



Daffodil
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A critical Legal analysis on Medical Negligence in Bangladesh

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Letter of Transmittal

To

Mohammad Badruzzaman

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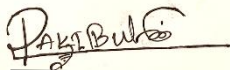
Subject: Submission of the Dissertation

Dear Sir,

It is my pleasure to submit here my dissertation, which has been prepared under the sound and dynamic leadership of a personality like you.

This research paper is an integral part of my academic program in completion of the degree named LLM ,which has assigned me "**A Critical Legal Analysis on Medical Negligence in Bangladesh**" as a part of the LLM Programme. I have tried my level best to collect the relative information as comprehensively as possible for preparing the research. During the research preparation process. I will be able to explain anything for more clarification if necessary.

I would like to thank you for giving me the opportunity to do a dissertation on the above-mentioned topic. If you kindly accept and analyze my research paper, I will be grateful and obliged.



Sincerely yours,

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Certification

This is to affirm that the test paper relies upon the work delivered by the creator and under my watch at the Daffodil International University regulation Division in Dhaka, Bangladesh. The work introduced here is affirmed to be unique and fitting for the degree of LL.M. that has yet been completely fulfilled (1 year).

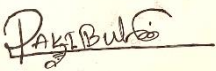


Sincerely,
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Declaration

I, Md. Rakibul Islam, hereby declared that the dissertation title “A Critical Legal Analysis on Medical Negligence in Bangladesh” submitted in fulfillment of the requirements for the degree of Master of Laws (LL.M), Department of Law, Daffodil International University embodies the results of my own research work pursued under the supervision of Mohammad Badruzzaman, Assistant Professor, Department of Law, Daffodil International University.

I further declared that I am responsible not only for the content but also for the writing of my entire work. I have written it with own responsibility. In order to assure the research paper's originality, the university's anti-plagiarism policies were adhered to throughout its composition. It has not been published or submitted to any other publication, nor has any other degree program at this or any other university accepted it for review.



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Abstract

Medical negligence is when healthcare professionals fail to do their job properly, causing harm to the patient and violating their right to good health. Medical mistakes or errors are currently a well-known subject of focus and discussion in many advanced countries. As a result, several of these countries have put in place separate laws and courts to make healthcare laws stronger. However, in Bangladesh, there are no specific laws to stop medical mistakes, even though there are some legal rules in different laws that are not clearly written down. Additionally, doctors and healthcare workers need to know and understand the legal effects of their mistakes in providing medical care. They also need to focus on behaving ethically in order to avoid getting caught up in controversial situations and legal cases. Medical practitioners sometimes avoid taking responsibility for their actions because people are not willing to report them or take action against them. Many individuals lack sufficient knowledge about their legal rights when faced with instances of medical negligence. This paper tries to explain medical negligence, the laws about it in Bangladesh and their problems, gather the necessary legal information and suggests ways to prevent violations of healthcare rights.

Table of Contents

Heading	Page Number
Letter of Transmittal	i
Certification	ii
Declaration	iii
Acknowledgement	iv
Abstract	v
Table of Contents	vi-viii
Chapter 1: Preliminary (1 - 8)	
1.1 Introduction	1-2
1.2 Statement of the Problem	2-3
1.3 Research Question	3
1.4 Objectives of the Research	4
1.5 Significance of the Study	4-5
1.6 Literature Review	5-6
1.7 Research Methodology	6
1.8 Limitations	6-7
1.9 Chapter Outline	7
1.10 Conclusion	8
Chapter 2: Comprehensive Discussion of Medical Negligence (9 - 14)	
2.1 Definition of Negligence	9
2.2 Professional Negligence	10
2.3 Elements to prove Negligence	10-12
2.4 Definition of Medical Negligence	12-13
2.4.1 Standard of Care	13
2.4.2 Res Ipsa Loquitur	13

2.5 Essential Elements to Prove Medical Negligence	14
2.6 Conclusion	14

Chapter 3: Review of the Existing Legal Regime in Bangladesh (15-23)

3.1 Introduction	15
3.2 Constitutional Safeguards	15-16
3.3 Law of Contract, 1872	16-17
3.4 Law of Tort	17-18
3.5 The Penal Code of 1860	18-19
3.6 The Consumer Rights Protection Act, 2009	20
3.7 The Bangladesh Medical and Dental Act, 2010	21
3.8 The Medical Practices, Private Clinics, and Laboratories (Control) Ordinance, 1982.	21-22
3.9 The Drug Control Ordinance, 1982	22-23
3.10 Conclusion	23

Chapter 4: Problems of existing laws dealing with medical malpractice in Bangladesh (24-29)

4.1 Introduction	24
4.2 Problems dealing with the Legal System of Bangladesh	24-26
4.3 Persons who are liable for Medical Malpractice	26-28
4.4 Recent Instances of Medical Negligence	28-29
4.5 Conclusion	29

Chapter 5: Right and liability of Doctor and Patients (30-34)

5.1 Introduction	30
5.2 Rights of the Patients	30-31

5.3 Duties of the Patients	31-32
5.4 Rights of the Doctors	32-33
5.5 Duties of doctor	33
5.6 Conclusion	34
Chapter 6: Findings, Recommendations and Conclusion (35-37)	
6.1 Introduction	35
6.2 Findings	35
6.3 Recommendations	35-36
6.4 Conclusion	37
Bibliography	38-41

Chapter 1: Preliminary

1.1 Introduction

Negligence means not doing something that an ordinary person would normally do or doing something that a person wouldn't do. The main reasons for negligence suits against doctors when a doctor fails to provide the appropriate standard of care for a patient, resulting in harm or injury and it is considered medical negligence. This can happen due to a misdiagnosis, improper treatment or failure to diagnose a condition. Patients have the right to sue the doctor for damages and compensation in such cases.

Every day, there are a lot of cases of doctors not doing their job properly. This happens because of different kinds of problems that happened before. One of the problems is that there are not enough trained doctors and easier to become a doctor or nurse due to advancements in education.

In Bangladesh, doctors can get away with wrong things because there is no good law in place. They use their power to protect themselves and don't think they can be punished. The situation is getting worse because of doctors are putting in more hours at their clinics as a way to make more cash while using less time for patient care. We can often find news in the newspaper or on TV about medical mistakes happening every month.

Malpractice means breaking the law by not being careful enough. If a healthcare provider doesn't do their job properly, the patient can take legal action for harm caused by their mistake.¹ Doctors, nurses, and other people who work in healthcare need to take care of their patients and make sure that they are healthy and safe. They should also do their best to give good care. Sometimes, doctors and nurses don't do their jobs well. Doctors can harm patients by not taking good care of them, being mean to them, or giving them bad care. This can cause big problems like getting hurt or even dying².

¹ Murthy K K S R, Medical Negligence and the law, Indian Journal of medical ethics , Vol-3, No-4 (2007) p-116
Available at < <https://pubmed.ncbi.nlm.nih.gov/18624138/>> accessed on 2 June, 2023

² Agarwal Sweta S. & Agarwal Swapnil S., Medical negligence – Hospital's responsibility, Journal of Indian Academy of Forensic Medicine, Vol-31, No-2, April 2009, p-164
Available at <[http://iafonline.in/data/publications/2009/JIAFM-31\(2\).pdf](http://iafonline.in/data/publications/2009/JIAFM-31(2).pdf)> accessed on 2 June, 2023

Not being skilled enough, careful or paying enough attention can cause malpractice. People who take care of others' mental health should also make sure they take good care of their patients. If they don't do their job well, they might be accused of doing something wrong in medicine. Patients should get good medical care while they are being treated. So, if you don't take care of it, you might get in trouble³. Doctors who are accused of doing their job poorly are compared to their colleagues to see if they did something wrong. Then they go to court to see if they did something really wrong.

