



A Research Paper On

***An Analysis of Medical Negligence in the Context of Duty of Care of
at Private Hospitals and Clinics in Bangladesh***

COURSE TITLE: SUPERVISED DISSERTATION

COURSE CODE: LAW 406

DEPARTMENT OF LAW

EAST WEST UNIVERSITY

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ID: 2017-2-66-016

Date Of Submission: 17 May 2022

ACKNOWLEDGEMENT

I would like to thank Dr. Md. Mehedi Hasan, Assistant Professor and Chairperson of Department of Law, East West University for giving me the opportunity to do this research. I would like to thank my supervisor, Sk Md Habibullah , Senior lecturer of East West University for giving me all-out support in completing this thesis work. I cordially thank him from the core of my heart for extending his support inorganizing, finding references, correcting mistakes and coming up with novel ideas that were relevant to complete the paper. His scholarly discretion and advice helped me bear the heavy burden of doing this thesis work. Overall, this has been an amazing journey working on the paper as it has immensely helped me expand my knowledge in the topic illustrated.

I am also thankful to all my respected teachers of faculty of Law, East West University for their attention and sincere advice to complete my research.

I also express my gratitude to my parents who have been there to mentally support me and provided scopes to explore the field online. Finally, I thank my almighty Allah to give me strength to conduct this research.

DECLARATION

I am Md. Luhanujjaman Basunia , hereby declares that the research paper named “**An Analysis of Medical Negligence in the Context of Duty of Care of at Private Hospitals and Clinics in Bangladesh**” is an original perused under the supervision of Sk. Md. Habibullah, Senior Lecturer, Department of Law, East West University.

I also declare that this paper is free from plagiarism and has not been submitted to other institutions or any other places.

I, therefore, confirm that the research paper has been composed and authored solely by myself as a part of the fulfillment of the LLB degree at East West University.

Date- 17/05/2022

ABSTRACT

Medical Negligence in Bangladesh has resulted from a natural disaster, and various concerns have arisen as a result. The research also discovered several shortcomings in our country's statutory laws regarding medical negligence. The primary research method was evaluating some recent and prior medical negligence compensation that occurred, particularly in the last 10 years. The primary research approach, on the other hand, was an examination of secondary sources such as journals, books, and internet articles. Medical negligence is an obvious violation of the right to health. Because the right to health is one of the fundamental principles of state policy, the government is obligated to safeguard it. Many nations throughout the world have passed medical negligence laws. Bangladesh's situation differs from that of other countries. There are several directives and legislation, however they are not fully codified. In this paper, an attempt has been made to identify gaps in current regulations, and recommendations have been made to prevent healthcare providers from violating patients' health rights.

TABLE OF CONTENT

Chapter - I: Introduction

Introduction	8
1.1 Hypothesis and research Questions	9
1.2 Aims and Objectives of Research	9
1.3 Scope Of The Research	9
1.4 Research Methodology	9
1.5 Limitation of the Research	10

Chapter - II: Medical negligence ,Medical Malpractice, Medical practitioner in Bangladesh

2.1 Definition of Medical Negligence	11
2.2 Types Of Medical Negligence In Bangladesh	11
2.3 Medical MalPractice	12
2.4 Difference between medical negligence and medical malpractice	14
2.5 Medical Practitioner	14
2.6 Duties and Liabilities	14
2.7 Professionalism	16

Chapter - III: Duty of Care scenario in Bangladesh's Medical and hospital

3.1 Government medical Scenario in Bangladesh	17
3.2 Private Medical & Hospital's Scenario in Bangladesh	18

3.3 Analysis	20
3.4 Duty Of Care In Private Medical & Hospital	21
3.5 Duty Of Care In Private Clinic	22
3.6 The Effects Related to Duty of Care	24

Chapter -IV: Legal issues & Remedies Under The Existing Law of Bangladesh

4.1 Legal Source Of Duty Of Care.....	25
4.2 Constitutional Remedies	25
4.3 Departmental Remedies	26
4.4 Civil Remedies	27
4.5 Criminal Remedies	28
4.6 Consumers Rights Protection Act, 2009	29
4.7 Medical Practice and Private Clinics and Labs (Regulation) Ordinance 1982	30
4.8 Medical and Dental Council Act, 2010	30
4.9 Judicial Activism and case analysis	31

Chapter -V: Findings

5.1 Absence of separate medical law	32
5.2 Lack of Duty of Care	34
5.3 Difficulties regarding Proof of negligence	34
5.4 Complex procedure for Filing suit	35

Chapter - VI: Recommendation

6.1 Specified laws on medical negligence	36
6.2 Special Court & Camera Trail	36
6.3 Alternative Dispute Resolution - ADR	37
6.4 Statutory Recommendation	37
6.5 Recommendation For Government	38
6.6 Recommendation for BMDC	38

Chapter - VIII: Concluding Chapter

Conclusion	39
Bibliography	40

Chapter - I

Introduction

Medical profession is one of the noble professions to serve the suffering humanity. General notion is that doctors are like god for the patient. So, it is presumed that doctors will not commit mistakes knowingly but the fact is that doctors are also fallible. Negligence by a doctor may create greater problems than a normal human being. Normally, a medical man is not responsible to god or man for such evil consequences of his prescriptions or surgical operation as they are entirely beyond his will and therefore independent of his control.¹ But, on the other hand if his mistakes arise from his ignorance or want of skill, he is to blame. He should not have undertaken the case for which he knew that he was not qualified.²

Nowadays people are facing various kinds of malpractices in their daily life for that reason they lose their life. The term medical negligence is not only including malpractice or professional misconduct, it also includes fraudulent misrepresentation, taking advantage of the patent situation etc. But people are not aware of their most important right and that is called the right to life. In our Country if a patient loses or suffers any injury due to negligence or malpractice, there is an option to file a suit. Due to the absence of proper and effective law, is one of the main reasons medical practitioners are taking advantage of their profession. Our constitution gives us a fundamental right for example Article 32 of the Constitution of People's Republic of Bangladesh which ensures our right to life.³

In a country like Bangladesh there are many ways to file a suit for medical negligence under civil, criminal and other special laws but remedies are not Sufficient because the amount of compensation is still not acknowledged by the court or we can say judicial remedies are still unstable. If we want to establish a proper amount of compensation, our lower courts should also acknowledge it like our High Court did, otherwise people will not get a proper or sufficient

¹ "Modi's Medical Jurisprudence and Toxicology" by K. Mathi Haran and Amrit K. Patriak – Page 148, 2, 3rd Edition.

² (PGA, Moral Principle and Medical Practice Editorial Antiseptic July 1127, pp. 367-70).

³ The Constitution of the People's Republic of Bangladesh, Article 32

compensation under this negligence. As these issues are the main problem for not getting proper remedies.

1.1 Research Questions

A number of questions can be framed on this research topic. However, this research has been limited to following questions to fulfill the purpose of the research.

1. What is the current scenario of wrongs related to duty of care committed in the private medical and hospital sector of Bangladesh and what are the main reasons behind it?
2. Whether the existing laws relating to medical negligence are sufficient to provide remedy to the victims? If not, then what are the best possible solutions?

1.2 Aims and Objectives of the Research

Every study has some aims and objectives. After having a good look on the research paper, one will be able to find out the actual scenario of medical negligence in Bangladesh. Most importantly the remedy which can be avail by a patient against the doctors in the event of medical negligence. This study seeks to find out the lacunas in the existing laws. Further, the study seeks to provide some reform proposals in order to make things less complicated and easier for the victims. Furthermore, this study will give a clear view about medical negligence and duty of care about Private medical and hospital.

