual driven and the connection among specialist and patient was the connection of trust and regard. The field of clinical calling was known for its sacrificial help to mankind. Medical care generally incorporates the mortality future and admittance to present day drug administrations and it's firmly identified with people. It is clear that this field is of vital interest for each cast and belief and healthy image of this calling requests the security for

each resident. Right to wellbeing cover numerous rights in it like arrangement of clean climate, assurance against unsafe, infection avoidance and free clinical assistance.

Anyway wellbeing as area doesn't show up in Indian Constitution however there are numerous backhanded or quiet arrangements which manage individuals and the job of the state is to foster medical care administrations. Under the term social equity and right to uniformity one can carry the topic of admittance to these offices. To improve the residents' financial and wellbeing status there should be some exacting laws and which ties clinical organizations and clinical professionals to rehearse morally. Exploitative clinical negligence is exceptionally confounded liable to comprehend this subject first will give light on what is clinical calling. Clinical practice is a calling of pride and honor and is required to serve the enduring humankind, be it rich or poor or of any rank or doctrine. Subsequent to having proficient certificate the specialists should maintain the virtues in releasing their obligations. Patient views the specialists as God. It is for sure stunning to see that this honorable calling has taken "turn in the new past, and the accentuation is on bringing in cash by embracing degenerate practices which straightforwardly or in a roundabout way influence the patient. The significant aspect is the duty of the public authority and the MCI which in the present time are far away as they neglect the entire situation. Different frameworks and laws have been outlined yet they are neither followed nor clung to. This has given an open consent and a free hand to the Pharma organizations, Path Labs and the Doctors to play foul. The sole reason for existing is to accumulate the abundance at the expense of the helpless enduring patients. In this exploration I will uncover certain realities which are significantly stowed away from the oblivious masses. These facts will leave you dumbfounded and will give you a shock to understand what sorts of acts of neglect are being done by the nexus of the business it is truly grim to tell that everything rotates at the impulses of experts the debilitated turns out to be more wiped out intellectually actually and monetarily.

Actually the Path labs alongside the private clinics are treating their patients just to look for cash in their vaults. Individuals are getting hauled by every such thing and this has made the circumstance really floating. Clinical practice is a sacrosanct occupation that is profoundly connected with human feelings and assumptions, where bringing in cash is an easy errand. However, in the current situation it is an exceptionally extraordinary errand. Specialists for their own financial advantage recognize and prescribe the specific clinical stores to the patients to acquire their advantages through bonus and that is by and large accessible at a sky shooting cost.

## **HEALTH CARE AND INDIA**

Indian constitution allows free medical care administrations to all, that is the explanation a large portion of the region central command have government emergency clinic where practically every one of the offices from conclusion to therapy are liberated from cost or have least expense. Medical services businesses wild development have drawn openly just as private players and now in current time private area holds significant part in medical care industry. In a review of Indian brand value establishment the absolute business size is required to contact US\$ 160 billion by 2017 and US\$ 280 billion by 2020. Inescapable development of private area in the medical services industry has brought up numerous issues. The vast majority of the medical services costs are borne by the people. The costly expense of treatment has driven numerous families to carry on with their life in pitiable circumstance. Reclaiming use of the public authority in medical services industry has left no decision for the poor aside from going to private emergency clinics for their therapy

which put additional weight on their work. Interest in health care coverage strategy in India is settle for what is most convenient option. Non accessibility of government protection plan has made private areas to step in to this, and the impact is that they give heft of protection strategy plans, however they don't meet the total need of the treatment. Indian law just covers detailing of the medications yet not the piece of a medication. It implies that conventional medications that regularly become accessible after the patent insurances stood to a medication's unique engineer terminate are accessible in India a whole lot sooner. Indian drug organizations regularly re-engineer measures for assembling nonexclusive medications to make prescription accessible at much lower costs. Likewise, the majority of the exploration spending plan in Indian drug organizations is arranged at creating measures for combining drugs, instead of medication advancement. In India, the advancement help for wellbeing for a populace of 1.3 billion is an aggregate of \$650 million out of which the dominant part is accommodated youngster and infant care (\$230 million) and maternal wellbeing (\$110 million) according to the Ministry of Health, improvement of 50 innovations has been focused in the FY16, for the therapy of sicknesses like Cancer and TB.

### **OBJECTIVES OF THE STUDY**

1. To study the present condition of medical malpractice.
2. To study the present medical condition and effectiveness of Indian medical ethics law.
3. To present the condition of health care industries true picture.
4. To present the condition of poor patient.
5. India should have its own medical malpractice reform bills

### **HYPOTHESIS OF THE STUDY**

Doctor's profession is the noblest profession amongst all, but immoral and unethical practices should be brought to fore. By this research I just want to prove that this relation between doctor and patient has changed in to consumer and supplier. Now a day's doctor's profession has changed in to money making profession, now doctors do not care for their medical ethics they are here to make money in every field, by playing with the emotions of patients. The biggest problem regarding the private health care system is affordability cost for the patient, cost of health care is increasing rapidly and most of the people are unable to bear the expenses. The real cost of treatment, consumer is also forced to bear the cost of number of medical malpractices that have now completely engulfed the system. It has become impossible to work ethically, all the private hospitals have raised the bar so high that it either forces practitioners to deny their existence or indulge in unethical practices. With this research I want our government to fix ethics and accountability for medical practitioner, there is urgent need to formulate medical malpractice laws. Government should have authority to take disciplinary action against delinquent doctors.

### **RESEARCH METHODOLOGY**

Research Methodology is the explanation of various methods of research. It is a process of collecting data and information for the purpose of solving the problem systematically. It includes various methods in order to identify the problem and solve the problem with appropriate methodology. There are number of methods which can be used by research for the solution of the problem. In my research all the techniques which are used for the research in analysis purpose will be discussed one by one. The research would be exploratory in nature. It will be followed by descriptive research.