The incident about medical negligence made by a doctor, nurse or medical personnel which has been shared with the public that often seen in newspapers. Few incidents were told, but many were kept secret. Many people continue to struggle to access basic medical services in this situations. This means that even though there are advanced medical tools available, some people are still having difficulty getting the medical care that they need. Many people in Bangladesh do not go to the government hospitals and clinics for medical care. For a while, doctors have been mistreating patients by making all the decisions without considering their feelings. This has hurt patients a lot.

1.2 Statement of the Problem

All research papers have a purpose and an area of study. My research paper is within nature and scope. The topic for research is about medical negligence and keeping patients safe in Bangladesh. This research includes reading and analyzing articles, newspapers, and historical documents.

A topic that is essential and often requested by students studying law. This is for People who want to work in the field of human rights for their whole life. Everyone who is sick is important in our society, even if they don't have a lot of money. People are scared to see the doctor because they worry about medical mistakes and this is becoming an issue in our society. They believe that going to a doctor who is not recognized could make their life more at risk. Our country is not talking about this problem.

³ Research Conference, KDU, 2015 Available at

<https://www.researchgate.net/publication/277718443_KDU_International_Research_Conference_2014_Proceedings_-_Defence> accessed on 2 June, 2023

Ain O Salish Kendra found out something important about human rights in Bangladesh. There were 504 cases where doctors didn't do their jobs right between June 1995 and September 2008⁴. Many cases reveal that our medical industry has a problem with clinical negligence and it is not good. It shows that the conditions for doing medical work are not very good country located in Southeast Asia. Bangladesh is a democratic country and our fundamental rights are enshrined in our constitution.

In Bangladesh, the BMDC has the power to punish and stop accepting degrees from an institute if it doesn't meet the standard requirements. The authority oversees the behavior of doctors and can punish them if they don't do their job properly. The Council doesn't do many things. The BMDC has a problem because it can only discipline certain doctors who work for private clinics or practice on their own. This means that only the head of the Health Department or the Health Ministry can do something about it, but they don't usually do anything. Law Commission recently admitted that the fact is true. BMDC doesn't have a lot of power to fix the problem of people being careless.

1.3 Research Question

I hope my research study will find as following question answers:

1. What is the current situation of medical negligence that impacts the health care system of Bangladesh?
2. What kinds of medical malpractice are occurrences in our country and the reasons behind it?
3. How is the medical practitioner becoming responsible even though they have proper knowledge of their profession?
4. Why has not the negligence of medical personnel been reduced so far?
5. Is the legal framework in Bangladesh enough for addressing medical negligence?
6. How can this be eliminated and the victims get their appropriate treatment and remedy?

⁴ Kamal Sultana, Human Rights Reports in Bangladesh, ASK

Available at <<https://www.askbd.org/ask/human-rights-reports/>> accessed on 2 June, 2023

1.4 Objectives of the Research

The main reasons for unaccountability of medical practitioners include the unwillingness of people to initiate action against medical practitioners and the lack of legal knowledge about the remedies for research objectives.

The main objective of this paper is to identify the adequacies of the existing laws to protect the patients from violation of their right to health, controlling medical negligence and how they preserve health care related laws.

The other objectives are:

- To know details about medical negligence
- To find out the negligence of medical personnel on medical services
- To identify the gaps and inconsistencies in the existing laws and practices
- To ensure accountability of health care service providers
- To protect the right to health care of the citizens
- To evaluate the legal remedies available to patients and the adequacy of the law regarding medical negligence in Bangladesh
- To make certain recommendations as to law and practice concerning medical negligence and malpractice

1.5 Significance of the Study

Doctors and other medical professionals need to avoid making mistakes that could harm their patients. It is very important in saving a person's life. The consequences of medical mistakes vary, and some individuals may remain unaware of the damage done until it becomes irreparable. Psychological and emotional distress can occur due to stress, isolation, and a lack of protection. Sadly, this situation is not a regular event. These mistakes can cause serious injuries or death to many people. When healthcare providers like doctors, nurses, dentists, and hospitals make

mistakes that cause pain and suffering, they should take responsibility for their actions. This study holds great significance as it can eradicate mistakes committed by doctors and ensure that every patient receives accurate treatment.

1.6 Literature Review

Literature review makes the researcher conscious of the other related work which has already been done. Literature review expands and sharpens the researcher's knowledge in conducting the study. The literature review also exposes the researcher has theoretical knowledge in his chosen research area. It also helps to find the knowledge gap between the previous researcher and the present researcher. Some relevant literature or article has already been reviewed to conduct the present research title.

There is a lot of research on medical malpractice. However, no significant research has been done to explore the flaws in the law regulating medical negligence, and it has not addressed all of the reasons of carelessness or provided an appropriate remedy to those problems. Even no such study has been conducted. Due to time and scope constraints, only a few papers and periodicals are looked over. However, only a few major challenges can be resolved.

Khandakar Kohinur Akter in her paper, “A Contextual Analysis of the Medical Negligence in Bangladesh: Laws and Practices” addressed the effectiveness of medical negligence in law and its loopholes that affect the health care system of Bangladesh⁵.

Md. Rafiqul Islam Hossaini in his paper name, “Medical Negligence and its Constitutional Protections in Bangladesh” examines the constitutional right to medical negligence and the limitations of judicial review(PIL)⁶

⁵ Akter Kohinur Khandakar, ‘A Contextual Analysis of the Medical Negligence in Bangladesh: Laws and Practices’, The Northern University Journal of Law, vol. 4
<https://uilspace.unil.orin.edu.ng/bitstream/handle/20.500.12484/5880/SEU%20Law%20Journal_Vol%202%20%282%29-1.pdf?sequence=1&isAllowed=y> accessed on 3 June, 2023

⁶ Islam Rafiqul, ‘Medical Negligence and its constitutional protections in Bangladesh’, Bangladesh Law Digest, 2016 Available at <<https://bdlawdigest.org/constitutional-protection-and-claims-for-medical-negligence-inbangladesh.html>> accessed on 3 June, 2023

To do this research, I used the statute Bangladesh Medical and dental Council Act, (2010), Code of Medical Ethics, Bangladesh Medical and Dental Council (2010), The Medical and Dental Council Act, (1980), The Limitation Act, 1908, Code of Criminal Procedure, 1898, The Constitution of the People's Republic of Bangladesh, 1972, The Penal Code of Bangladesh, 1860, Ain O Salish Kendro, Medical Negligence, (2008) etc.⁷

1.7 Research Methodology

The way of doing research means the way or approach used to do a particular study. This study used a method called qualitative descriptive. I have looked at old books and studies about doctor's mistakes in their practices. I have wanted to see what the doctor should do to avoid mistakes in medical negligence case to figure out.

The laws in Bangladesh protect people from medical negligence are looked at in this study. The present thesis has been completed and released, incorporating extensive citations from a variety of sources, including literature, periodicals, online sources, and select articles. The subject matter of this thesis paper pertains to the intersection of tort law and human rights.

From the moment I commenced my research, my focus lay on seeking out dependable sources and accurate facts for my research work. I have endeavored to enhance this scholarly document through the inclusion of all pertinent data. To study Medical Negligence: Law and Practice in Bangladesh, I have used a way of researching called qualitative Methodology. Books, magazines, papers that have been printed, papers that have not been printed, newspapers, official paperwork, small sections of the paper, laws that have been recorded, and more. When looking at previous court decisions, I have used both logical thinking and careful examination. I have included reasonable explanations in this document.

