



Research Monograph

On

**PROTECTION OF VICTIMS IN CASE OF MEDICAL NEGLIGENCE: A CRITICAL
ANALYSIS ON BANGLADESH PERSPECTIVE**

Submitted to:

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Date of Submission: 27 October 2020

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Date: 27 October 2020

To,

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Subject: Submission of research monograph.

Dear Sir,

It is a great pleasure for me to submit the Research Monograph on **PROTECTION OF VICTIMS IN CASE OF MEDICAL NEGLIGENCE: A CRITICAL ANALYSIS ON BANGLADESH PERSPECTIVE** While preparing this Research Monograph. I have tried my level best to maintain the required standard. I hope that this paper will fulfill your expectation.

I, therefore, pray and hope that you would be kind enough to go through this Research Monograph for evaluation.

I always available for any further clarification for any part of this Research Monograph at your convenience.

Yours most obedient

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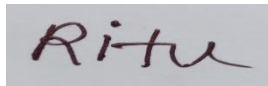
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ACKNOWLEDGEMENT

In preparation of my thesis under titled “Protection of Victims in Case of Medical Negligence: A Critical Analysis on Bangladesh Perspective”, I had to take the help and guidance of some respected persons, who deserve my deepest gratitude. As the completion of this assignment gave me much pleasure, I would like to show my gratitude **Dr.Khudrat-E-Khuda(Babu)** Associate professor Department of law Daffodil International University for giving me good guidelines for this thesis throughout numerous consultations. I would also like to expand my gratitude to all those who have directly and indirectly guided me in writing this thesis.I am also grateful to Md.Abu Saleh, Assistant Professor Department of the Law, Faculty of Humanity & Social science (FHSS), Daffodil International University to his cooperation and authorized me to work on this topic research. I am also grateful to every Faculty of LL.M, staff members of the Library of Daffodil International University and especially my classmates have made valuable comment suggestions on my paper and have given their valuable time which gave me an inspiration to improve the quality of the thesis.

DECLARATION

I hereby do solemnly declare that the work presented in dissertation has been carried out by me and has not been previously submitted to any other institution. The work I have presented does not breach any copyright. I further undertake to indemnify the University against any loss or damage arising from breach of the forgoing obligations.



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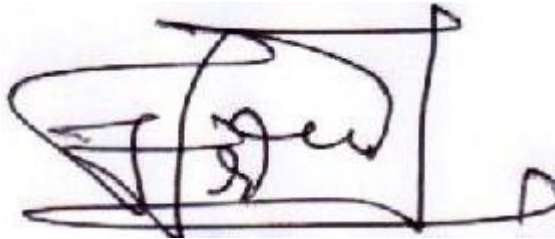
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Letter of acceptance

It is to certify that Rasna Sharmin Ritu has completed her thesis **PROTECTION OF VICTIMS IN CASE OF MEDICAL NEGLIGENCE: A CRITICAL ANALYSIS ON BANGLADESH PERSPECTIVE** under my supervision. This is his original work. To the best of my knowledge, no part of the thesis has been published or submitted to any person or organization for publication.

I wish his success.



Dr. Kudrat-E-Khuda (Babu)

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ABSTRACT

Medical negligence may be a clear violation of right to health by knowledgeable group who are literally on duty to guard when emergency strikes and therefore the health rights are under threat. Medical negligence is lately a well-liked topic of attention and discussion in many developed states and consequently many of them have enacted and established separate Acts and courts to strengthen health care laws. However in Bangladesh there's no specific and comprehensive legislation to stop medical negligence though many legal provisions are there under different statutes which aren't precisely codified. this text during this background has made an attempt to define medical negligence, present laws concerning medical negligence of Bangladesh with their major loopholes and lastly recommends some actions to return on strong preventing such violation of health-care rights. This paper seeks to interact with this legal scenario that exists in reference to the laws and regulations involving medical negligence in Bangladesh. Public and personal health sector of Bangladesh virtually remained unregulated since the inception of this country. we've a really weak health system and really few rules and regulations are alive to guard the rights of the patients and to supply remedy to them just in case of breach of liability. The article begins by setting the scene in reference to the essential concepts of medical negligence. Some recent stories of medical negligence are discussed with legal analysis. the prevailing legal framework of medical negligence is then explored before the analysis progresses to the requirements for regulatory reforms towards an efficient legal regime of ensuring the prevention and redresses of medical negligence cases.