1.3 Scope Of The Research

Every research paper has a nature and scope. So my research paper is not outside its scope. Because the research topic is "An Analysis of Medical Negligence in the Context of Duty of Care at Private Hospitals and Clinics in Bangladesh" it is connected to analytical, journal, newspaper, historical, scientific, and systematic approaches. Most of the time, the consequences of medical neglect are fatal. The major focus of this research is the duty of care in our country's

private clinics and hospitals.. Free medical treatment is provided by the government medical but in private clinics or hospitals they charge a large amount of money for service. So the question arises here for their lack of care. The Duty of care in private clinics and hospitals is to keep them in a bind with law so that they are forced to obey the duty of care.

1.4 Research Methodology

The research has been conducted with assistance from the data of the secondary sources. Books, articles, newspaper writings were the main source of this paper. Information from newspapers has been used extensively though the number of references collected from journals and books is limited. In addition, some international Articles are used. The approach was driven by “Qualitative Research Methodology”. The footnote and bibliography have been referred to in the OSCOLA referencing system.

1.5 Limitation of the Research

Since it is a gray area of law in the context of Bangladesh, it is difficult for me to collect all the information together. Instead four months is a short time to conduct research on a topic like medical negligence. Moreover, the laws regarding this topic are scattered. It is difficult for me to collect and peruse all these laws. There are not many articles written on that topic and it is very difficult to assemble all the things together.

Chapter II

Medical negligence ,Medical Malpractice, Medical practitioner in Bangladesh

Medical negligence may result in a civil action by the injured party or a criminal prosecution by the state. Medical negligence may result in a civil action by the injured party (claimant) or a

criminal prosecution by the state. Medical negligence is defined as an act of omission by a professional health-care provider (particularly a physician, dentist, nurse, medical assistant, pharmacist, or any other medical service provider) that lowers his or her accepted standard of practice and causes injury or even death to the patient.⁴ There are certain elements of negligence, in a lawsuit these elements must be proved in order to get the remedy. First of all, there must be a duty on the part of the defendant or the defendant must be under an obligation to perform a duty. Now a question may arise whether a medical professional owned any duty. Apart from Hippocratic oath and ethical point of view, when a medical professional agrees to treat a patient, he is under obligation for performing his duty.

2.1 Definition of Medical Negligence

The word negligence implies a breach of duty, where a person is under an obligation to perform a duty but he refrains from doing so. There are certain elements of negligence, in a lawsuit these elements must be proved in order to get the remedy. First of all, there must be a duty on the part of the defendant or the defendant must be under an obligation to perform a duty. Now a question may arise whether a medical professional owned any duty. Apart from Hippocratic oath and ethical point of view, when a medical professional agrees to treat a patient, he is under obligation for performing his duty.⁵

2.2 Types Of Medical Negligence In Bangladesh

In our country the nature of medical negligence is very complex. Even sometimes the smallest mistake can turn into a big medical negligence. Some common malpractices are-

⁴ Hossaini, M.R.I. (2017), "Medical negligence in Bangladesh: criminal, civil and constitutional remedies", *International Journal of Law and Management*, Vol. 59 No. 6, pp. 1109-1115>/ Accessed 30 april 2022

⁵ <https://www.lawyersjurists.com/article/medical-negligence-law-and-practice-in-bangladesh/>> accessed on 20 april 2022

- **Misdiagnosis-** after the admission of the patient, this is the first action or first step which is taken by the doctor and that is they have to supervise the test so that they can acknowledge the original problem and can prescribe the proper medicine. In the case called Dr. Kamal Saha vs. Dr. Sukumar Mukherjee and Ors court held that negligence in diagnosis or misdiagnosis is also considered as a medical malpractice or negligence.⁶
- **Error in Anesthesia-** for operation anesthesia is a very important thing. Anesthesia requires an expert hand however sometimes a non-anesthesiologist performing his or her duty in hurry which may cause death sometimes. On 23 December 2020 MrShirazulislam died because of extra assets.
- **Medical negligence and C-sections-** C- sections means a cesarean section. If the medical staff fails to perform or delay this procedure in hope of delivering the baby in a normal way, then this action may put the mother and baby`s life in danger.⁷
- **Negligent long term treatment-** In case of long term treatment sometimes doctors involve their assistant , nurse ,intern student for taking care of patients. They are inexperienced and it can be risky for a patient's life.⁸
- **Surgical error** – It is the most critical action because it requires boundless skill and experiences otherwise a small mistake can take peoples life.⁹

2.3 Medical Malpractice

Medical malpractice is defined as an act or omission by a medical professional that deviates from acknowledged medical standard practice. The acknowledged medical standard practice relates to whether the care would be prescribed to a patient by another physician with the same or comparable education and background under the same or similar conditions. Medical

⁶ GayathriVaidyanathan, ‘A Landmark Turn in India’s Medical Negligence Law’ (*Ministry of External Affairs Government of India*, 31 October 2013) <<https://mea.gov.in/articles-in-foreign-media.htm?dtl/22423/A+Landmark+Turn+in+Indias+Medical+Negligence+Law/>> accessed 28 August 20212

⁷ Sheikh Mohammad TowhidulKarim, Mohammad Ridwan Ghani and Mohammad Hasan Murad, ‘Medical Negligence Laws and Patient Safety in Bangladesh: An analysis’ (2013) 5 *Journal of Alternative Perspectives in the Social Sciences* 424, /accessed on 15 april 2022

⁸ Rafia Khatun, ‘Medical Negligence Issues in Bangladesh: An Urge for a Separate Medical Negligence Law’ (2020) 8 *Jahangirnagar University Journal of Law* 127 ,/accessed on 15 april 2022

⁹ *ibid*

practitioners that are irresponsible are rarely willing to accept fault or misconduct. As a result, victims frequently engage teams of attorneys and detectives to find the proof.

Medical misconduct, after heart disease and cancer, is the third biggest cause of mortality in the United States, accounting for at least 250,000 fatalities per year. From June 1995 to September 2008, 504 cases of medical misconduct were reported in Bangladesh, according to a study by Ain O Salish Kendra. The following requirements must be met in order for a claim of medical malpractice to be valid:

The health care provider owes a duty of care; failure to fulfill that responsibility; claimant incurring compensable harm; and the harm and the professional's behavior are in close proximity. In *Le Lievre v Gould Case*, justice Smith LJ held that a duty of care existed where a Medical malpractice includes a variety of situations.¹⁰

Medical malpractice is most commonly caused by healthcare workers' lack of accountability. To prevent medical malpractice, there is no all-encompassing, exact, and defined regulation. The majority of individuals are hesitant to sue doctors and are unaware of the legal options open to them in the event of medical negligence. Existing regulations are complicated, and there are additional barriers to prosecuting experts in the private sector. Furthermore, according to a World Health Organization estimate, medical spending should be \$34 per person, however it is just \$5 in Bangladesh. The doctor-to-nurse ratio is 1:0.48, although it should be 1:3.¹¹ Medical practitioners in the public sector are frequently unconcerned with their public duty and are more focused with their private pay. All of these circumstances contribute to rampant medical malpractice in Bangladesh, and as a result, disgruntled citizens are flocking to foreign nations in the hope of receiving better care.¹²

¹⁰ <https://www.readcube.com/articles/10.9790%2F1959-1438287/>>Accessed 30 april 2022

¹¹ *ibid*

¹² Md. Rafiqul Islam Hossaini, 'Medical Negligence in Bangladesh: Criminal, Civil and Constitutional Remedies' (2017) 59(6) International Journal of Law and Management 1109>/ .accessed on 30 april 2022

2.4 Difference between medical negligence and medical malpractice

Medical negligence is defined as a mistake that results in unintentional injury to a patient. Medical malpractice occurs when a medical professional fails to adhere to the appropriate standard of care.¹³ Medical malpractice is a legal cause of action that occurs when a medical or health expert deviates from standards in their field, causing damage to a patient, by a careless act or omission. Errors in diagnosis, treatment, aftercare or health management may result in carelessness. When a medical professional's action fails to give proper care it results in medical negligence. And if due to medical negligence the patient suffers an injury or it causes any damage to the patient's health, it becomes medical malpractice. Medical malpractice occurs when a doctor's carelessness results in an injury to a patient. When a patient can demonstrate all of the legal aspects that make up medical malpractice, they can file a lawsuit against the negligent medical practitioner to seek compensation for their injuries.