1.8 Limitation of the Research

A variety of reading materials, including books, papers, and other related sources has been read here. Even though there is critical research to carry out, there aren't enough resources to support

⁷ Laws of Bangladesh Available at [Laws of Bangladesh](#) accessed on 3 June, 2023

our studies. The inability to acquire the necessary information created a challenging situation to carry out the task.

1.9 Chapter Outline

The research focuses on medical negligence in Bangladesh scenario. This paper contains with 6 chapters. Each chapter contains different context. The research paper contains the following chapters:

First chapter of this research paper contains a general introduction which includes an introduction, statement of the problem which is most important. Then literature review, objectives of the study, methodology of the research, scope of the research, significance of the study and lastly limitations of the research.

Second chapter explains the concept of negligence, definition of medical negligence, elements of negligence. Basically, it is a conceptual idea chapter of the paper. This chapter provides a proper guideline about the negligence.

Third chapter in this research paper discuss national policy which relating to the legal provisions of different laws which exist in Bangladesh for ensuring medical safety, rights and liabilities of medical staff and patients. This chapter contains with the national policy such as the Constitution of The People's Republic of Bangladesh, The Penal Code, 1860 and others statutes.

Fourth chapter deals with problems of existing laws and medical malpractice in Bangladesh. It contains a list of the persons who are liable for medical negligence and are the victims of medical negligence. There are also some instances which provide the incidents of medical negligence in Bangladesh.

Fifth chapter deals with the rights and duties of the patients and doctors in medical sector.

Sixth chapter is the concluding chapter. This chapter provides the findings of the research and with some major and essential recommendations which can develop and improve the medical sector and ensure the safety of the patients in Bangladesh.

1.10 Conclusion

Medical negligence means when a doctor makes mistakes that can hurt someone. There are different types of mistakes that doctors can make. Conduct that is engaged in or abstained from, medical mistakes are becoming more common. To understand them better, we need to identify what types of mistakes are happening in a particular area. To figure out what needs to change in the laws and rules for medical mistakes, we need to look at the most common types of mistakes that happen. This means that even if something bad doesn't happen often, we still need to take it seriously if it does happen.

Chapter 2

Comprehensive Discussion of Medical Negligence

2.1 Definition of Negligence

Medical negligence is when a doctor does not take proper care of their patient, which can result in the patient getting hurt. This is becoming more common and patients who don't know their rights may not get the help they need. The upcoming chapter will go through the theoretical concepts of negligence, including medical negligence. The history of medical malpractice will also be included.

Negligence means not being careful and causing harm. It can happen if you do something dangerous or don't take the right steps to prevent danger. Negligence means someone did something without being careful and this can lead to being responsible for damage or harm in the law. The word "negligence" means not doing something that a regular person would do, doing something that an expert would not do. LB Curzon said that negligence happens when someone doesn't do what they are supposed to do and this causes harm to someone else⁸.

Salmond thought that being careless and not taking enough care about something was a way to be held responsible for causing harm to someone, instead of purposely trying to harm them. If someone fails to take proper care and you can prove it, then it's called negligence and the person can be sued. The person who did something wrong was supposed to be careful and not cause harm to the person who is complaining⁹.

Negligence means being careless, but in a legal sense, it means more than that. It refers to a concept of responsibility, where someone didn't do what they were supposed to do, and that caused harm. What is the mechanism behind negligence? If someone didn't take reasonable care and someone else got hurt because of it, that's negligence.

⁸ Curzon, L.B. and Richards, P.H, the Longman Dictionary of Law. Pearson Education, 2007 Available at

<https://www.researchgate.net/publication/320638234_Medical_negligence_in_Bangladesh_criminal_civil_and_constitutional_remedies> accessed on 5 June, 2023

⁹ Jhabvala H Noshirvan, "The Law of Torts", 25th Edition, Universal Book House, 2012, p. 97

2.2 Professional Negligence

In simple words, a professional is someone who does a job as their main way of earning money. They also know how to speak and behave in a particular way for their job. Linked to certain activities done for fun and not for money. The Supreme Court of India talked about how professionals should behave and what could be considered as careless behavior in the Jacob Mathew's case¹⁰.

The law of negligence includes professionals like Advocates, Surgeons and architects who have special skills and knowledge. If someone can do a job well, they should be the only ones to do it. If someone wants to become a professional in a certain job, they are expected to have enough knowledge and be careful when doing their work. People who work with them can trust that they will do their job well.

He does not promise his customer a certain outcome. A doctor cannot promise that a patient will fully get better all the time. A doctor can't promise that a surgery will always have good results, especially 100% good results. If a doctor doesn't have the necessary skills or doesn't use them well during a surgery, they can be held responsible for any problems that happen because of the surgery. To see if someone did something wrong, we use a normal person's skill as a standard. Not all professionals need to be experts in their field.

A person who is really good at their job might have better abilities, but we can't use that to decide if they did something wrong and should be punished for being careless.

2.3 Elements to Prove Negligence

Despite our awareness of the definition of negligence, four crucial elements must be included in order to demonstrate its occurrence.

1. The Duty of Care

¹⁰ Jacob Mathew v. State of Punjab, 136 (SCC) 1, 2005

2. Violating that Care

3. Causation by Law

4. Infections

Each of these requirements needs to be met. The petitioner cannot prove that the responder was careless, even if they are not happy. Below is a description of these four components:-

The Duty of Care

Basically, a person has a responsibility to take care of others and not do anything to accidentally cause them harm. For example - A responsibility of the driver is to avoid any crashes with other drivers while driving on the road. It's important for them to exhibit caution and accountability while driving on the road to avoid causing harm to others. To be careful, a person should use as much caution as they would in similar situations to keep themselves and others safe. This is called reasonable care¹¹. You may be held accountable for causing harm if you did not take necessary precautions.

Breach of that Duty

Neglecting to execute the assigned task in a particular context. In order to determine rule violation, it's necessary to ascertain whether the individual exercised caution. If someone doesn't take care of something they are responsible for, it's called breaking a rule. Also, if someone could have known something bad might happen, not doing anything can be called foreseeable. This means that if something can be predicted and was likely to happen because the accused did not take appropriate action or were careless, then it is foreseeable¹². Injuries is expected if a diligent

¹¹ Four elements of Claim of negligence and more, Griffiths Law, available at <https://www.griffithslawpc.com/resources/elements-negligence-claim/> accessed on 6 June, 2023

¹² Berg David, Foreseeability in a persona injury case available at <<https://www.lawyers.com/legal-info/personal-injury/personal-injury-basics/what-is-foreseeability-in-a-personal-injurycase.html> accessed on 6 June, 2023

individual in the same situation as the injured person would think the injury was caused by someone's actions.

Legal Causation

If someone doesn't do their job correctly and it directly causes harm to someone else, they are responsible for that harm. This means not being careful enough to prevent someone or their things from getting hurt¹³.

Damages

In the event of harm caused by someone, you have the option to seek financial redress under the law. In order to demonstrate lack of care, an individual must engage in an action that is widely recognized as having potential to cause harm.

2.4 Definition of Medical Negligence

Medical negligence means when a doctor or other medical professional doesn't do their job properly and it causes harm to someone. This could happen because they weren't careful enough or didn't provide the right medical care. Medical malpractice arises when a doctor is negligent fails to perform their duties in accordance with the accepted standards followed by other doctors. In case of medical negligence, a patient is harmed due to inadequate care provided by a medical practitioner. When doctors fail to take proper care of their patients, they could cause harm through mistakes. This could mean missing a diagnosis, giving the wrong medicine, or messing up during surgery¹⁴. The law mandates that doctors possess the expertise to determine the most appropriate

¹³ Enjuris Editors, Causation in negligence cases, Enjuris, available at <<https://www.enjuris.com/personal-injury-law/causation.html>> accessed on 6 June, 2023

¹⁴ Gilman and Bedigion, 7 Exercise the standard of care resulting in medical malpractice in Maryland available at <<https://www.gilmanbedigion.com/what-does-it-mean-to-fail-to-exercise-the-standard-of-care/#:~:text=Medical%20malpractice%20occurs%20when%20a,mistake%20during%20a%20surgical%20procedure>> accessed on 6 June, 2023

course of action for their patients and are permitted to provide particular treatments that are considered to be suitable. If the doctor doesn't give proper care, there could be negligence.