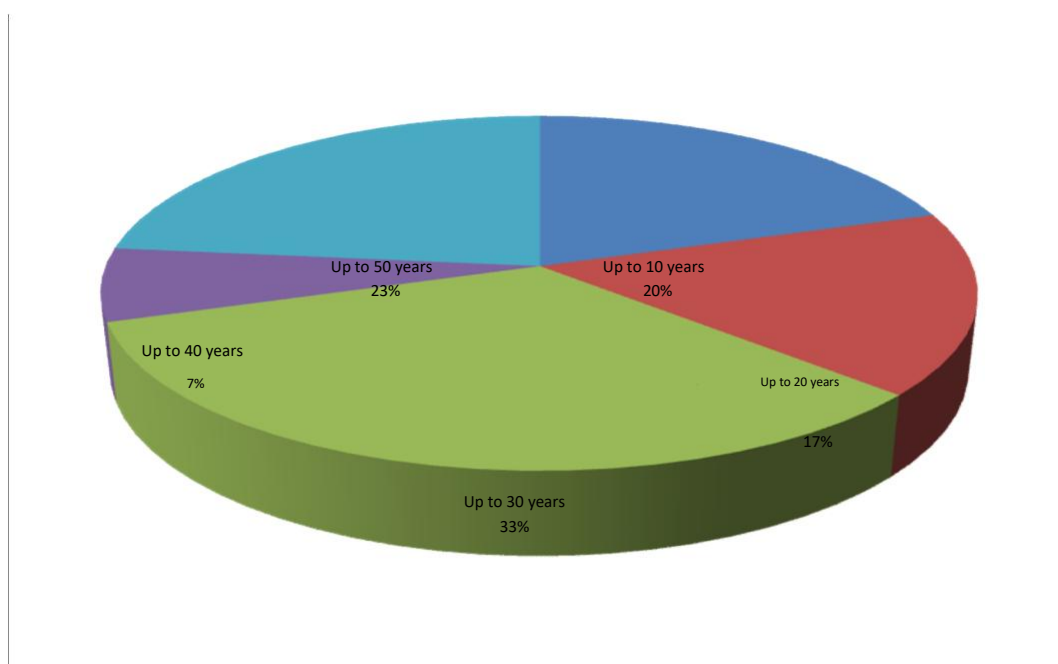
## DATA ANALYSIS RESULTS – DOCTOR’S QUESTIONNAIRE

### 1. How long have you been practicing medicine?

**Table 1**

<b>Experience in years</b>	<b>N</b>	<b>%</b>
Up to 10 years	6	20.00
Up to 20 years	5	16.67
Up to 30 years	10	33.33
Up to 40 years	2	6.67
Up to 50 years	7	23.33
<b>Total</b>	<b>30</b>	<b>100.00</b>

**Figure 1**



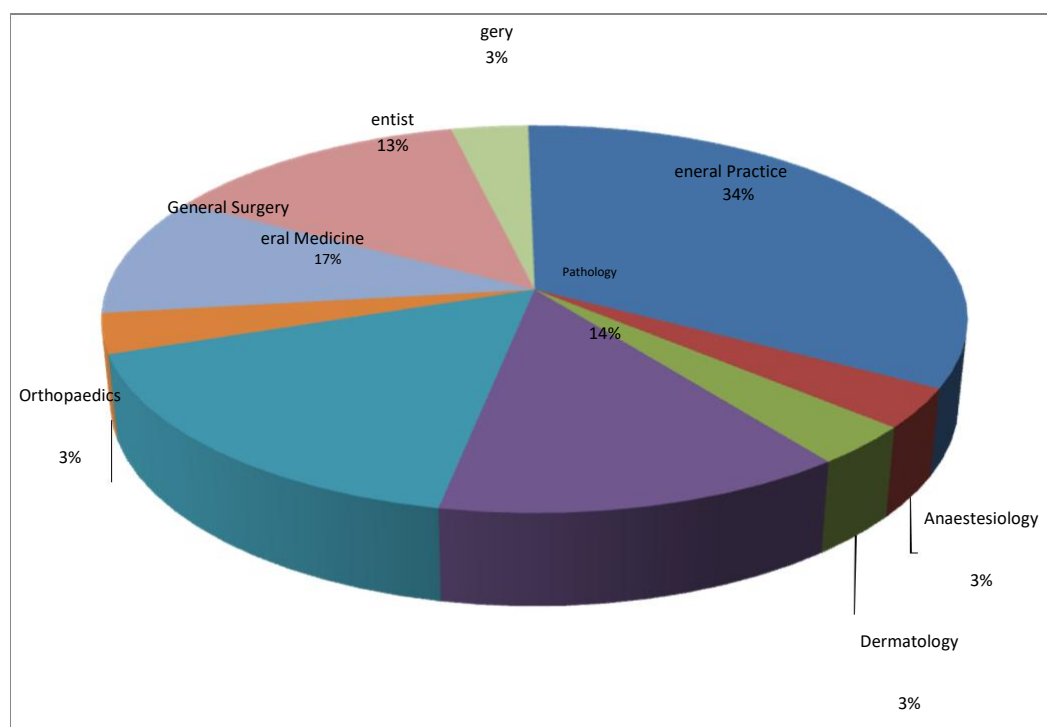
From The Table above, It can be ascertained that majority of the Doctors are having the experience of 21 to 30 years. In this 33.33% doctors are having experience of 21 to 30 years, and 20% of them having experience of 10years.16.67 having experience of 11 to 20years, 23.33 are having experience of 41 to 50 years and 6.67 are having of experience of 31 to 40 years.