2.5 Medical Practitioner

A medical practitioner is a type of doctor. A medical practitioner is someone who has a valid registration with the Government's Medical Council for Medicine or Homeopathy and is therefore authorized to practice medicine within its jurisdiction, as well as someone who is acting within the scope and authority of such license. The insured or close family members should not be the registered practitioner.

2.6 Duties and Liabilities

Medical professional training places growing demands on time, both for those who train and for those who receive it, chances to study areas of practice or future practice other than those that are

13

<https://www.spectorlawgroup.com/medical-negligence-vs-malpractice-whats-difference/#:~:text=In%20simple%20terms%2C%20medical%20negligence,the%20proper%20standard%20of%20care/>>

solely clinical may be reduced as a result. As a result, a significant effort must be made (and is being done in a number of institutions) to include some larger aspects of practice into medical education and training in order to produce more complete and well-informed practitioners. The practitioner's function is essentially social and psychological in nature. The law establishes boundaries by stating that some actions are prohibited or will not be permitted. Between the commonplace and the professionally responsible, there is a world of difference.

Professionalism, it is said, entails both the moral and practical obligations of recognizing the law's bounds. Knowing such boundaries means being aware of the circumstances in which the law reserves the power to declare a therapeutic practice to be unlawful. Knowing the vast limits that the law purports to put on clinical practice, on the other hand, brings into sharp focus the true flexibility with which professional autonomy and clinical judgment may be practiced.¹⁴ A medical practitioner owes his patient certain professional obligations, and a breach of any of these professional duties might result in a medical negligence claim against the medical practitioner. Before performing diagnostic testing or therapeutic care, the medical practitioner must get the patient's prior informed permission. In the process of performing their duties, medical practitioners are occasionally irresponsible in adhering to their professional code of conduct.

The "Hippocratic Oath," which the medical professionals swear when they are ordained into the medical fraternity, enshrines the legal obligations, ethical obligations, and moral responsibilities of medical practitioners.¹⁵ They are outlined in the Medical and Dental Practitioners Act as well as the Medical Practitioners' Professional Code Rules. In *ABATAN v. AWUDU* (2003) 10 NWLR PT 829 PG 451, It was held that "the connection between a medical practitioner and his patient is one of trust and confidence, a relationship in which one has the authority and obligation to treat and return the other to medical and physical well-being." This responsibility of trust and confidence stems from the medical practitioner's fiduciary relationship with his patient.¹⁶

¹⁴ J. D. FINCH, B_A., B.C.L.(OXON.), Faculty of Law, University of Leicester, Leicester

¹⁵ <https://www.ejusticeindia.com/>> accessed 29 april 2022

¹⁶ https://www.researchgate.net/publication/273168242_Ethico-legal_aspects_of_hospital-based_blood_transfusion_practice_implications_of_professional_negligence_to_medical_practitioners_a_review/> accessed 29 april 2022

Negligence is the most prevalent and powerful ground of legal liability for medical practitioners.¹⁷ Thus, if a health care professional gives therapy to a patient carelessly and the patient suffers harm as a result, the patient may sue the medical practitioner for the injury incurred. The rationale for a health care provider's responsibility for medical negligence is that anybody hurt by the activities of such a provider ought to be compensated by the injured party. Criminal culpability definitely extends to health care practitioners, because the goal of criminal prosecution is to punish the perpetrator.

2.7 Professionalism

Medical professionalism denotes a set of attitudes, behaviors, and relationships that support the public's faith in doctors. Patients' and families' trust and confidence are based on their awareness that the physician would protect patient information. In some cases, such as teenage sexual health treatment, anonymity can be preserved even if the patient is a juvenile. The major reason for professionalism and teamwork is to ensure the safety of patients. Health care is provided by teams of experts who must communicate effectively while adhering to the ideals of honesty, respect for others, confidentiality, and accountability for their actions. The five professional conceptions in healthcare, These were divided into five groups: adherence to ethical practice norms (honesty, integrity, confidentiality, and so on); effective relationships with patients and individuals important to patients (courtesy, empathy, respect, and so on); effective contacts with other people working in the health system.

Chapter - III

Duty of Care Scenario in Bangladesh's Medical and hospital

Bangladesh has a good healthcare network covering both rural and urban areas. There are 3,976 healthcare facilities in the public sector and 975 privately-run hospitals/clinics.¹⁸ To perform

¹⁷ Br. J. Anaesth. (1987), *LEGAL OBLIGATIONS AND RESPONSIBILITIES OF THE MEDICAL PRACTITIONER* 59, 870-876/56 Holborn Viaduct, London EC1A 2EX/> accessed 30 april 2022

¹⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2754001/>> accessed 29 april 2022

reasonable care, health practitioners have a common obligation to take reasonable care for the patient's safety and well-being. Breach of the obligation may give rise to a claim for damages. A court will frequently require information from medical professionals concerning right processes and normal protections followed in specific medical treatments before deciding whether or not a particular health practitioner was so reckless in administering that to a patient as to be considered negligent. The significance of negligence prevention via risk reduction, harm avoidance, and promotion of excellent practices above remedial remedy through damages. A survey by the Center for International Epidemiological Training (CIET), Canada, showed that, in Bangladesh, 13% of treatment-seekers use government services, 27% use private/NGO services, and 60% unqualified services.¹⁹

3.1 Government medical Scenario in Bangladesh

A public hospital, often known as a government hospital, is one that is owned and funded by the government. This type of hospital offers free medical care, with the cost paid by the hospital's finances. The vast majority of hospitals across the world are free and open to the public.

Because the majority of the people in this nation are impoverished and have a bad economic situation. As a result, people rely on public hospitals for medical treatment. The state of public hospitals, on the other hand, is deplorable. Despite financial assistance for the health sector, the general people are not benefiting due to massive corruption at the administrative and personal levels.²⁰ They do not carry out their responsibilities effectively. This signifies that public hospital physicians are not doing their jobs. In addition, the nurses are not paying attention to their responsibilities. The items aren't doing their jobs adequately either. The patients are being demanded to pay money or Brive. Patients are consistently neglected by surgeons in particular. Some surgeons instruct their patients to go to his or her private chamber.