2.4.1 Standard of Care

People sometimes don't understand what "standard of care" means in the law. Doctors often talk about this idea. Doctors have a responsibility to give good care and treatment to their patients according to certain rules¹⁵. This means it's something that only a skilled person should do. In Bolam v Friern Hospital case, the court decided that it is important for professionals to use reasonable skill and care when doing their work. This has been the standard for a long time when it comes to professional negligence¹⁶.

2.4.2 Res Ipsa Loquitur

The Latin phrase "res ipsa loquitur" means "thing speaks for itself"¹⁷. This indicates that in the case of medical malpractice, consequences would not have happened if no one had been negligent¹⁸. The elements of res ipsa loquitur have to be demonstrated with the following:

- If there was no injury, there would be no negligence.
- The person who suffered injuries is not responsible for their own injuries.
- The defendant who caused the injury has sole control.
- The accused's regulator's apparatus was the only potential cause of the injury.

¹⁵ Brazier Yvette, what is medical malpractice, Medical news today available at < <https://www.medicalnewstoday.com/articles/248175> > accessed on 8 June, 2023

¹⁶ Bolam v Friern Hospital [1957] 1 WLR 582

¹⁷ Res Ipsa Loquitur and Evidence Law, FindLaw
Available at
<<https://www.findlaw.com/injury/accident/injury/law/resipsaloquitur.html#:~:text=Res%20ipsa%20loquitur%20is%20a,defendant%20through%20the%20use%20of>> accessed on 9 June, 2023

¹⁸ Raynes and Lawn, In medical malpractice what are the key facts required to prove medical malpractice
Available at < <https://rayneslaw.com/what-are-the-key-facts-required-to-prove-medical-malpractice/> > accessed on 9 June, 2023

2.5 Essential Elements to Prove Medical Negligence

Certain guidelines have been established to indicate instances where doctors make significant errors while treating patients. In order to prove a medical error, the party must provide compelling justifications. In order to demonstrate medical negligence, we must certain things:

- The doctor didn't take good care of the patient or forgot to treat them properly.
- Not giving enough attention or care by a doctor can cause harm or injury to the patient.
- The individual was hurt as a consequence of the doctor's therapy¹⁹.

2.6 Conclusion

If you're not cautious and someone incurs damages or losses, you may be held accountable under the law. This is called "negligence". Legal standards for negligence are not just about being careless in daily life, they cover a lot of different bad things people might do. Because it's very complicated, it refers to the idea of doing the right thing and not doing it and the consequences of that. Medical malpractice is when a doctor or nurse doesn't do their job correctly and it causes harm to the patient. This can happen when they do something wrong or when they don't do something they should have done. Failing to adhere to the standards of proper care may result in the failure of a crucial medical examination, administration of incorrect medicine or serious errors during surgeries. Medical mistakes are happening a lot in Bangladesh hospitals and people who are harmed by them don't get much help from the law because there are no good rules about this issue. This has been a problem for a long time.

¹⁹ Hirst Albert, Essential Elements needed to prove medical malpractice in the state of California. available at < <https://www.socalworkerscompensation.com/essential-elements-needed-to-prove-medicalmalpractice-in-the-stateof-california/> > accessed on 9 June, 2023

Chapter 3 Review of the Existing Legal Regime in Bangladesh

3.1 Introduction

There are numerous aspects involved in medical services which includes diagnosing, prescribing medication, conducting surgeries, and other approaches to ease the patient's condition. This part is about the laws in Bangladesh that oversee medical services, healthcare, and running of hospitals, clinics, and labs. We have talked about and looked at something closely. The content of this section highlights the importance of safeguarding the healthcare rights of Bangladeshi citizens, in accordance with international agreements, starting with an assessment of their Constitution. The following segment assesses the procedures and regulations and highlights any discrepancies or deficiencies within them. In the end, the Law Commission suggests that we need a new law specifically for this.

3.2 Constitutional Safeguards

The Constitution of Bangladesh guarantee that all citizens have the right to obtain medical treatment and sustain good health. According to Article 15 of the Constitution, the government is responsible for promoting economic growth and improving people's quality of life. The goal is to help citizens live well and have a good quality of life²⁰.

This means making sure that people have important things like enough to eat, clothes to wear, a safe place to live, learning opportunities, and healthcare. People have the entitlement to receive assistance from the government during situations such as unemployment, illness, disability, advanced age, or loss of a spouse or parent.

Article 18 of the Constitution says that the government must work to make people healthier by improving nutrition and public health²¹. Though the Constitution doesn't guarantee the right to health care, the founders of the Constitution perceived its significance and intended to gradually

²⁰ The Constitution of the People's Republic of Bangladesh 1972, Art 15.

²¹ The Constitution of the People's Republic of Bangladesh 1972, Art 18

implement it. The Constitution says that we have a right to be healthy and get medical care. This is supported by article 32, which says we have a right to life. It has been observed in a number of Public Interest Litigation (PIL) cases that the right to life has already been construed in a wider sense to include right to safe environment²² and right to livelihood. The concept also involves the opportunity to earn a livelihood and the availability of a pollution-free surrounding. This means that the right to life includes the right to good health and medical treatment that is needed.

Furthermore, maintaining good health and receiving necessary medical attention are very important for human existence. These aspects cannot be left out of the fundamental requirements for a safe and protected life, and the government has a responsibility to make sure these rights are fulfilled. The Preamble of the Constitution supports this argument strongly²³.

The government's main goal is to create a fair society where everyone is treated equally and has access to their basic rights and freedoms. This includes making sure the law is followed and that there is no unfair treatment or exploitation. This applies to all aspects of life, including politics, the economy, and social issues

So basically, the Constitution is mostly supportive of people's right to health and medical care. But, when we talk about medical mistakes and dishonest behavior in hospitals and clinics, there are also other parts of the Constitution that are important. These constitutional guarantees also apply to medical negligence. Any actions taken or plans made to establish accountability and provide proper compensation for medical negligence must comply with the delicate balance of the constitution. This balance considers both the rights of patients and the freedom and protection of doctors and other medical professionals.

3.3 Law of Contract, 1872

The responsibilities of health professionals are determined by the Contract Act of 1872²⁴. These responsibilities arise from the explicit or implied terms agreed upon by both parties involved, such

²² Dr. Mohiuddin Farooque v. Bangladesh and others; 48 DLR, (1996) HCD 438

²³ The Constitution of the People's Republic of Bangladesh, 1972

²⁴ Law of Contract, 1872

as the patient or their representative, and the doctor or hospital. In Contract Law, the focus is on individuals reaching a mutual agreement and providing a form of consideration. The level of responsibility a health professional holds when violating this agreement is comparatively lower than in other legal scenarios. Within the Act, there are multiple provisions concerning the conduct of giving, accepting, exchanging, agreeing, paying, Agent & Principal roles, and the corresponding legal obligations. If the patient or their representative has been harmed, they have the option to seek monetary compensation by taking their case to court under this legislation. The provisions contained in the Contract Act are wide enough to cover even a breach or non-fulfilment of a contractual obligation resulting from mental disorder or loss of the patient. However, it is difficult to prove the allegations under this Act, the compensation or damages being granted by them is very high and stand on a different footing²⁵.