## 2. What is the field of your practice?

**Table - 2**

Branch	N	%
General Practice	10	33.33
Anesthesiology	1	3.33
Dermatology	1	3.33
Pathology	4	13.33
General Medicine	5	16.67
Orthopedics	1	3.33
General Surgery	3	10.00
Dentist	4	13.33
Surgery	1	3.33
<b>Total</b>	<b>30</b>	<b>100.00</b>

**Figure - 2**



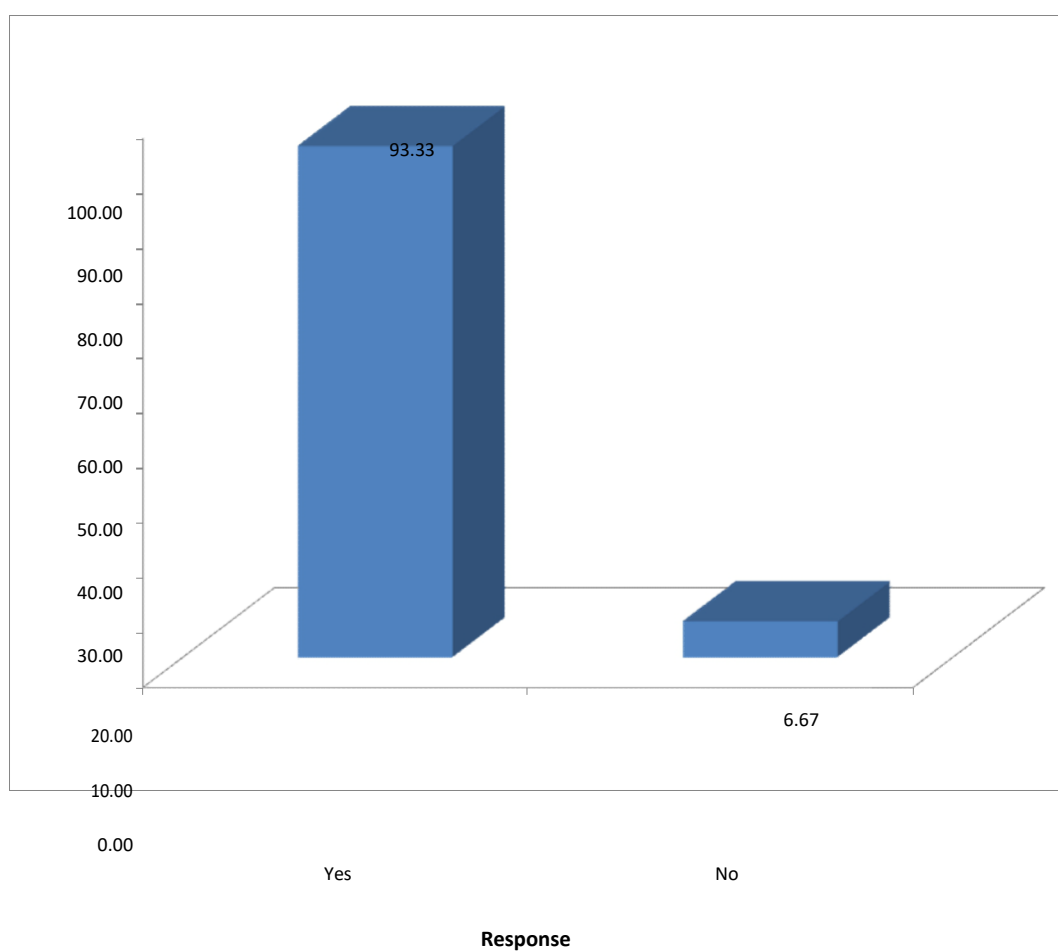
The above table shows of the different areas of doctor's practice in this 33.33% doctors are from General Practice, 16.67% from General Medicine, 13.33% were dentist, 13.33% were from Pathology field, 10.00% were from General Surgery, 3.33% were Anesthesiology, 3.33 were from Dermatology, 3.33 from Orthopedics, 3.33 were from Surgery.