TABLE OF CONTENTS

Chapter One

Introduction

1.1 Background of the Study	1-2
1.2 Statement of the Problem	2
1.3 Research Question	2
1.4 Objectives	2-3
1.5 Literature Review	3-4
1.6 Research Methodology	4
1.7 Scope and Limitations	5

Chapter Two

Conceptual Analysis

2.1 Introduction	5-6
2.2 Definition of Major Concepts	6
2.3 Present Scenario in Bangladesh	6-8
2.4 Nature of Medical Negligence	8
2.4.1 Surgical Error	8
2.4.2 Unnecessary Surgery	8-9
2.4.3 Negligent Anesthesia Preparation	9

Chapter Three

National Legal Framework to Prevent Medical Malpractice and Negligence

3.1 Law on Medical Negligence	10
3.2 Constitutional Safeguard	10-11
3.3 The Medical and Dental Council Act, 1980	11
3.4 The Medical Practice and Private Clinics' and Laboratories (Regulation) Ordinance, 1982	11-12
3.5 Civil Liability	12-15
3.6 Duty and Care.....	15
3.7 Negligence.....	15

3.8 Efficacy..... 15

Chapter Four
Problems of Existing Laws Dealing with Medical Negligence in Bangladesh

4.1 Introduction..... 16

4.2 Absence of Specific Laws 16

4.3 Problems related to evidence of negligence..... 16

4.4 Incompetency of the Judges	17
4.5 Monitoring of private and public hospitals Unfinished medical regulatory agencies.....	17
4.6 Lack of Public Awareness	17

**Chapter Five
Concluding Remarks**

5.1 Findings	18-19
5.2 Conclusion.....	19-21
Bibliography	21-24

Chapter One

Introduction

1.1 Background of the Study

Negligence: The draft defines the various types of negligence of physicians, medical assistants and medical providers and the resulting damage. Negligence refers to 'negligence on the part of the physician in performing the proper duties, i.e. misdiagnosis, misdiagnosis, misdiagnosis, misdiagnosis, wrong limb removal, misreporting or exaggerated reporting, multiple patients being examined together, drug addiction or dementia. Unnecessary delays in providing emergency medical care, giving unnecessary pathological and diagnostic tests, prescribing unnecessary and the same drugs from different companies, giving out-of-jurisdiction treatment, being late for work and leaving the workplace before work hours or absent without permission, Not following the prescribed protocol, getting the work done by the nurse, nanny, ward boy or someone else without doing the work of the doctor, giving less or more medicine than required, meeting the representative of the drug manufacturing organization. The draft also defines the negligence of medical assistants. The commission says these would be considered a crime if they happened.

Remedy for Citizens and Punishment of Offenders: The draft calls for the formation of a 'National Health Commission' to ensure medical negligence and punishment of offenders and to oversee the whole matter. The victims have to lodge complaints with the commission in the prescribed manner. In the context of violation of this law, it has been said that one or more 'Healthcare Dispute Resolution Tribunals' should be set up in the country to assess the medical negligence and the consequent damages, determine the compensation and recover it. Article 41 of the draft law states that the government will set up one or more

tribunals in the capital under the name 'Healthcare Dispute Settlement Tribunal'. If necessary, 'tribunals' can also be formed at the district level.

1.2 The Statement of the Problem

Medical negligence may be a common incident in Bangladesh. a day and even every minute tons of patients are getting victims of medical negligence. However, what are the explanations behind this? Definitely, I believe, there's no comprehensive law concerning medical malpractice which may easily enforce the rights of the victim patient. additionally , cases of medical negligence often involve complex issues regarding ER care, surgery, medical care treatment, and delivery and drugs errors. These cases require extensive medical research, investigation and analysis i.e. the investigation officer or the other person during this connection, judges and particularly the lawyer must have proper medical knowledge. Negligence by doctors has got to be determined by judges who aren't trained in life science . They believe experts' opinion and choose on the idea of basic principles of reasonableness and prudence. But most of the lawyers, investigation officers, judges haven't any experience and knowledge in life science to gauge the case and provides real legal advice, real report and comprehensive judgment. Besides, lacking of evidence of patient is another loophole for not proving the medical negligence lawsuits.

1.3 Research Questions

1. What are the laws to provide the remedies against the medical negligence in Bangladesh?
2. Are there any drawbacks in the existing laws and policies regarding protection of victim in case of medical negligence?
3. What are the legal and practical reforms may be introduced for the better protection of the victim of medical negligence in Bangladesh?

1.4 Objective of the Study

As of complex nature of the practice of drugs , it's no surprise that even the littlest mistake by a doctor can have life-altering (even life-ending) effects on his or her patients. There are many various sorts of medical negligence are seen in life science . therefore the objective of the study is-

Spelling out the present forms and contexts of medical negligence to supply the remedies against the medical negligence under the prevailing laws regarding medical negligence in Bangladeshi system .