3.4 Law of Tort

A tort is when someone does something wrong, and the way to fix it is through a lawsuit to get monetary compensation for the harm caused. It's different from breaking a contract or trust, which are other types of wrongs. This definition comes from Sir Johns Almond.

Careless or unintentional behavior that causes harm or injury to another person. When someone fails to exercise reasonable care and caution, they may be held legally responsible for their actions. Negligence is an important concept in the legal field because it helps to determine who is at fault and accountable for any damages or injuries that occur. These damages are not directly caused by the action or event but occur as a consequence of it. Examples of consequential damages include lost profits, lost opportunities, or damage to reputation.

The health professional can be held responsible for medical mistakes and can face legal consequences. If someone is harmed, they can take legal action to receive compensation in court. The determination of the jurisdiction for the case will rely on the claimed monetary amount. It can start from a lower court and go up to the High Court Division of the Supreme Court. The doctor's

²⁵ Verma SK, 'Legal Framework for Health Care in India', (2002) p 158.

Available at < https://search.lib.uiowa.edu/primo-explore/fulldisplay/01IOWA_ALMA21317421930002771/01IOWA> accessed on 11 June, 2023

responsibility is to help patients and save their lives by providing medical assistance. The doctors might go through the proper steps allowed by law after providing the needed medical help²⁶. In Bangladesh, we don't have a specific law called The Law of Tort. However, there are rules and regulations related to it in other laws that are still followed.

3.5 The Penal Code, 1860

A specific criminal statute which deals with medical negligence is not in existence in Bangladesh²⁷. However, depending on the scenario, some careless behaviors incur penalties under the Penal Code of 1860. It provides an equitable remedy for negligent behaviors that may propagate an infection, contaminated drugs, abortion carried without a woman's consent, catastrophic harm, or reckless or careless actions that put another person's life or safety in danger or result in death. Criminal charges and/or fines may follow these offenses.

Section 269 of the PC 1860 states that knowingly committing any illegal or negligent act that could infect another person with a potentially fatal disease carries an exact prison sentence. A fine or an extension of the sentence to six months will be enforced, or both²⁸. In addition, under the law, enhancing a medication in a view to reduce, change, or interfere with its effectiveness may be punished by up to six months in jail, a fine of up to TK 1,000, or both Section 274²⁹.

Similarly, Section 312 states that a doctor who deliberately aborts a pregnant woman or her child faces the maximum terms of three years in prison, or both of the Penal Code³⁰.

According to section 313, the accused dangers the prospect of a life sentence or a fine and up to ten years in prison if this is done without the woman's consent of the penal code 1860³¹.

²⁶ Verma SK, 'Legal Framework for Health Care in India', (2002), p54.

Available at < https://search.lib.uiowa.edu/primo-explore/fulldisplay/01IOWA_ALMA21317421930002771/01IOWA > accessed on 11 June, 2023

²⁷ Reza Hossain Mohammad, Mediation of Health Disputes to Optimise Patient Safety in Bangladesh, Australian Journal of Asian Law, (2021) No 2, Art 8: 119-136.

Available at < <https://search.informit.org/doi/abs/10.3316/informit.065321529667567?af=R> > accessed on 11 June, 2023

²⁸ Penal Code 1860, s 269.

²⁹ Ibid, s 274.

³⁰ Ibid, s 312

³¹ Ibid, s 313.

Furthermore, section 336 may also apply to negligent or irresponsible actions that threaten the life or health of someone else of the Penal Code, 1860³².

Section 337 says that causing another person a common injury via negligence brings a six-month jail sentence, a fine, or both³³. Hence, under section 338, recklessly causing significant harm carries an aggregate punishment of two years in prison, a fine, or both of the penal code, 1860³⁴.

In addition, Section 304A states that a person who caused death by negligence faces years in prison, a fine, or both of the Penal Code³⁵. In De Souza's case, the compounder created a fever drink by taking a bottle from a cupboard of non-poisonous medications and adding all of its contents to a mixture that was administered to eight individuals, seven of whom perished. rather than quinine hydrochloride as expected, strychnine hydrochloride was found in the poison bottle. Section 304A led to the compounder's sentence of the Penal Code, 1860.³⁶

Regretfully, healthcare professionals are safeguarded from prosecution under sections 88 and 92 of the Penal Code if they harm others in specific instances³⁷. Additionally, the most appropriate section of the penal law for punishing the death of an individual who acted negligently is Section 304 A. What happens to people who have been hurt but have not passed away yet? This clause stipulates that a victim must have died as a result of the offender's careless actions. This is still unresolved. Human life is at danger due to the parties' disregard for the freedom of interpretation, even when questionable concepts like "hurt" and "painful" have been defined. The functioning of professional groups, such as physicians, nurses, and others, is not described. In furtherance of adding ambiguity, Section 323 safeguards the accused based on their honest beliefs. In all cases of medical malpractice, this is an essential defense. In actuality, medical negligence was not taken seriously when creating the Penal Code.

³² Ibid, s 336.

³³ Ibid, s 337.

³⁴ Ibid, s 338.

³⁵ Penal Code 1860, s 304A.

³⁶ De Souza, 42 All 272. (1920).

³⁷ Penal Code 1860, s 88 and s 92.

3.6. The Consumer Rights Protection Act, 2009

When it comes to medical negligence, safeguarding and upholding patient rights are equally essential, especially in light of the 2009 Consumer Rights Protection Act. The Act's Section 2(22) defines "service" as, among other things, health services provided to clients in return for money; nevertheless, this excludes free services³⁸.

likewise medical negligence is directly related to Section 53 of the Act, which states that a service provider faces up to three years in prison, a fine of up to Tk 2,00,000, or both if he damages a service recipient's money, health, or life through negligence, irresponsibility, or carelessness. Even so, the penalties aren't always proportionate with the harm or loss the service causes providers³⁹. Within 30 days of the cause of action, a consumer must first lodge a complaint with the director general or other administrator-designated individual in order to file a complaint under Section 60 of the CP Act 2009 accruing⁴⁰.

No violation is cognizable under Section 61 of the CP Act 2009 unless a charge sheet has been submitted within ninety days of the complaint. Consumers cannot complain to the magistrate promptly, even if they lose money, until the person with authority gives the charge sheet within 90 days⁴¹. Customers get unhappy or lose interest in this approach due to the complexity and difficulty. The director general in the private sector may investigate the healthcare coverage, but they are unable to take any preventative measures. Notifications will only be provided to the director general of health services and the health secretary. Professional negligence at private clinics is on the rise since it is challenging disciplining healthcare workers in the private sector. The term "medical profession" was inserted in 1995 under Section 2 (1) (o), but it is not explicitly included in Section 2 of the CP Act, 2009 of the Consumer Protection Act, 1986⁴².

³⁸ The Consumer Rights Protection Act 2009, s 2(22)

³⁹ Ibid, s 53

⁴⁰ Ibid, s 60

⁴¹ Ibid, s 61.

⁴² The consumer Protection Act, 1986 (repealed), s 2(1).

3.7 The Bangladesh Medical and Dental Act, 2010

In Bangladesh, doctors and other health care practitioners are regulated by the Medical and Dental Council. A doctor or dentist who has been found guilty of professional misconduct may have their registration revoked by the Medical and Dental Council under the Medical and Dental Council Act of 2010. A registered medical practitioner or dentist's name may also be banned for professional misconduct, per Section 23 of the BDMC 2010 from the register⁴³.

In Raifa's case⁴⁴, According to the committee, the doctors on duty failed to provide Raifa with sufficient healthcare. They were found negligent and were warned to face disciplinary action. Furthermore, the hospital's overall poor administration was recommended to be fixed in order to safeguard patient safety.