### 3. Do you agree that unethical practice exist?

**Table 3**

Response	N	%
Yes	28	93.33
No	2	6.67
<b>Total</b>	<b>30</b>	<b>100.00</b>

**Figure - 3**

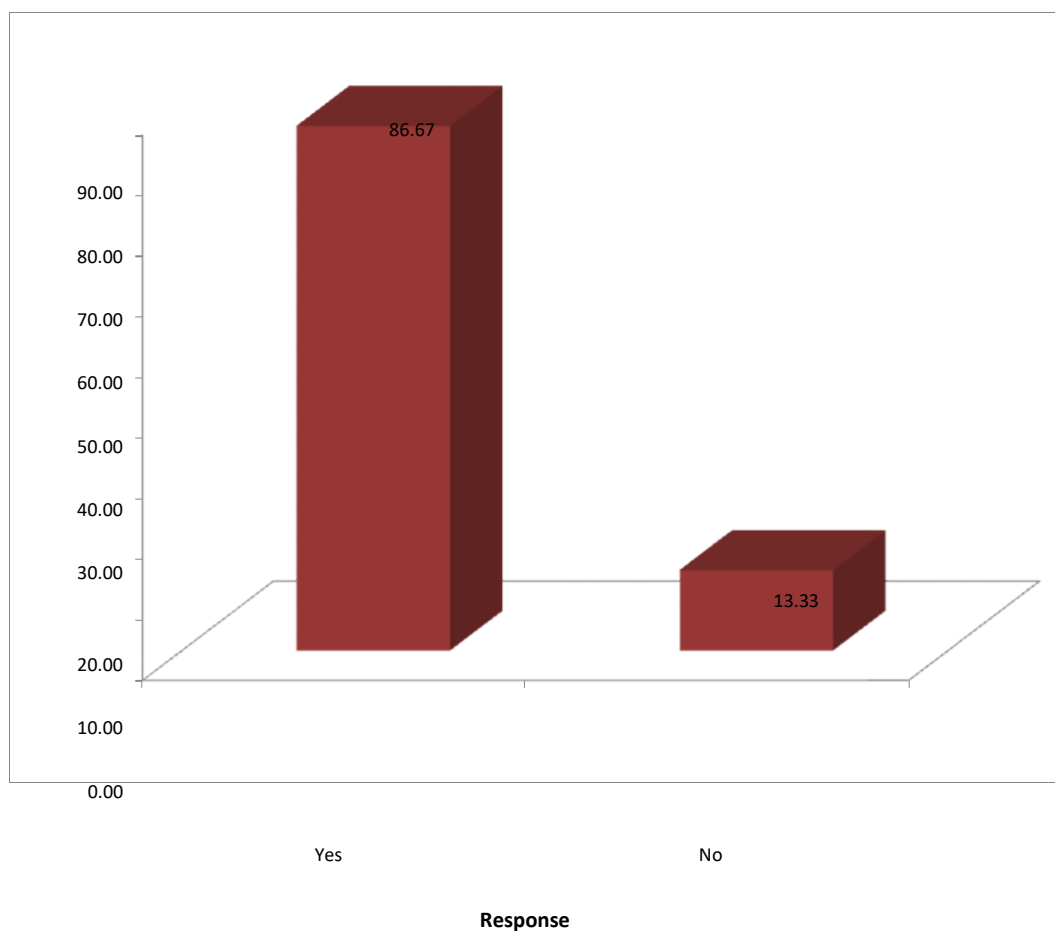


#### 4. Are you in favour of ethical practice?

**Table - 4**

Response	N	%
Yes	26	86.67
No	4	13.33
<b>Total</b>	<b>30</b>	<b>100.00</b>

**Figure - 4**



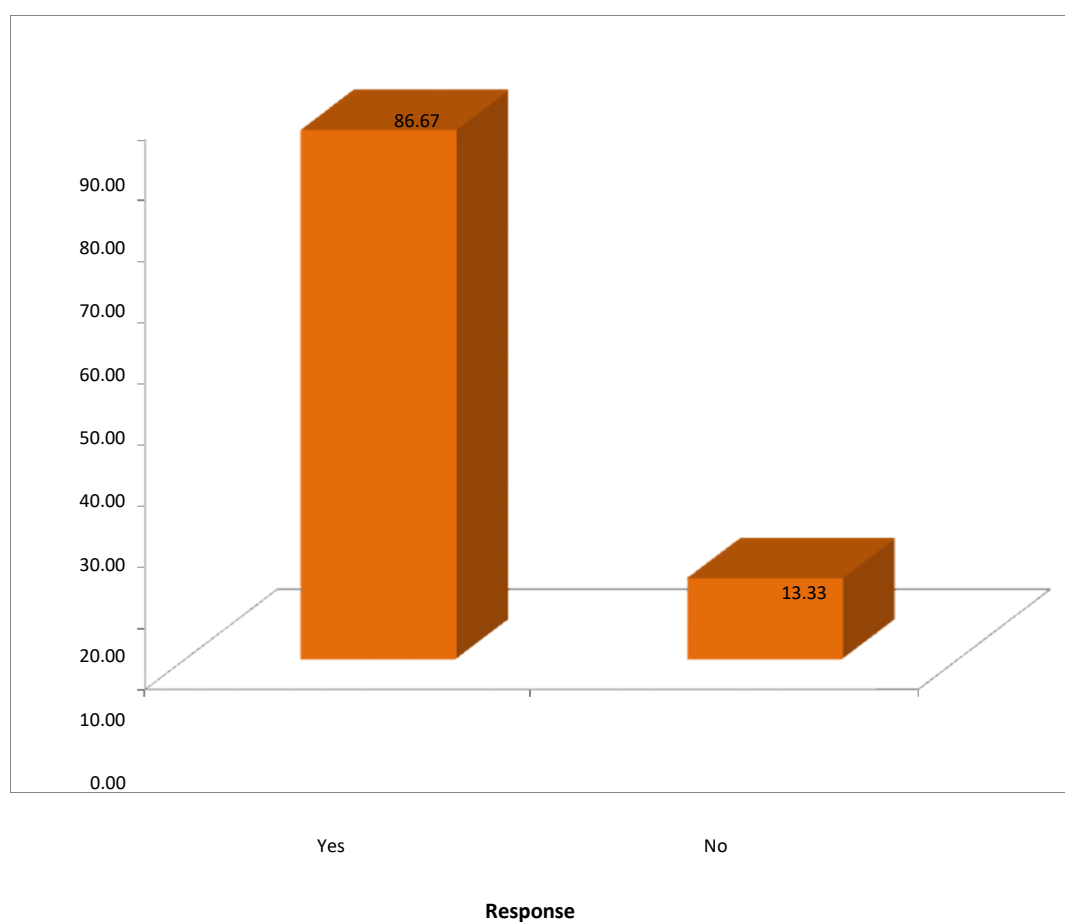
It can be ascertained from the above table that 86.67% of Doctors were in favour of Ethical practices and the rest 13.23% Doctors weren't in favour of Ethical Practices.

## 5. Are you aware of Unethical medical malpractice?

**Table - 5**

Response	N	%
Yes	26	86.67
No	4	13.33
<b>Total</b>	<b>30</b>	<b>100.00</b>

**Figure - 5**



The above question was related to awareness of the unethical medical practices in which we can clearly assume that most of the doctors that 86.67% were aware of Unethical medical practices and very less 13.33% doctors said No for these practices.