The physicians at the public hospital do not consider the patients to be human beings. They are constantly unconcerned about the sufferer. For example, Omar Faruk, 24, the son of Abdul Zabbar of Bazuriya village in Dinajpur's Bochaganj upazila, died as a result of suspected doctor

¹⁹ Cockcroft A, Milne D, Anderson N. *Bangladesh health and population sector programme: third service delivery survey 2003: final report*. Ottawa: CIETcanada; 2004. pp. xxiii–85./> accessed 29 april 2022

²⁰ <https://archive.dhakatribune.com/bangladesh/dhaka/2020/06/06/public-health-system-held-back-by-corruption/>> accessed on 6 may 2022

neglect at Dinajpur Medical College and Hospital. Faruk was rushed to the hospital on Thursday night after ingesting poison. Faruk's relatives claim he died around 4:30 p.m. on Sat Jun 19, 2010 as a result of the physicians' incompetence. In the other incident, Tahera Begum, 20, who was expecting, died at Panchagarh Mother and Child Welfare Centre Thursday Jun 2010 in the evening. She was admitted there with labor pain in the morning on Jun 18, 2010. After admission, she remained unattended by any doctor till evening. At about 6:00 pm in the evening, a nurse of the center pushed an injection to Tahera following instructions of Dr Akhter Jahan. After 10 minutes of pushing the injection, she became unconscious. Sensing something wrong, the doctor ordered to shift the patient to Panchagarh Sadar hospital by the ambulance of the center without saying anything to the patient's attendants. She was rushed to the sadar hospital where the doctor declared her dead. Later, police arrested Dr Jahan following a murder case filed by victim's father-in-law Isahak Ali and sent her to Panchagarh Chief Judicial Magistrate's Court. The court sent Dr Jahan to jail.²¹ These are not the only instances of a doctor's medical carelessness at a public hospital. There are countless incidents that demonstrate medical carelessness by doctors at public hospitals.

3.2 Private Clinics & Hospitals Scenario in Bangladesh

Private hospitals are those that are operated and funded by a person or a group of individuals. Private hospitals have advantages since they are outfitted with cutting-edge technology and medical supplies. When it comes to treating individuals, most private hospitals have strong regulations and standards in place since the owner is accountable for his or her hospital's reputation in the market. According to the The Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982,²² every private clinic must provide the following facilities:

- (a) proper accommodation with a cleanliness environment.
- (b) at least eighty square feet of floor space for each patient.
- (c) an air-conditioned operation theater.
- (d) essential instruments as stated in the Ordinance.
- (e) adequate supply of life-saving pharmaceuticals and medicines and,
- (f) such number of full-time registered medical practitioners, nurses, and otologists as necessary.

It is divided into profit and non-profit, formal and informal, domestic and international subcategories. The private health sector, which includes for-profit and not-for-profit enterprises, may have charitable or commercial goals. Faith-based organizations (FBOs), non-governmental

²¹ <https://www.thedailystar.net/news-detail-143251/> accessed 29 april 2022

²² Section 9 of The Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982
> accessed o 5 may 2022

organizations (NGOs), and civil society groups are further examples of non-profit organizations (CSOs).²³

Medical care providers, physicians, specialized hospitals and clinics, nursing homes, hospitals, diagnostic centers, pathology laboratories, and wellness centers are all part of the private healthcare business. In terms of income and employment, Bangladesh's private healthcare business has grown to be one of the country's major service-sector companies. For the previous few decades, the healthcare business has grown steadily. An ever-increasing population, with increased healthcare demands and a growing disparity between the number of available beds and the number of patients, would necessitate an expansion in the number of healthcare service providers. Taking advantage of the situation, several international players are eager to enter the country. It is projected that Bangladeshis spend six times more money in private hospitals than in state hospitals, contributing to a higher flow of cash and resources in the private health care industry. The private sector began to function as a supplement to the public sector, and over time, the private sector began to establish facilities around the country that provided cheap services. However, because of the quality, efficiency, and dependability of the services, private healthcare institutions began to acquire popularity among the general population.

Low-cost category private clinics in city regions, particularly in Dhaka, only concern was selling service. Their major goal is to make money by running a clinic in one way or another. To market their clinics, they frequently place them near government hospitals or along a busy road, so that they may acquire patients even if they do not provide sufficient quality and services by focusing on their goods. The hospitals' eye-catching signboards with information about numerous notable doctors are a profitable sales tactic for them.

On the other hand, hospitals recognized as world standard hospitals, such as United Hospital, Square Hospital, and Apollo Hospital, believe in the social marketing notion of delivering excellent customer service at premium costs in order to generate money. Through ensuring consumer satisfaction because they place a premium on meeting the demands of their customers, they provide a wide range of health services in the form of packages to the upper-middle and higher classes. They use an integrated marketing approach with a suitable mix of professional physicians and nurses so that patients from the high and upper middle classes are diverted from their habit of traveling overseas for treatment.

Actually, in terms of medical technology, our private health sector has been attempting to compete with international institutions. However, the service is still subpar. At the same time, the cost of accommodation far outweighs the cost of treatment, owing to Dhaka's numerous reputable five-star hotel-like private hospitals. According to satire, many people are more

²³ World Health Organization, *THE PRIVATE HEALTH SECTOR: AN OPERATIONAL DEFINITION 2019*> accessed on 5 may 2022 .

concerned about their healthcare expenditures than their health condition. There have also been allegations against several reputable private hospitals and clinics for continuing life support or keeping patients in ICU/CCU even after the patients' deaths in order to collect extra fees. Private hospitals and clinics in Bangladesh have begun a rivalry to import expensive diagnostic equipment and promote in order to boost their client base while maintaining basic service quality. Still, our physicians encourage upper-class individuals to travel overseas for serious medical procedures such as brain neurosurgery since there is a risk of infection locally or experts are unsure.

Post-operative treatment is still deplorable. As part of their marketing or promotional plan, most private hospitals and clinics have established consultation centers within their clinics or hospitals with professional doctors. Even now, the majority of private hospitals are dominated by physicians from government institutions. However, a few recognized hospitals have begun to employ full-time, not part-time, regular doctors.²⁴

3.3 Analysis

A recent Transparency International Bangladesh (TIB) poll on private healthcare reveals the dire state of affairs. It demonstrates how profit-driven private hospitals and diagnostic centers have deviated from the fundamental principles that govern the health-care system at large. It especially refers to a commission-based marketing system, which is the giving of recommendations (for patients) to certain parties in exchange for compensation for the referees. It's a win-win strategy that benefits physicians, private medical facility owners, intermediaries, and almost everyone else engaged in the process—except the people who matter the most, the patients. The private sector did not create some difficulties, such as a shortage of effective medical and paramedical workers or the high cost of importing medical equipment, and it is not the only one affected by them. The government has a significant role to play in all of this, but it is up to the private sector to demonstrate its willingness to lead the change from inside.²⁵

²⁴ <https://thefinancialexpress.com.bd/>> accessed on 1 may 2022

²⁵ <https://www.thedailystar.net/lifestyle/perspective/why-private-healthcare-failing-1536163/>> accessed 1 may 2022

3.4 Duty Of Care In Private Medical & Hospital

Even if patients pay out of pocket at private hospitals, they do not receive enough care from their surgeons. At this point, the truth regarding medical negligence in Bangladesh will be revealed. In this case, Masum P. Mohammad, a Bangladeshi software developer, was in shock on October 29, 2007, when he rushed back to Bangladesh to witness his ailing father fighting for his life in the CCU at LabAid Cardiac Hospital. Masum claims that he saw his father, who was covered in blood, sleeping on a bed. Then he asked the nurse to show him where his father was operated on, and he was dumbfounded when he saw the filthy conditions in which his father was placed. He stood there for a long time, unsure what to say. Masum's father, Late A.K.M Fazlum Haq, was hospitalized at LabAid on October 25 for treatment by Dr Prof. Baren Chakraborty after experiencing a severe chest discomfort. After suffering a major heart attack on October 26, Haq was given an injection and a ring was placed around his heart on October 27. Haq's chest x-ray indicated black spots across his lung, prompting Prof. Ali Hossain to be called in for lung therapy. On November 2, the same day, Hossain informed Masum that food had been lodged in the patient's lung and that he required an emergency Bronchoscope. Prof. Hossain then gave cough samples for Tuberculosis (TB) testing at two distinct diagnostic centers in Panthapath, Dhaka, one at LabAid and the other at Monowara Diagnostic. Three days later, the outcome at the two hospitals was radically different. Masum claims that the LabAid findings revealed that his father did not have tuberculosis, but that the Monowara Diagnostic test results showed that the report was truly positive! Masum goes on to say that they eventually discovered that his father had suffered from major brain injury shortly after being taken to the hospital, which had gone undetected by any of the physicians. When he had a heart attack previously, blood became lodged in his brain. Due to the misdiagnosis of the physicians he was not receiving treatment for his brain damage for all of these days.