Section 22 of the Act prohibits identifying oneself as a doctor or dentist and the codified phrase "practice of allopathic medicine without registration"⁴⁵. Section 28 stipulates that it is punishable by three years in prison to make a fraudulent claim to be a registered physician or dentist or to make false statements to that effect or a Tk 1,000 fine, or both⁴⁶.

It is illegal to use an untrue title under Section 29⁴⁷. As is well known, the BDMC, 2010 has the authority to take action against an authorized doctor or dentist who is proven to have engaged in any wrongdoing. However, the definition of misbehavior is not provided by the Act. The regulation does not define the scope of a doctor's duty to patients or address medical malpractice.

3.8 The Medical Practices, Private Clinics, and Laboratories (Control) Ordinance, 1982.

This ordinance's goal is to regulate private clinics, laboratories, and medical practices. Because it controls individual practices, clinics, and laboratories, it is an important piece of legislation for

⁴³ The Bangladesh Medical and Dental Council Act, 2010, s 23.

⁴⁴ Mohammad Rubel Khan v Dr Bidhan Roy Chowdhury and others. Case No 08 (07) 2018.

⁴⁵ The Bangladesh Medical and Dental Council Act, 2010, s 22. ⁴⁶
Ibid, s 28

⁴⁷ Ibid, s 29

dealing with private medical services. This ordinance's Section 4 prohibits a licensed doctor hired by the Republic from operating his own medical practice while on duty⁴⁸. Section 5 of the ordinances additionally stipulates that all medical professionals conduct patient examinations in hygienic settings and spaces⁴⁹. Section 9 of this regulation states that private clinics must have sufficient facilities to be licensed⁵⁰.

The Director General of Health is given major responsibility by the MPPCL (Control) Ordinance, 1982. The terms of the ordinance also seem to be appropriate. However, the application is the problem. The question now is whether there is anything in the law that might ensure effective enforcement. Nothing in this statute holds the Director General of Health accountable, even if he has the right to take the necessary actions for monitoring, etc. To increase the accountability of the surveillance system, this problem must first be examined.

3.9 The Drug Control Ordinance, 1982

This law was created to monitor and control the making, bringing in, giving out, and selling of medicines in Bangladesh. Section 5 of the law allows for the registration of medications⁵¹. The rule says that no medicine can be made, brought from another place, given out, or sold unless it is approved by the authorities. A registration will be given if you meet the requirements set by the people in charge of giving out licenses. According to Section 6 of the Ordinance, the authority in charge of issuing licenses can revoke the registration of any medicine if the Drug Control Committee suggests it. The group will check every medicine that could be made or brought into the country, to see if it is safe, works well, and is helpful. If a medicine is found to be unsafe, the Committee can suggest to the licensing authority that the medicine's registration should be cancelled. If the medicine is not up to the required standards, the licensing authority may temporarily suspend its registration until it meets the standards⁵².

Section 15 of the law states that every drug maker must follow the rules and guidelines set by the World Health Organization when making and testing drugs. If a manufacturer doesn't do what

⁴⁸ The Medical Practices, Private Clinics, and Laboratories (Control) Ordinance, 1982., s 4

⁴⁹ Ibid, s 5.

⁵⁰ Ibid, s 9.

⁵¹ The Drug Control Ordinance, 1982, s 5

⁵² Ibid, s 6

they're supposed to, they might lose their license⁵³. Sections 17, 19, and 21 state the consequences for making low-quality medicine, selling drugs for more money than allowed by the Government, and promoting drugs illegally⁵⁴.

3.10 Conclusion

Medical mistakes happen often in Bangladesh, but there is very little legal action taken against them. One of the main reasons for this is that mistakes in the law, confusion, a complex process, not knowing where to file an action and extra expenses prevent patients from doing so and make it easy for the accused to escape responsibility. If we look at countries like Pakistan and India, they established significant modifications to their lawful systems. These changes are crucial and should be implemented in our country too.

⁵³ Ibid, s 15

⁵⁴ Ibid, s 17,19 and 21

Chapter 4

Problems of existing laws dealing with medical malpractice in Bangladesh

4.1 Introduction

The jurisdiction of Bangladesh does not possess a specific law addressing medical negligence. In the case of illness or injury, individuals can refer to sections 337 and 338 of the Penal Code to locate the appropriate resolution. Furthermore, section 304A specifies a regulation for causing someone's death due to negligence or lack of attention⁵⁵. In Bangladesh, if someone needs help to get proper remedy due to medical negligence, they should follow the mentioned sections. When I looked into this research, I found good and bad things about medical mistakes in Bangladesh. In this chapter, I've tried to make a list of the persons who are liable for medical negligence and are the victims of medical negligence.

4.2 Problems dealing with the Legal System of Bangladesh

Currently, Bangladesh regulates medical negligence by way of different statutes which directly or indirectly prosecutes the wrongdoers as mentioned earlier. However, there is no full-fledged legal forum to address the issue of medical negligence and most often people are not willing to seek redress of their grievances. The major problems of current laws are as follows:

Absence of specifically enacted laws

In simpler terms, there are different rules in various laws, but they are not organized and clear. As a result, people who have been wronged by medical professionals are unsure about which court to go to or which law to use when filing a lawsuit. Sometimes, criminal cases are filed against doctors

⁵⁵ The Penal Code, 1860

under the Penal Code, which is not good. This is because just making accusations does not mean that the doctors are actually guilty. This can cause problems for the doctors if criminal cases are filed against them. In contrast, civil courts can't punish the accused people. They can only determine how much money needs to be paid as compensation. According to the Consumer Protection Act, you can file a lawsuit for medical mistakes. This can result in many lawsuits. The Law Commission of Bangladesh has recently tried to address the problem of medical negligence by proposing new laws to deal with it. The Law Commission has suggested a good idea to improve healthcare for people while still considering the needs of healthcare professionals.

Higher Court Fee

In general, bringing a lawsuit in a court requires a significant financial investment in addition to extra costs, which less fortunate litigants in Bangladesh cannot pay. Because of this, victims frequently do not turn to the judicial system for help. However, under the Consumer Protection Act, there are no court costs needed to file a medical negligence lawsuit in our neighbor, India, which encourages customers to seek swift and effective relief.

Difficulties regarding Proof of negligence

The person who files a complaint must prove that the medical professional was negligent. If they can't provide evidence showing that the professional acted improperly, they won't have a legal solution. Proving negligence between doctors is a complex task due to the intricacy of medical issues. Usually, doctors do not want to give negative information about another doctor because they are in the same profession. Even the hospitals refuse to give important documents to the patients. So, if you don't have the right papers and proof, it's really hard to show that somebody didn't do what they were supposed to do. In Bangladesh, medical institutions usually refuse to give things unless ordered by a court. Incompetency of the judges: In Bangladesh, judges are not specifically trained to handle medical malpractice cases, which are different from other types of cases. These cases require extra knowledge and skills. Because medical issues can be complicated,

the judges may not always be seen as knowledgeable enough to determine what is fair and what is not in a specific case. One possible way to solve this problem may be to give the responsibility of this job to doctors and organizations that are better trained to handle it.

Incompetent Medical Regulatory Bodies monitoring Private and Public hospitals:

In Bangladesh, the Bangladesh Medical and Dental Council has the authority to punish and cancel the recognition of any hospital or qualifications if it is not meeting good standards. In simpler terms, it is the only organization in charge of making rules for how doctors behave and punishing them if they make mistakes. But the Council does very few things. Another issue is that the Bangladesh Medical and Dental Council has some restrictions when it comes to enforcing discipline. This is because it only has control over doctors who work in private practice or are employed by private clinics. In this situation, only the top health officials can do something about it, but they usually don't take action. Recently, the Law Commission recognized that the Bangladesh Medical and Dental Council has limited ability to deal with cases of malpractice.