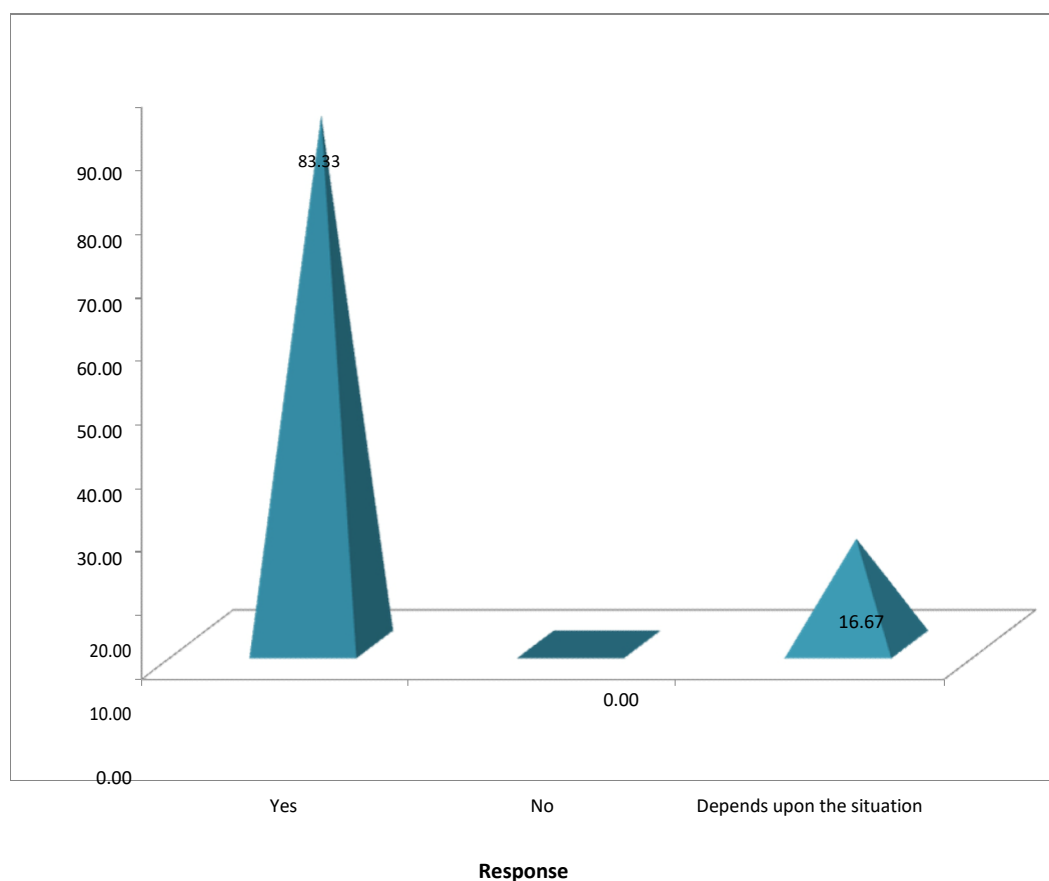


**6. Are you practicing under the guidelines and rules provided by Indian Medical Council?**

**Table No. 6**

Response	N	%
Yes	25	83.33
No	0	0.00
Depends upon the situation	5	16.67
<b>Total</b>	<b>30</b>	<b>100.00</b>

**Figure no. - 6**



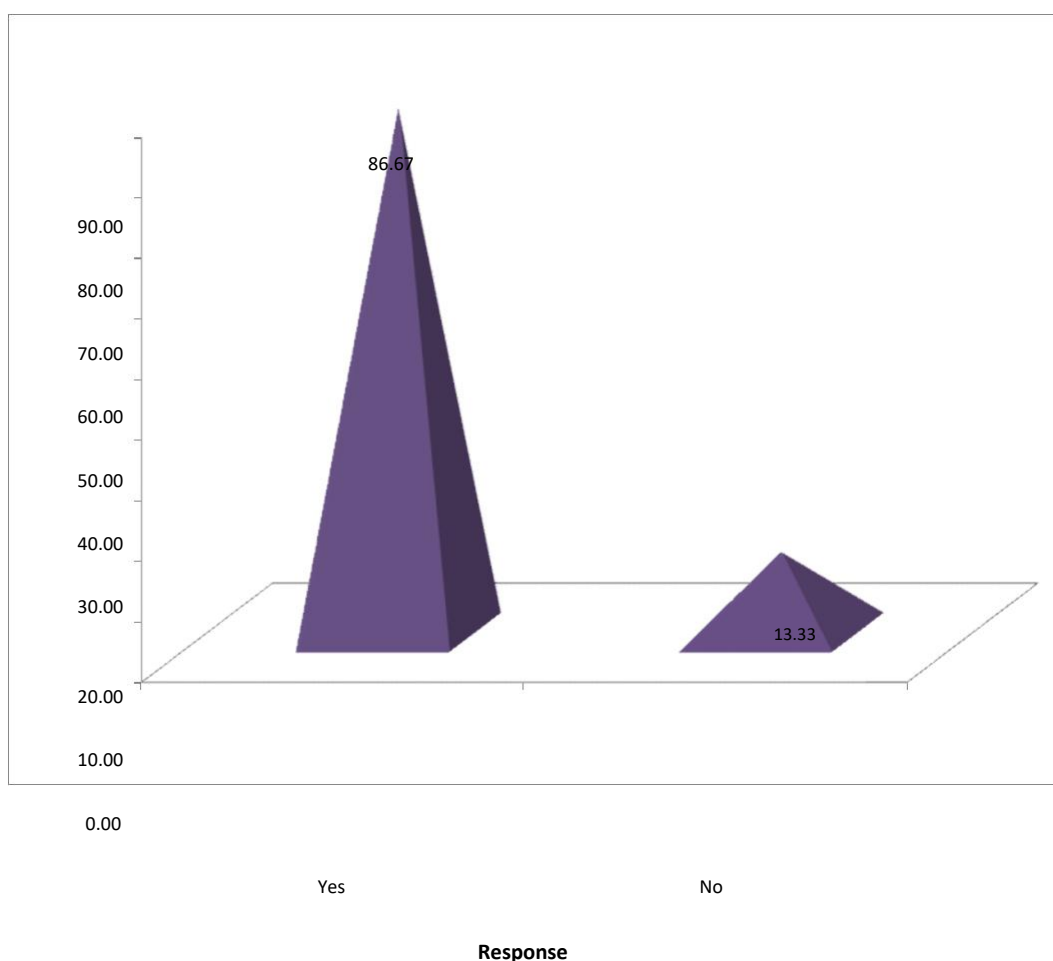
Based on following question Doctors who were practising under the guidelines provided by Indian Medical Council are 83.33% and 16.67% of doctors said that it depends on situation that they practice under the guideline or not.