Masum claims that his father's tuberculosis test was submitted on November 3, 2007. He inquired as to why it took so long to transmit the TB test for diagnosis, and why it took so long to find this TB. Masum also claimed that the TB diagnosis was incorrect. Masum also stated that when his father was given medicine, he was unable to identify them. At that moment, they asked Prof. Chakraborty to summon a neurologist to examine his father's brain, but he didn't bother to listen to them. Two days later, on November 11, his father was declared deceased.

From this scenario it can clearly be stated that the patient may have survived if the attending physician has taken into consideration the concern of the patient's family. It clearly shows the carelessness and lack of regard of the physician. And it is also seen that the confusing reports from two different private hospitals has played a role in the misdiagnosis of the patients. And it's a common occurrence in most of the private medical institutions in Bangladesh.

'Masum's experience is nothing out of the ordinary,' says Dr Quamruzzaman, who runs the Dhaka Community Hospital in Malibagh and has himself been a victim of medical incompetence, losing a fully working kidney. There are several additional incidents of medical carelessness and ignorance. However, it is critical to recognize that one of the most serious faults in our health-care system is that there is no accountability at all.

Masum's situation is far from unique. According to a research conducted by a Dhaka-based NGO, Ain-o-Shalish Kendra, over 76 deaths were alleged to be the result of medical incompetence between January and October 2007.

3.5 Duty Of Care In Private Clinic

Every year, hundreds of individuals die in Bangladesh as a result of clinical carelessness. The majority of them are children and women. Surgeons, nurses, and hospital personnel are primarily accountable for clinical negligence.

Nayan Begum, a pregnant housewife from Bhairab upazila's Chandpur village, was hurried to the Sadek Medical Hall in Bhairab town due to acute stomach ache. When she arrived at the hospital, they discovered that the clinic's owner, Doctor Sadek, was one of the attending doctors. He insisted on her having the baby right away. Without any serious inquiry into what the origin of the discomfort may be, he informed the victim that he would have to deliver the baby, disregarding our requests that he might perhaps conduct an ultrasound, recalls Nayan's daughter Mili Begum, a third year honors student at Dhaka's Eden College.

She was immediately escorted to a filthy, dark room at the Clinic that was used for birth. The doctor insisted that none of her female relatives who had accompanied her to the hospital be

present in the operation room. She was already feeling tense. Mili claims that when she was brought inside, she was told to close her eyes and was not given any anesthetics or pain relievers to help with her birth. Mili further stated that at first, doctor Sadek attempted to deliver the baby using his spiritual skills. But, as his spiritual talents proved useless and mother's position deteriorated, he attempted a forceful delivery on her. He used a sharp blade to injure the fetus's skull while attempting to forcefully deliver the baby. My mother screamed in agony as an untrained hand swiped a blade over her inside organs. When Nayan's family discovered her in such critical condition, they took her to a hospital in Dhaka. The infant died on April 19 at a Dhaka hospital. Nayan, thankfully, had escaped with her life.

At this point, this is another actual fact concerning medical neglect in a private clinic in Bangladesh. This factual statement will discuss clinical medical negligence in Bangladesh. Khokan is a Dinajpur resident who admitted his wife to Janata Clinic on October 14th. His wife was a fever patient. He received word from the doctors that his wife was infected with typhoid. She remained in that hospital for 5 days receiving treatment. On October 18th, she fell victim to an oxygen shortage. However, oxygen was not provided at that clinic. The clinic's duty nurses communicate with Dr. Saidur Rahman. Mr. Rahman then tells them to send her to the Dinajpur Medical College for treatment of her oxygen deficiency around 8 p.m.

However, the following items must be present in a private clinic, according to Schedule C of the Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982.

- a. Every bed has one qualified medical practitioner on call 24 hours a day, seven days a week.
- b. Two nurses are on duty 24 hours a day, seven days a week for every ten beds.
- c. Two sweepers are assigned to every ten beds and work around the clock.

But it was completely lacking in the clinic. This is also a violation of the Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982. However, the relevant authorities are not paying attention to this issue. Finally, victims should be adequately compensated for their suffering. When a person submits to medical treatment, they entrust their whole well-being to the

care of another. When things go wrong, the repercussions might be severe. Medical negligence can result in physical, mental, and psychological harm, as well as a loss of earnings.²⁶

From the given incidents it is seen that many private medical institutions have untrained staffs and physicians and it threatens the life of the patients. And most of the private institutions of smaller scale have lack of equipments, and some equipments are very basic for treatment, which can become life threatening problem for the patients.

3.6 The Effects Related to Duty of Care

When doctors fail to conduct their tasks appropriately, it can have a negative impact on the patient and his family. The patient may be wounded, dead, or become infirm as a result of medical carelessness, or he may lose any one organ of his body, or he may suffer financial loss or damages, among other things.

Chapter -IV

Legal Issues & Remedies Under The Existing Law Of Bangladesh

Nowadays, medical negligence has been a major issue of attention and discussion in many industrialized nations, and many of them have passed and formed special Acts and courts to give legal remedies on this. However, there is no explicit and comprehensive regulation in Bangladesh to prohibit medical negligence. As a result, the likelihood of incidences of medical negligence sometimes goes unnoticed, which often leads to aggression, creating a difficult scenario. In cases of medical negligence the offered solutions are often torturous in nature. That is, in order to make apologies, Furthermore, there are medical negligence remedies available. There are two types of remedies: departmental remedies and professional treatments. For example, the Ministry of Health and Family Welfare can file a departmental complaint against the doctors at a public hospital for medical negligence. Doctors, on the other hand, are licensed by the BMDC. If the charge is proven, the BMDC has the authority to revoke a doctor's license.

²⁶ <https://www.lawyersjurists.com/article/medical-negligence-law-and-practice-in-bangladesh/>> accessed 1 may 2022

There is another option here, which is to file a criminal lawsuit. These procedures are briefly detailed here. If negligence is claimed on the side of the Doctor or either Hospital, the burden of proof lies on the complainant, who must identify and show the carelessness. If the complainant fails to prove carelessness on the side of the doctor or hospital authorities after raising the complaint, he will not receive any legal remedy, no damages, and his claim will be rejected.

4.1 Legal Source Of Duty Of Care

Physicians are obliged by law to give a minimum level of skill and care to their current patients. When a physician agrees to treat a patient who has asked for his or her services, a legal obligation of care is created.²⁷ According to legal scholars, duty of care consists of many listed duties: attending, diagnosing, referring, treating, and guiding the patient. If a physician violates his or her duty of care and a patient is damaged as a result, the physician may be held negligent and ordered to pay monetary damages to the aggrieved patient or family. These expenses may be covered by professional insurance.²⁸

4.2 Constitutional Remedies

Bangladesh's constitution has recognized the significance of promoting and protecting human rights. Fundamental rights are mentioned in Bangladesh's constitution as civil and political rights.