Lack of public awareness:

In Bangladesh, people don't know about their rights for healthcare and they don't even understand the idea of medical ethics. Once again, the government does not seem very interested in sharing information about medical ethics or professional negligence. We only see articles in newspapers and reports on TV when a major incident occurs. Unfortunately, there are no programs in place to raise awareness.

4.3 Persons who are liable for Medical Malpractice

Anyone involved in medical treatment can be held responsible if they do something wrong. Especially the medical professionals, such as doctors and nurses, along with the staff members of hospitals, the people responsible for managing or overseeing the hospital and can be held

responsible for making mistakes in medical care⁵⁶. Basically, if someone doesn't take care of a sick person, they can be held responsible for medical negligence.

Doctor:

Mostly, doctors or surgeons are responsible for medical mistakes. They don't fulfill their responsibilities correctly. Every year, many people suffer harm due to mistakes made by doctors. According to a study by an organization in Dhaka, Bangladesh called Ain O Salish Kendra created a list of 504 people who were harmed by mistakes made by doctors and hospitals. They made this list by reading the news in newspapers from 1998 to 2008. It has been proven that the mistakes made by surgeons caused the deaths of around 492 people⁵⁷. Medical negligence by doctors can happen in any hospital in Bangladesh, whether it is a public or private hospital. It can also occur in the patient's home or the doctor's office. Medical mistakes happen a lot in government hospitals in Bangladesh.

Nurse:

Both the doctors and the hospital staff in our country are responsible for medical mistakes. Most of the time, nurses stay in hospitals to do their job. They do the same things as doctors. They have agreed to look after a sick person. They must give medicine to a sick person on a schedule. However, a majority of the nurses are not fulfilling their responsibilities adequately. When a patient needs a nurse to give them their medicine, the nurse is not there. They don't want to help the patients the right way if they don't have money. They are asking patients for more money.

⁵⁶ Yadav Mukesh & Rastogi Pooja, 'A Study of Medical Negligence Cases decided by the District Consumer Courts of Delhi' J Indian Acad Forensic Med, Vol. 37, (2015).

Available at < <https://www.semanticscholar.org/paper/A-Study-of-Medical-Negligence-Cases-decided-By-theYadav-Rastogi/c518f3e8511f325945e50130f09be5e58e342963> > accessed on 14 June, 2023

⁵⁷ Ahmed Nuhiya Tasmiah, Legal remedy to medical negligence, New Age available at <<https://www.newagebd.net/article/48258/legal-remedy-to-medical-negligence>> accessed on 14 June, 2023

Stuffs of Hospitals:

Both the doctors and nurses in our country can be held responsible for medical mistakes, as well as the hospital staff. Most things in the country are corrupted. They do not do their jobs correctly.

4.4 Recent Instances of Medical Negligence

1. The terrible death of a pregnant woman and her unborn child in a Dhaka hospital as a consequence of medical malpractice has once more highlighted the problems that appear to have afflicted our entire healthcare system. The commission established to look into Rafida Khan Raifa's death at the privately owned Max Hospital concluded that the main cause was carelessness. The committee said in its report that the doctors on duty lacked experience. The doctors weren't sincere either. Even though the patient's condition was critical, the on-duty doctors failed to provide her with adequate medical treatment. Monitoring of her treatment and a lack of coordination between doctors and nurses were also discovered in the investigation⁵⁸.
2. On October 25, 2018, Viqarunnisa Noon School & College student Afreen Hoque Shristy, age 11, was hospitalized to one of the city's reputable hospitals due to dengue fever. She died away in the hospital's critical care unit on October 26. The hospital administration refuted her family's claim that she died as a result of receiving inadequate treatment. The doctors at the intensive care unit disconnected Afreen's (artificial) ventilation apparatus without notifying her family, according to her brother. There were no nurses or doctors in the intensive care unit when her family members were forced to enter to find out about her condition the ICU⁵⁹.
3. In 2011, Mr. Justice AHM Shamsuddin Chowdhury Manik and Mr. Justice Jahangir Hossain ordered Labaid Hospital to compensate the widow of Dhaka University professor Mridul Kanti Chakrabarty, who died due to delayed medical treatment and alleged hospital negligence⁶⁰.

⁵⁸ Tithi Naznin, Victims of a rotten healthcare system, The Daily Star available at <<https://www.thedailystar.net/opinion/views/news/victims-rotten-healthcare-system3355546>> accessed on 27 June, 2023

⁵⁹ Tithi Naznin, Who will protect the rights of the patients?, The Daily Star available at <<https://www.thedailystar.net/opinion/society/news/who-will-protect-the-rights-the-patients1657993>> accessed on 27 June, 2023

⁶⁰ Rahman Tahmidur, Medical Negligence and Medical Malpractice law in Bangladesh available at <<https://tahmidurrahman.com/medical-negligence/>> accessed on 27 June, 2023

4. In 2017, Madam Justice Salma Masud Chowdhury and Mr. Justice AKM Zahirul Haque's Suo Moto ruling mandated that respondents make up the victim Tk. 9 lakhs for posing as an authorized doctor and operating on her while leaving pieces of gauge in her stomach, resulting in her suffering for eternity and further medical expenses expenses⁶¹

4.5 Conclusion

Based on the above analysis, it is clear that Bangladesh does not have specific laws addressing medical negligence. Right now, there is no law that clearly states what medical negligence is. Doctor's negligence is a complex topic that is treated differently by the courts and lawyers compared to other cases. So, it's really important to have a law that clearly explains what medical negligence is and how to measure it.

⁶¹ Rahman Tahmidur, Medical Negligence and Medical Malpractice law in Bangladesh
<<https://tahmidurrahman.com/medical-negligence/>> accessed on 27 June, 2023

Chapter 5 Right and liability of Doctor and Patients

5.1 Introduction

When a person goes to the doctor, they hope to get treatment for their health issues using the doctor's knowledge and expertise in order to feel better. The relationship is like a contract that keeps the important parts of a tort. A doctor has responsibilities towards their patient, and if they fail to fulfill these responsibilities, the patient can take legal action for negligence against the doctor. The doctor must ask the patient's permission before doing tests or treatments.

5.2 Rights of the Patients

Patients have certain rights that apply to them in various levels of care and in every type of medical specialty. When a person visits a doctor or goes to a hospital, they have certain rights as a patient. In 2003, the Ministry of Health and Family Welfare of India published a document called a list⁶². In that situation, it was important that the patient had certain rights.

- The right to get information from doctors about the services they provide.
- The right to have access to safe and ongoing medical care.
- The ability to keep information private.
- The right to be treated with respect and be valued as a person.
- The freedom to talk about thoughts and opinions.
- The right to receive help and find a solution to a problem or injustice.
- The right to decide on the type of medical care and family planning methods.
- The right to have access to all documents about medical care.
- The right to know all about the treatment.

⁶² Rao S., 'Medical Negligence Liability Under the Consumer Protection Act: A Review of Judicial Perspective', Indian Journal of Urology: IJU: Journal of the Urological Society of India, (2009)

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2779962/> accessed on 1 July, 2023

Generally, all states have recognized these rights as the right of the patient. The American Medical Association (AMA) defines essential components of the doctor-patient relationship, for instance the Code of Medical Ethics⁶³. These rights include the following:

1. The right to get information from doctors and talk about the good and bad effects, and the cost of different treatment choices.
2. The ability to choose and decide on the medical care suggested by the doctor.
3. The right to be treated nicely, with respect and dignity, to have your health needs taken care of quickly and with care.
4. The right to keep things private.
5. The right to ongoing healthcare.
6. The fundamental right to have enough good healthcare.