**7. Are you aware about all the laws related to medical practices in India?**

**Table - 7**

<b>Response</b>	<b>N</b>	<b>%</b>
Yes	26	86.67
No	4	13.33
<b>Total</b>	<b>30</b>	<b>100.00</b>

**Figure - 7**



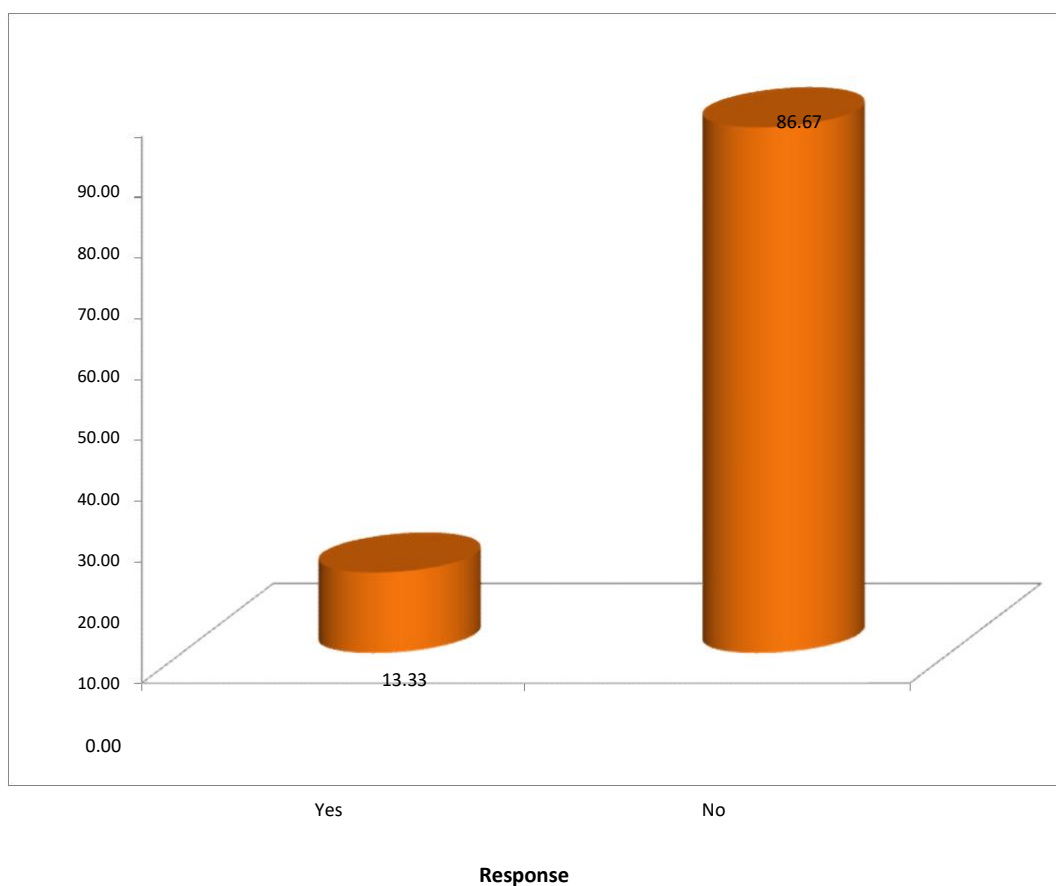
The above table shows that 86.67% Doctors are aware of the Laws related to Medical practice and the among the respondents only 13.33% Doctors are not aware.