- **Article 8** of the Bangladesh constitution talks of social equality.
- **Article 11** of the constitution of Bangladesh states that the Republic shall be democratic in which fundamental human rights and freedoms and respects for the dignity and the rights of the human person shall be guaranteed. The provision of

²⁷ Crits v. Sylvester, [1956] OR 132, aff'd [1956] SCR 991/> accessed on 8 may 2022

²⁸ <https://lawjournal.mcgill.ca/wp-content/uploads/pdf/5523213-picard.pdf/>> accessed on 8 may 2022

life's essential requirements, such as food, accommodation, education, and healthcare.

- The state shall implement appropriate measures for the development of public health, according to **Article 16** of the Bangladesh Constitution. The state shall view raising the level of nutrition and improving public health as among its fundamental tasks, and in particular it shall implement the appropriate medical care methods.
- **Article 32** guarantees the right to life as a fundamental right. As a consequence, the constitution has acknowledged the right to a healthy life by providing medical facilities.

Furthermore, according to Article 21(2) of the Constitution, "everyone in the service of the Republic has a duty to strike at all times to serve the people." So In light of this provision, it is possible to make all the doctors and all other employees of the Medical and Hospitals liable on the grounds of negligence in the duty. And in this case, it is possible to seek remedy by filing a separate petition in a higher court in a lawsuit filed by the ASk, the High Court Division of Bangladesh's Supreme Court, has declared a rule nisi requiring the responsible agencies to provide the citizens with adequate and appropriate health care while adhering to the terms of the law.²⁹

4.3 Departmental Remedies

Departmental remedies are steps taken by higher authorities against responsible hospitals and employees. Some noteworthy regulatory regulations in Bangladesh to control doctors and hospitals or clinics are as follows:

- The BDMC code of ethics.
- Medical practice and private clinics and laboratories ordinance 1982.
- Drug (control) ordinance 1982.

²⁹Article 21(2), The Constitution of the People's Republic of Bangladesh/ > accessed 31 april 2022

- The Transplant of Organ in Human Body Act, 1999.
- The Consumer Rights Protection Ordinance, 2008.
- The Bangladesh Medical and Dental Council Act, 2010.

Some safeguards have been incorporated in these legislation that protects the interests of patients, while others have been enacted to hold physicians, employees, and others accountable for their carelessness in providing care. However, the applications of these legislation are minimal, and the public is unaware of these.

The director general of the Ministry of Health and Family Planning holds power to take action when there is an allegation against doctors, hospitals, clinics about medical negligence of any doctor, hospital, clinic, or other entity in Bangladesh. The director general's office has the authority to conduct an independent investigation of any hospital or clinic. If the suspected hospital or clinic is proved to be guilty, he has the right to pursue legal action against them. However, such actions are purely administrative, according to section 13 of The Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982 the termination of the suspected hospital's or clinic's license, the imposition of a fine, and so on. However, such legislative measures will not benefit the victim or his family. However, these can be more effective in preventing future events.

4.4 Civil Remedies

Tort laws have yet to develop in Bangladesh. That is because there's no event of negligence remedy. There are 45 civil statutes related to the health affairs, including the Vaccination Act of 1880, the Pharmacy Ordinance of 1976, the Medical Practice and Private Clinics and Laboratories Regulation Ordinance of 1982, the Medical and Dental Council Act of 1980, the Safe Blood Transfusion Act of 2002, the Private Health Service Act of 2005, etc and others.

If a victim wants, he can take action using the aforementioned statutes. However, the primary issues in the civil suit are:

- Under the Court Fees Act of 1887, the victim must pay an advalorem court fee. If the victim is unable to pay the court fee, he or she cannot bring a claim in court for proper justice.
- The victims are not interested in filing a suit in court for the corruption, bribery, etc. of the court's clerk, officials, or staff of the hospitals.
- Victims are unwilling to bring a lawsuit because of the high expense of doing so.³⁰

Doctors in Bangladesh can be held individually or vicariously accountable for their services under civil law, and medical practitioners can be held liable or compensated for medical malpractice. It indicates that whenever there is a breach of a contract (regarding treatment or service), the aggrieved parties have the right to seek one or more remedies from the other party under the Contract Act of 1872. Furthermore, an offended patient may obtain preliminary and permanent injunctions against health professionals who violate contractual and service obligations under the Specific Relief Act of 1877.

4.5 Criminal Remedies

Criminal charges have been brought against doctors alleging the conduct of offenses punishable under Section 304A or Sections 316, 336, 337, or 338 of the Bangladesh Penal Code 1860, resulting in the loss of life or damage to the patient to various degrees. Sections 80 and 88 of the Penal Code, on the other hand, provide defenses for doctors accused of criminal culpability.

Section 304A of the Penal Code 1860 discusses the offense of causing death by carelessness

“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 five years, or with fine, or with both.” The terms criminal rashness and criminal carelessness are used frequently, however there are variations between them. Criminal rashness

³⁰ The Code of Criminal Procedure, 1898/> accessed 31 april 2022

is having a risky or careless act with the knowledge that it is such, and that it may cause damage, but with no intention to cause hurt, or with the knowledge that it would most likely cause injury. Criminal negligence, on the other hand, involves acting without the awareness that the illegal and harmful consequence would result, but under circumstances that indicate that the actor has not exercised the caution due upon him, and that if he had, he would have had the consciousness. Both are equivalent offenses under Section 304A.³¹

section 316 of the Penal Code deals with causing death of quick unborn child by act amounting to culpable homicide

which provides that whoever does any act under such circumstances that, if he caused death, he would be guilty of culpable homicide, and causes the death of a quick unborn child by such act, shall be punished with imprisonment of either description for a term that may extend to ten years, and shall also be liable to fine. For example, A, knowing that he is likely to cause the death of a pregnant woman, commits an act that, if it results in the lady's death, would constitute culpable homicide.³²

4.6 Consumers Rights Protection Act, 2009

Under this Act, "service" includes, along with other, health services that are made available to customers in exchange for a fee, but does not include free services (Section 2 (22) of the Act). According to the Act, anybody who does any act that endangers the life or security of a consumer shall be sentenced to imprisonment for a term not exceeding three years, a fine not exceeding 200,000 taka, or both (Section 52). Medical care providers can be punished if there is negligence or willful act or omission that endangers the patients' lives and security. Section 53

³¹ Section 304A, The Penal Code, 1860 > accessed 31 april 2022

³² section 316, The Penal Code, 1860 > accessed 31 april 2022

states that medical practitioners may be held accountable if their carelessness causes financial, health, or life loss to service recipients.³³

4.7 Medical Practice and Private Clinics and Labs (Regulation) Ordinance

1982

The Director General of Health has also been given supervisory powers under this Act. The Director General of Health or any other officer authorized by him shall have the authority to investigate any registered medical practitioner's chamber, private clinic, private hospital, or pathological laboratory to determine whether any provision of this Ordinance has been violated or failed to comply with (Section 11). If the Director General discovers that they have breached any provision of this Ordinance, he may recommend to the government that the medical practitioner be disqualified from carrying on medical private practice, that the private clinic or hospital's license be revoked, and that the pathological laboratory be closed down.³⁴

4.8 Medical and Dental Council Act, 2010

The Medical and Dental Council (BMDC) is Bangladesh's governing organization for doctors and other health professionals. According to the Act, if a medical practitioner or dentist is found guilty of professional misconduct, the Council may refuse to register that individual (Section 23). The Council may also declare that the name of any registered medical practitioner or dentist be removed from the Registration, either permanently or for a specific length of time, for professional misconduct. Furthermore, Section 5(a) of the Code of Medical Ethics states that

³³ <https://thefinancialexpress.com.bd/views/consumers-rights-protection-in-bangladesh/> > accessed 31 april 2022

³⁴Section 11, Medical Practice and Private Clinics and Labs (Regulation) Ordinance 1982 > accessed 31 april 2022

excessive carelessness of medical and dental practitioners in their duty to their patients may be considered misbehavior sufficient to justify the suspension or removal of their names from the Registrar's database.³⁵

4.9 Judicial Activism and case analysis

In the Doctor's Strike case of Dr. Mohiuddin Farooque vs. Bangladesh & others, Writ Petition No. 1783 of 1999, the court defined Strike as a "failure to exercise their statutory and Constitutional obligations to guarantee health services and medical treatment to the general public, resulting out of the abstention from duties by the striking physicians."³⁶ Also highlighted that the intentional absence of BCS (Health Cadre) doctors as members of the Association from their statutory and public obligations caused a threat to the public's life and body has no legal consequence.