5.3 Duties of the Patients

Duty to uphold his own health:

The person should try their best to take care of their health and wellness. For example, he should live in a way that doesn't put his health in danger. He should follow tips for staying healthy and consider the things that can affect his health, like knowing his family's medical history.

Duty to protect the health of others:

The person who is sick should make sure they don't spread their illness to others around them. He should take care of the health and well-being of his family and should not support or allow activities that can harm their health.

Duty to seek and access healthcare responsibly:

⁶³ AMA Principles of Medical Ethics, 2001

<<https://code-medical-ethics.ama-assn.org/principles>> accessed on 1 July, 2023

The patient needs to be responsible when and how they look for healthcare. For example, regular doctor's offices usually expect patients with minor issues to understand that they might have to wait for their first appointment on a different day. If he can go to the doctor's office, he shouldn't ask for the doctor to come to his home. The patient should be polite and patient when visiting healthcare places, like the emergency room, to understand that their own expectations of care should be reasonable.

Duty of truthfulness:

The person seeing the doctor should always tell the truth during the appointment and when talking about their medical history. This will help the doctor make an accurate diagnosis. For example, he needs to share all the important information and not make it sound fancier or avoid answering.

Duty of compliance:

The patient needs to follow their prescribed treatment plan and take their medication, unless they have valid concerns about the plan or medication.

Duty of recovery or maintenance:

During and after treatment, the patient should try to help themselves get better or, if that's not possible (like for long-term illnesses), strive for a good quality of life.

5.4 Rights of the Doctors

A doctor has the following rights:

- Right to keep personal information private.
- Right to know patient's daily habits and choices. By knowing their lifestyle, doctor can better understand their health needs and provide appropriate care.
- Right to stop treating a patient if the doctor is sick, busy, or had a negative experience before.

- Doctor doesn't have to help a patient at odd times.
- Don't have to go visit the patient at their home if someone calls him.
- If a doctor doesn't have the necessary things to treat a patient like facilities, instruments, medicines, or staff, and he believes he can't help them, he will say so honestly and might send the patient to a good place.
- Physicians must be permitted to treat patients as they see fit without hindrance.
- Physicians have to have the professional autonomy to advocate for and secure patients' health needs.

5.5 Duties of doctor

According to the International Code of Medical Ethics from 1949, the following responsibilities are expected of doctors⁶⁴. The tasks of a doctor are:

1. A doctor should always behave in the best way they can professionally.
2. A doctor should not let the desire for money affect their work.
3. To create a space where patients can be evaluated easily and conveniently.
4. To talk with patients about their medical conditions, tests, and treatments in a way that is easy to understand and not too technical.
5. To suggest sensible options for treatment or medication.
6. To let patients know who is available for them outside of working hours.
7. To maintain accurate information about patients.
8. To let patients know about services that their insurance does not pay for.
9. To understand when doctors don't know enough about something and to request advice from someone else.
10. To team up with patients to help them achieve good health and well-being.

⁶⁴ WMA International Code of Medical Ethics, 1949
available at <https://www.wma.net/policies-post/wma-international-code-of-medical-ethics/> accessed on 14 July, 2023

5.6 Conclusion

Physicians, nurses, allied health professionals, and other qualified healthcare professionals who are permitted by law and hospital bylaws to offer medical care within a healthcare facility are known as medical staff members. To promote patient safety and clinical performance responsibility, these medical personnel are typically grouped into a medical staff framework in hospitals. Despite the fact that the majority are independent medical practitioners and not full-time hospital workers, members of medical staff categories carry out important tasks in the hospitals. Providing the highest caliber of patient safety and care is the primary duty. When addressing issues regarding the organization and its employees, the members are allowed to operate as a team and communicate with the governing board and staff leaders.

Chapter 6 Findings, Recommendations and Conclusion

6.1 Introduction

Medical negligence means when a healthcare professional makes a mistake or fails to provide proper care to a patient. People who are experts in a particular job may make mistakes, but that is different from when regular people make mistakes. In simple words, this proof of negligence is based on how much care was expected to be taken, which is different from regular negligence and professional negligence.

6.2 Findings

While conducting my research, I discovered that the Bangladeshi laws don't do not properly deal with cases of medical negligence. Some parts of the law dealing with medical negligence are unclear, faulty, and not well defined, which makes it hard for victims to seek compensation. Furthermore, many parts of these laws and rules are usually not used directly to fix medical mistakes. The person who was harmed may feel even less motivated to take legal action because going to court is very expensive and can take a long time.

In Bangladesh, there is no specific law about medical negligence. If someone gets sick or hurt, they can get help from sections 337 and 338 of the Penal Code to fix the problem. Moreover, section 304A includes the rule for causing death by carelessness. In Bangladesh, if someone needs help, they should use the sections mentioned earlier. However, these sections have some restrictions or conditions.

6.3 Recommendations

Because of the unclear understanding and inability to enforce laws on medical negligence in Bangladesh, people in the medical profession are able to escape responsibility for their actions by exploiting the weaknesses in these laws. So, to stop these wrong actions, we can do the following things –

- We need a specific law for healthcare that deals with how to fix problems and make things right when mistakes happen. This law should cover all medical services, the organization in charge of them and what should happen if someone admits to making a mistake. The goal is to make it easier for patients who have been hurt to get help and compensation under this law.
- Medical negligence could be considered a crime under certain parts of the Penal Code, 1860 specifically sections 337, 338, and 304A. Furthermore, it is important to clearly define and explain what medical negligence means, its different types, and how far its influence reaches. In addition, we need to get rid of any hurdles that may come up, even if there has been a mistake by doctors.
- Private clinics and hospitals must be run by the right people, have the equipment and facilities needed for healthcare, be tidy and maintained properly, and have sufficient seats for guests.
- Tort law should be a strong part of our legal system because it usually covers cases where medical mistakes have been made. It needs to be written in a clear way.
- The rules for doctors should cover different ways of being careless.
- To avoid any ambiguity when filing a claim for medical negligence under the new Consumers Protection Act 2009, the term "medical profession" should be mentioned explicitly in section 2(1).
- Suggestions for guaranteeing openness in the management team of the medical profession, as per the BMDC Act of 2010.
- Develop a plan for advocating for health policies; Specific rules exist to protect people's right to healthcare, and it is important to identify and prioritize them.
- To let people know that they have the right to receive good health and care by using public awareness campaigns.
- A Health Court might be created to help people who have been harmed by medical mistakes. They would be able to go to this court to try to get compensation.
- The fees to file a medical negligence case shouldn't be too high, so that people can afford them.
- Make sure that court decisions and judgments related to the right to healthcare, medical errors, and professional wrongdoing are published and shared with the public.

6.4 Conclusion

Medical mistakes and the absence of responsibility in the entire healthcare system have caused an intolerable situation in both public and private hospitals, clinics, and the healthcare industry of Bangladesh. In Bangladesh, there is a lack of resources, not enough necessary equipment and medicine, and not enough doctors and nurses compared to the number of patients. Despite our sincere gratitude for the dedication of medical professionals in difficult circumstances, it is crucial to recognize that their challenging situation should not be seen as a justification for negligent, immoral, or deceitful conduct. Understanding the linkages between these various misconducts is highly significant. In order to halt the destructive cycle, it is important to enforce accountability for people's actions. Having a greater responsibility will make people trust doctors more and make healthcare services better in the country. Rather than solely focusing on the limited resources, it is crucial for the government to take into account the yearly outflow of funds due to individuals seeking medical care abroad. Once again, it is certain that the government must take the lead in order to make a difference. However, it is also important that organizations in society, like NGOs, need to start the process and keep working with the government and each other until things change.

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