## 8. Are you satisfied with current situation of medical field?

**Table -8**

Response	N	%
Yes	4	13.33
No	26	86.67
<b>Total</b>	<b>30</b>	<b>100.00</b>

**Figure - 8**



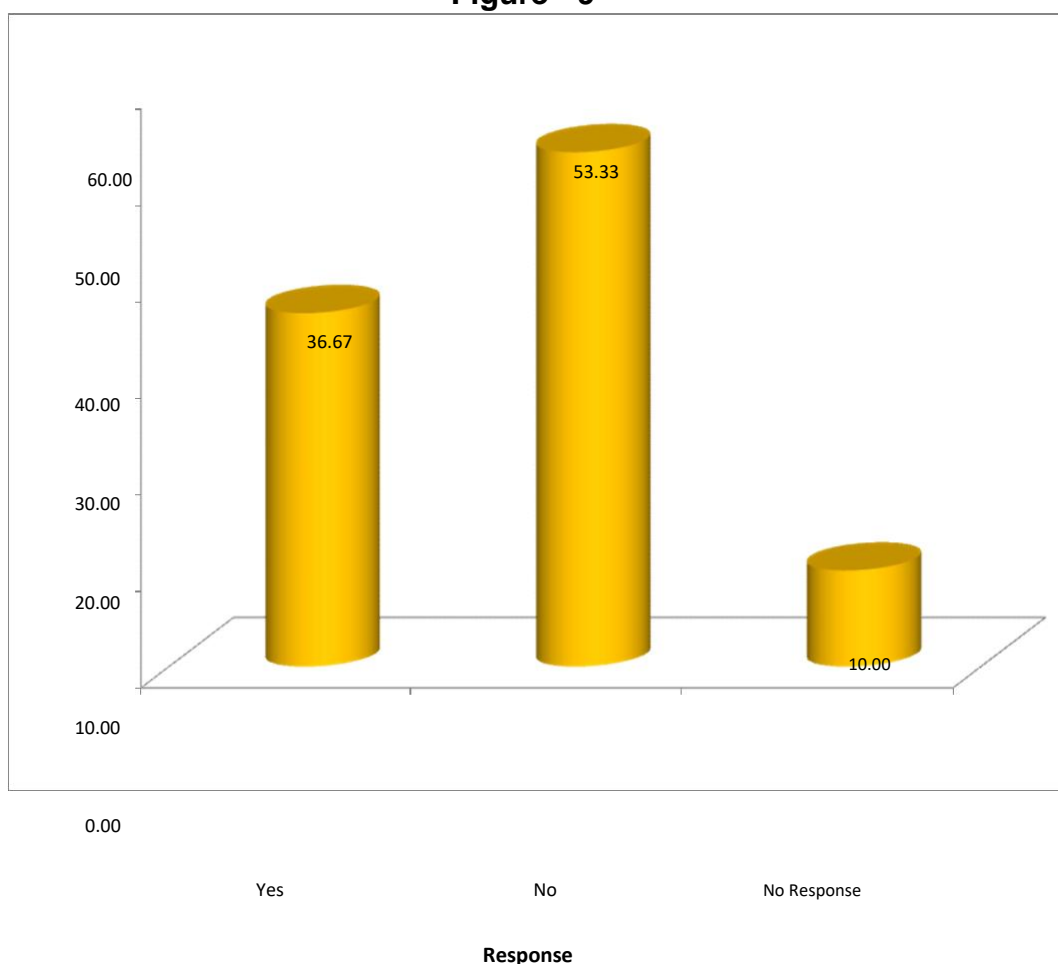
The above table shows the satisfaction of doctor in current Medical practices in which 86.67% of doctors are not satisfied and the rest 13.33% were satisfied.

## 9. Are you happy with incredible growth of private hospitals?

Table - 9

Response	N	%
Yes	11	36.67
No	16	53.33
No Response	3	10.00
<b>Total</b>	<b>30</b>	<b>100.00</b>

Figure - 9



It can be ascertained from the above tablet that many Doctors are not happy with the growth of Private Hospitals in which 36.67% Doctors were happy, 53.33% were not and the remaining 10% didn't answer the question

## ATTITUDE OF PATIENTS TOWARDS UNETHICAL MEDICAL PRACTICE

From the response receive by the patients about unethical medical practice by the doctors it was tried to see what is their (patients') attitude about unethical medical practice

by the doctors. On the basis of question given to the patients' about unethical medical practices by the doctors a score was calculated. High score means patients' think that doctors are involved in unethical medical practice. Further test was applied to see whether the mean score obtained by the patients' data about this is significantly high above the middle level that doctors may or may not practice unethical medical practice. Test result shows that the mean score of patients' about unethical medical practice by the doctor was significantly high above the average level ( $t = 7.09$ ,  $p > 0.001$ ) which shows that patients' believe that doctors do unethical medical practice.

## CONCLUSION

Doctors are professionals and it is their duty to take care. But in situations of medical emergencies, doctors do face risks which are one of the biggest reasons of medical negligence actions. These actions affect both doctors and patients in terms that the position and career of doctor is downgraded and life of patient is at risk along with financial losses, agony, health etc. To such negligence, only remedy available to the patients is consumer forum. The issue left for the courts to decide and with rising number of cases, takes long time to come to the conclusion. With doctors going for specialisation, there is lack of general practitioners and this is a financial burden for patients.

Every system suffers with certain shortcomings so does the medicine. Since, medicine is handled by human and this is bound to lead to errors but this does not mean that in the name of human error, one side should have upper hand and doctors be easily freed from their inability to cause harm because of the status they enjoy in the society. Britishers have British Medical Council Act to regulate medical doctors. After independence, Indian Medical Council Act, 1956 regulates medical practitioners.

The basis of medical negligence is failure in performance of one's duty with due care skill diligence and assiduity. The basic principle of medicine is being violated daily. Medicine is a noble profession and requires extra duty of care from doctors. In case of medical negligence by a doctor, three conditions should be simultaneously present to prosecute a doctor. These three conditions are there is a duty of doctor towards the patient, breach of duty by the doctor and this breach causes damages to the patient.

The liability due to medical negligence is either civil or criminal. Civil liability arises in case of breach of contract between the parties and the remedy is either damages or injunction. Criminal Liability is based upon the intention and remedy is under section 304-A, section 232, section 235 of the Indian Penal Code, the Medical Council Act, 1956, the Pre-natal Diagnostic techniques (Regulation and Prevention of Misuse) Act, 1994 etc. This legislation does not solely deal with medical negligence but impliedly much other legislation too.

The cases of medical negligence are dealt by civil and criminal courts at various levels like Supreme Courts, High Courts, National Commission and District Forums. The aim of awarding compensation is to restore the plaintiff his loss in monetary terms. The criteria to grant compensation are assessment of future earning done by multiplier method. This method results in uneven results with very low compensation is paid in case of injury of workmen and huge amount is paid in case of professionals. These income criteria give rise to inequality among victims.

Thus, the two problems being faced by the patients is that no legislation solely aimed to counter cases of medical negligence and inequality in amount of compensation paid. So, it is high time to establish a tribunal to deal with the cases of medical negligence. And these tribunals should be headed by legal and medical experts.

## **SUGGESTIONS**

### **Increase in the number of Medical Practitioners-**

This shortage of doctors is plaguing the healthcare and results into overburdened hospitals and stressed doctors. So, it is important to restructure the Medical Council of India (MCI) which is the medical regulatory body of India.