In the following case, Prof. Dr. Mridul Kanti Chakrabarty, on 19 august 2011, a University of Dhaka professor, died at the LabAid Cardiac Hospital. Following a PIL filed by Advocate Monzil Morshed, the High Court Division summoned the accused doctor and awarded compensation of fifty lac taka to the patient's family. The LabAid hospital immediately paid the compensation to the Professor's family.³⁷

In another case in 2016, a child died in the hospital on February 9, but the employees at Japan Bangladesh Friendship Hospital in Dhaka wanted money from the family without notifying them of the death. The High Court Division's bench of Justice M Moazzam Husain and Justice Md Badruzzaman issued a suo-motu rule against the hospital officials and summoned the Management before the Court. The court also asked the hospital authorities to show cause why they should not be instructed to compensate the child's family in the rule. A mobile court,

³⁵ Section 5(a) and Section 23, Medical and Dental Council Act, 2010 > accessed 1 may 2022

³⁶ Dr. Mohiuddin Farooque Vs. Bangladesh and others; 48 DLR, (1996) HCD 438

³⁷ <http://archive.thedailystar.net/newDesign/cache/cached-news-details-199296.html/>> accessed 31 april 2022

together with the Rapid Action Battalion (Rab), arrested six people in connection with the event and fined the hospital Taka 11 lakh.³⁸

Chapter -V

Findings

The method for filing a complaint is not only difficult, but also time consuming and governed by strong evidentiary guidelines. Many legislation address medical negligence litigation. All of these legislation offer remedy in the form of punishment, jail, or compensation. However, because there are so many forums, it is difficult for victims to choose one. Furthermore, these regulations are not just intended for medical misconduct. Because the laws do not specifically address medical negligence, it is difficult for victims to address their complaints. The following are the major difficulties with existing legislation.

5.1 Absence of separate medical law

In Bangladesh, there is no distinct legislation governing medical negligence. The penalties specified in the Consumer Protection Act of 2009 are insufficient. The explanation for the inadequacy of penalty under the Consumer Protection Act has already been examined. A few years ago, the Law Commission proposed enacting legislation to resolve claims or disputes relating to medical negligence.³⁹ On the other hand when a person becomes physically sick and disabled or harmed, he should seek the assistance of sections 337 and 338 of the penal code for adequate remedies. Furthermore, section 304A offers a provision for causing death by

³⁸ <https://www.thedailystar.net/city/hc-summons-md-japan-bangla-hospital-459619/>> accessed 31 april 2022

³⁹ S.M. Masum Billah, Law Commission's proposal of making medical negligence law, <https://www.thedailystar.net/news/law-commissions-proposal-of-making-medical-negligence-law/>> published April 20, 2013. Accessed on 2 may 2022

carelessness. When anyone in Bangladesh wishes to acquire a remedy, he should consult the aforementioned areas.

A. Statutory Limitations

Medical negligence is a type of negligence and it is required to "specify" that carelessness in order to convict it as criminal negligence. However, it is not present in this situation. Though there is a provision for punishment for rash or negligent driving of any vehicle in section 304B of the criminal code, there is no specific section for medical negligence. Medical negligence is one type of professional carelessness. People that specialize in a field, their carelessness, and the negligence of the general public are not the same thing. In this case, the proof of negligence is based on the expected level of care, which is distinct from general negligence and professional carelessness. However, there is no explanation or illustration of this in the Act. In general, the patient or his relatives could not make a demand that the surgeon murder him or his relatives. In the case of criminal culpability, it is a *sin qua non* that there be a purpose to commit an offense. However, the word itself indicates that the action was not done deliberately, but rather resulting in a lack of proper care.

B. Procedural Limitation

When a lawsuit is filed against medical and hospital negligence, if after a prima facie investigation it is established that the accused doctors are guilty, the approval of the Ministry of Health Affairs is necessary. This is a time-consuming process that significantly complicates the secretariat. The existing ways of collecting evidence in these situations is time-consuming and, in some cases, unreasonable and unnecessary. In one example, in the event of a death, the matter is forwarded for a post mortem report and a surathal. In the current circumstances, if a case is submitted for a post mortem report or a surothal report, the suit will be waiting for an extended period of time. The usual investigation methods delay and obstruct the principal suit. There is a shortage of experience in criminal investigation. In most cases, criminal investigation is done by police. The current police investigative technique is unsatisfactory for the medical inquiry. The

Bangladesh police without adequate expertise and competence to investigate cases involving medical negligence.

The restrictions of the criminal law when it comes to carelessness. Sections 312,313,314,315 & 316 of the penal code are also concerned with abortion and the death of an unborn child. These sections are not directly related to medical negligence because, except from the physicians, no other authority may be held liable for carelessness.

5.2 Lack of Duty of Care

In case of Inappropriate treatment of patients and rejection of medical care, the remedy for medical negligence can be found under the tort law. Claims for medical negligence, also known as clinical or hospital duty & carelessness, occur when doctors, healthcare service providers, and hospitals have a duty of care to those admitted to their care and fail to meet that responsibility, causing the patient suffering and loss of pleasure. Madam Justice Salma Masud Chowdhury and Mr. Justice AKM Zahirul Haque issued a Suo Moto ruling in 2017 ordering respondents to pay the victim Tk. 9 lakhs in compensation for falsely representing himself as a certified doctor and performing surgery on the victim, leaving pieces of measure inside her stomach, causing her suffering and pain and additional medical costs.⁴⁰

5.3 Difficulties regarding Proof of negligence

The complainant has the burden of proof in the case of negligence and if he fails to offer relevant evidence in court showing improper treatment on the part of the medical professional no legal remedy will be available. And it becomes difficult because, owing to the complexity of medical concerns, a doctor is necessary to show the carelessness of another doctor against whom a negligence allegation has been brought. However, because they are in the same field, most doctors are unwilling to offer information against another doctor. Even medical institutes refuse

⁴⁰ Faria Ahmad, Medical negligence and duty of care, <https://www.thedailystar.net/law-our-rights/medical-negligence-and-duty-care-1609813/>> published Jul 24, 2018 . accessed on 2 may 2022

to provide patients with the appropriate paperwork. As a result, in the absence of the required documents and evidence. It becomes quite difficult to establish a charge of carelessness. In most circumstances, medical institutions in Bangladesh refuse to offer them until a judge directly addresses them to do so.⁴¹

5.4 Complex procedure for Filing suit

One can make complaints with the Bangladesh Medical and Dental Council by contacting the registrar of such council about his issues against doctors and dentists for negligence committed by such practitioners. If the register is satisfied with the complaint, he will command the formation of a committee to investigate the reported concerns. If the claim is proven, the appropriate authorities will take action against the accused medical professional.⁴² If a person wishes to make a complaint under the Consumer Protection Act of 2009, he must do so within 30 days by writing to the director general of the relevant organization.⁴³ It is clear from this that the entire operation is time consuming. Because of the long procedure, a sufferer is often hesitant to seek such relief. In other sense, the process extended in order to provide compensation to the victims.