### **Increase in the number of Public Medical Establishments**

The numbers of medical practitioners should be increased. Public hospitals should not be burdened to the point breakage; the facilities should be increased in the form of more hospitals equipped with adequate doctors, nurses and other support staff. This will reduce pressure on existing system and will allow it to work attentively taking due care of the patient.

### **Increasing the know-how of existing medical practitioners is urgently required**

It is seen that there is a lack of knowledge in government medical practitioners and they continues prescribing drugs which were prevalent decades ago. Government should takes steps that doctors become aware of latest developments in the field of medicine, be it new diseases diagnosed or drugs developed due to research going on. Government can do this by organizing tests every fixed period and the doctors failing should be trained properly. This should also be the cases with nurses and other paramedical staff in order to provide best healthcare services to the patients. This procedure will encourage the habit of studying latest medical research in doctors.

### **Availability of Life saving drugs and other facilities**

Lack of drugs and facilities are also cause of medical negligence. So hospitals should be well equipped as this lack may become the cause of the doctor not being able to provide optimum care.

### **Fixing the Cost of Treatment**

In private practice, Medical experts say that 1.4% of the total population requires cataract surgeries every year. The government has tried to establish law in this regards but there is a lack of will. **The Clinical Establishments (Registration and Regulation) Act, 2010** makes registration of private hospitals compulsory and also prescribes minimum standards and facilities to be followed by private hospitals. This will help patients visiting private hospitals not to pay for the treatment which is not required. This is one of the unethical practice in which private hospitals indulge to increase the bills for the maximum profits.

To make healthcare services more affordable, apart from compliance to the standard of procedures and their subsequent rates, there is also a need to regulated costs of medical devices, drugs and consumables. This can be done by the active participation of the Drug Controller General of India and the National Pharmaceutical Pricing Authority (NPPA).

Each human body is different and so are the needs of the body. Before implementation of any law, experts should take this in mind and should allow doctors to take steps for each patient according to the condition of a patient. The government should become sensitive to the needs of its people and should act against greedy, unaccountable and uncaring

private health care system that is more interested in profits. Such establishments should not be allowed to escape in the garb of additional tests for the sake of the patient but in reality it is only concerned about making profits. In a capitalist country like Japan private hospitals deliver services as per the prices laid down by the government. This may give good results. India too should follow such models.

### **Patient Centered Approach**

To avoid unethical practice of doctors and the paramedical staff leading to medical negligence on their part, approach of medical doctors need to be changed. With focus on human rights in all over the world, it is important for doctors to treat their patients as equal partners in the process. So, this interpersonal communication skills of doctors should be enhanced and skill improvement should very much be made part of medical training. Medicine is an art whose magic and creative ability have long been recognized as residing in the interpersonal aspects of patient-physician relationship.

### **Medical Malpractice Claim Act: A Proposition**

To deal with the cases of medical negligence, there are no statutory guidelines in India. But, with rising number of cases of medical negligence, need of time is an act for Medical Malpractice Claims. For such act to be useful to curb medical negligence, two most useful purposes should be fulfilled. One is providing compensation against the damages caused due to medical negligence and secondly the award should act as a deterrent against future negligence by other doctors and hospitals. Defensive medicine is done when a medical doctor carries out procedures or treatments to avoid medical negligence.

### **Separate Medical Tribunals may be established**

In India, medical cases are dealt by consumer tribunals, the functioning of which is not up to the mark as the Supreme Court commented in the case of Dr. J.J. Merchant v. Srinath Chaturvedi held that “after the enactment of the Act, appropriate steps have not been taken by the Government for ensuring that the National Commission or the State Fora can function properly. Also the Consumer Dispute Redressal Agencies have not been fast enough in disposing cases. Several bottlenecks and shortcomings have also come to light in the implementation of the various provision of the Act.” The time which is taken by tribunals to decide cases not only causes mental agony to patients but also destroys reputation of doctor immediately. So, separate medical tribunals should be established to adjudicate medical negligence cases. Judges of these tribunals should have knowledge in medico-legal field, as otherwise they will have to rely on medical experts of the evidence, which may be tempered and also time consuming. Additionally, there should be Appellate Tribunals at the High Court level, which may be preferably presided over by Medico-Legal experts.

### **Assessment of compensation must be on humanitarian ground**

The legislation should also deal with the assessment of compensation in cases of medical negligence. Since no uniform criteria are followed, it leads to non-uniformity.

The two methods generally used to assess compensation are either by using multiplier method or by following Workmen Compensation Act’s schedule.

Compensation awarded has to be commensurate with the loss or injury suffered and cannot be arbitrarily fixed. As Supreme Court has mentioned in Nizam Institute’s case that the court has to strike a balance between the inflated and unreasonable demands of a victim and the equally untenable claim of the opposite party saying that nothing is payable. So, the assessment of compensation must be done by using a method which can be used uniformly throughout the country so that no person feels that injustice is done to him.

### **Medical Negligence Insurance' model should be followed**

To safeguard the interests of hospitals and doctors also, legislation should cover them either by setting up fund or by insuring doctors and hospitals for the safe rendering of medical services. In many developed countries, it is one of the requirements to have medical negligence insurance to practice healthcare. In the UK, this type of Insurance is called professional indemnity whereas in the USA, it is medical negligence insurance. The insurance covers litigation expenses and other expenses incurred for investigations, compensation etc. This will also cover negligence on the part of doctor or establishment, human error, incorrect diagnosis etc. Thus, doctors can be protected against the financial consequences. The insurance will give mental security to doctors to work. The insurance companies also arrange legal aid for the doctor. An act of medical negligence on part of doctor affects him in two ways- financial and social. The insurance provides security of money but it can never cover the reputation lost. So, the insurance cover can save doctors from rising number of cases of medical negligence.

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