This thesis also detects a lack of awareness, with thousands of incidents of medical negligence going unreported due to a lack of legal expertise or failure to file a claim in the correct procedure or forum. Most people in Bangladesh have a common misconception about medical negligence. This study also stated that legal minds such as lawyers and judicial bodies such as lower courts do not correctly recognize Section 9 of the Code of Civil Procedure 1908 as a method of getting relief through compensation. As a result, there is a lack of implementation.

⁴¹ ibid

⁴²Relief against medical malpractice

<https://www.thedailystar.net/law-our-rights/relief-against-medical-malpractice-1438093/>> published July 25, 2017, accessed on 3 may 2022

⁴³ The Consumer Protection Act of 2009> accessed on 7 may 2022

Chapter - VI

Recommendation

There are several laws that deal with medical negligence, both directly and indirectly. Since the term "medical negligence" is connected with a variety of factors, it has appeared recently as controversial topics in the legal field. A new legislation should be incorporated into Bangladesh's legal system sooner or later.

6.1 Specified laws on medical negligence

Enactment of new medical negligence laws in Bangladesh is a topic of great importance. Many advanced economies and emerging countries have implemented specific laws, and the progress is now visible. It is worth mentioning that the state is bound to protect the citizen's right to life. As a result, it is the state's first priority to do all possible to safeguard these rights.⁴⁴ A particular legislation will assist a victim in obtaining the desired remedy. A specialized law is comprehensive, time saving, and most importantly, helps in achieving just and proper justice. In the United Kingdom, a separate Act has been passed to deal with medical negligence proceedings. It gives compensation, an explanation, and a report of the incident to avoid repeat misconduct.⁴⁵ However, it is not possible to make things happen overnight, definitely it will take time.

6.2 Special Court & Camera Trail

In Bangladesh, there are several specialized courts that deal with specific issues such as efficiency, justice, and equality. Separate courts are not a new concept; there are several courts in Bangladesh that deal with various subjects. The concept of medical negligence is not new, but a distinct court for medical malpractice is. However, the desire for a separate court for medical

⁴⁴ Article 32, the constitution of people's republic of Bangladesh > accessed 3 may 2022

⁴⁵ <https://pubmed.ncbi.nlm.nih.gov/19771990/>> accessed on 3 may 2022

negligence has begun to evolve day by day. This planned court is expected to be handled by specially qualified adjudicators, expert witnesses, and expected damage awards.

In medical negligence situations, a trial in camera may be used. The reason for this proposal is that it protects patients and Doctors & Hospitals privacy. A false or disproved allegation may sometimes damage a doctor's career & hospitals reputation, and the same is true for patients. It is sometimes also a matter of patient and witness safety. Patients' privacy and security are threatened in an open court. As a result of these concerns, camera trials should be used in relevant medical negligence cases.

6.3 Alternative Dispute Resolution - ADR

The concept of alternative dispute resolution should be made mandatory in medical new cases. It takes time to resolve a dispute in a conventional court, but ADR saves a lot of time. Most importantly, it ensures that individuals have access to justice. When a penalty alone is insufficient to satisfy a complaint, monetary compensation may be required. Victims will always have a say in ADR. In the majority of medical negligence instances, the sufferer lost control of several of his bodily parts or damaged any of them. Negotiating monetary compensation will be a lifesaver for him in that circumstance. For these reasons, the concept of alternative dispute resolution (ADR) should be introduced in medical negligence cases.

6.4 Statutory Recommendation

The following changes should be implemented in order to remove the stated legislative and procedural limitations. It will be more effective if it is able to enact a separate statute for medical negligence. It is not conceivable to alter the current condition of our health-care sectors in a single night. As a result, the following proposals may be considered to prevent medical negligence and to give victims with legal remedy.

- The definition of medical negligence, as well as its forms and scope, must be stated clearly.
- In the context of medical negligence, the entire lump sum inquiry process must be abolished (section 11 of The Medical Practice and Private Clinics and Laboratories (

regulation) Ordinance 1982). As a result of these investigative procedures, the duration of the suits is increased.

- The Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982 requires that private clinics be inspected. There is less scope of inspection of our country's private clinics under the Ordinance. As per the Ordinance, If a person violates any provision of the Ordinance, he is subject to imprisonment for a term of up to six months, a fine of up to five thousand Taka, or both. But it should be increased to imprisonment for a term of up to 2 years, a fine of up to five Lac Taka, or both. Also the inspecting authority's accountability must be assured.
- To get a license, private clinics or hospitals must have appropriate medical equipment, and adequate seating arrangements for patient visitors.
- There must be suitable systems in place to set the rates for private clinics and laboratories for surgical operations, medical tests and services, including pathological and radiographic investigations, and patient record management.

6.5 Recommendation For Government

- A patient rights awareness program might be conducted for nurses and ward boys at hospitals, clinics, and other health-care institutions. Everyone should participate in a training program.
- Unwanted political interference should be eliminated.
- The budget for the health sector should be expanded, and the funding should be used properly.

6.6 Recommendation for BMDC

The BMDC may evaluate various proposals for controlling Bangladesh's medical, clinic, and existing hospitals.

- The BMDC should be established as a non-political administration that is the people's representative, unbiased, and effective.
- A reevaluation measure should be included in the renewal of the doctor's registration.
- The hospital atmosphere should be as patient intensive as possible.
- The accountability of hospital administration must be assured.
- The BMDC tribunal should be activated.

Chapter - VIII

Conclusion

Medical negligence laws are intended to safeguard victims of medical negligence. This paper provided an overview of medical negligence. Bangladeshis, as a lower-middle-income country, are losing faith in complete medical services due to a lack of accountability. Medical negligence is on the rise as a result of doctors' intentions such as favoring their own profit, having too much work, having an unlawful purpose, having a weak management system in our Private hospitals & clinic, and, last but not least, because of loopholes in the present legislative structure.⁴⁶

A higher sense of accountability will also significantly enhance the general state of our country's health-care systems. As a result, the government should safeguard the common interest of public health while also amending the compensation sector in those codified Acts or Ordinances relating to medical negligence.

The findings of this study are also presented in this paper, together with the real inconsistencies in the existing laws. A large number of individuals in our nation are unable to obtain good health care; hence, if the law is unable to aid them in this regard, it would be a significant setback in the country's health sector. It is well recognized that one of the fundamental principles of state policy

⁴⁶ Rafea Khatun, 'Medical Negligence Issues in Bangladesh: An Urge for a Separate Medical Negligence Law' (2020) 8 Jahangirnagar University Journal of Law 127, accessed on 5 april 2022

is the right to health. Furthermore, the authority is obligated to protect this right. In this regard, the purpose of this study is to make some recommendations for overcoming these difficulties. These recommendations will assist in providing victims with appropriate and reasonable compensation. Furthermore, these recommendations will assist in restoring order to the situation. Recommendations include the adoption of new laws, the establishment of an active monitoring body, institutional accountability, and the use of a camera trial to make the new statute governing medical negligence and the duty of care of private medical and hospital facilities more effective.

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