Identifying the drawbacks of existing laws and policies regarding protection of victim just in case of medical negligence and existing protection provides by Bangladeshi laws against the medical negligence

Rethinking the (re)construction about the legal and practical reforms and it's going to be introduced for the higher protection of the victim of medical negligence under national legal framework to chase down medical negligence in Bangladesh. So that victims by medical malpractice can get effective remedies

1.5 Literature Review:

Mr. Mohammad Hasan Murad, Assistant Professor, Department of Law, International Islamic University Chittagong, mentioned on his writing namely “**An analysis Patient Safety in Bangladesh**” published on **Journal of Alternative Perspectives in the Social Sciences(2013) Volume 5 No 2**, “Most doctors, nurses and healthcare providers are highly skilled professionals who are committed to providing the finest medical care. But sometimes in hospitals, operating rooms or clinics there are tragic mistakes. Clinical errors in the diagnosis and treatment of hospitalized patients are unfortunately the most common form of hospital weakness "but I strongly disagree with this. Because most of the doctors are not skilled and properly trained and sometimes they committed wrong for their negligent duty.

Rafea Khatun, Lecturer of the Department of Land Management, Faculty of Law, Jagannath University, “**Doctors Should Know Their Own Laws**” **The Daily-Sun, 9 November, 2019**, mentioned about the **Code of Medical Ethics**: Bangladesh Medical and Dental Council sets the normative guidelines of professional conduct as the Code of Medical Ethics to be followed by the registered physicians and dentists. This Code provides embargo on providing false medical certificate, attempting to make improper profit, abusing professional knowledge, skill, privileges, abusing of doctor-patient relationship and canvassing etc.

In addition, this code included provisions regarding suspension and removal of name from the BMDC's register as a practitioner in case of gross negligence along with the provisions of taking disciplinary action in case of assisting an unregistered person to practice medicine and dentistry etc. Though, this code does not specifically set any standard for degree of care that a medicine or dental practitioner owes to the patient, it addresses gross negligence and unauthorized professional association is referred by **Khandakar Kohinur Akter Lecturer (Law), School of Social Science Humanities and Language, Bangladesh Open University**. “**A Contextual Analysis of the Medical Negligence**” in the **The Northern University Journal of Law**,

Volume IV (2013). She medical negligence is a clear violation of right to health by a citizen in Bangladesh under his/her constitutional rights.**Dr. S.M. Masum Billah, Assistant Professor, Department of Law, Jagannath University, Dhaka. “Law Commission’s proposal of making medical negligence law”, The Daily Star, April 20, 2013** Law Commission's proposal is based on purpose of standard of health service for the people without obviating the interest of the professionals and concerned authorities. In making a medical negligence law, the first challenge is to legally define and determine the nature of medical negligence. Much depends upon how does the law view 'negligence' itself. Normally, negligence is defined as 'failure to exercise reasonable care and skill in a particular situation. Pending a draft, the Commission has succinctly presented some basic tenets of medical negligence.**Sultana Nishat, “Medical Negligence in Bangladesh; An Introduction”, Law Vision, Issue: 9 Department of Law, University of Chittagong, (2004-2005)** Negligence is the breach of a legal duty of care. A breach of this duty gives the patient a right to initiate action against medical negligence. All medical professionals, doctors, nurses, and other health care providers are responsible for the health and safety of their patients and are expected to provide a high level quality care. Unfortunately, medical professionals and health care providers can fail in this responsibility to their patients by not giving them proper care and attention, acting maliciously, or by providing substandard care. It causes far-reaching complications such as personal injury and even death

1.6 Research Methodology

This research work is qualitative and descriptive in nature. Data were collected by secondary data collection method. Books, journal articles, news reports and statutory laws are reviewed to formulate this work. The legal propositions and doctrines are to be gathered through the judgments; statute laws include constitutions, civil and criminal procedure codes and international conventions, books, article scholars and to critically analyze, to draw the inadequacies, disadvantages, advantages, weakness and strengths of the systems and to precise opinion on rational basis then come to conclusion of the research at the top . Finally, through Analytical and important approaches, the researcher is expecting to research the prevailing applicability of right of the victims to urge protection under the Bangladeshi system .

1.7 Scope and Limitations

This study will specialise in ensuring the protection of patients who has been suffered by negligence in time of medical aid . Besides us there are huge numbers of example of medical negligence. So

- 1) Available facts of medical negligence within the Bangladeshi private and government's hospitals.
- 2) People are suffering by medical negligence, highly interested to share their story then they get proper treatment after going abroad.
- 3) Newspapers highlights the news of medical negligence just in case anyone suffered by medical negligence.
- 4) This research paper has contained many leading cases in Bangladesh but thanks to shortage of your time I couldn't explore the whole segment.
- 5) Lack of secondary source-based information regarding negligence by doctors of our country.
- 6) Lack of governmental resources to follow up the medical negligence incidences usually occur privately and public hospitals of the country.
- 7) Only a limited number of Non-Governmental organizations affect the difficulty of medical negligence incidences.
- 8) Insufficient information in hospitals, sometimes they ignore about the incidents of medical negligence.

Chapter Two

Conceptual Analysis

2.1 Introduction:

Most of the Bangladeshi Medical practitioners are highly skilled professionals who are committed to providing the best medical aid . But occasionally, tragic mistakes are made during a hospital, OR or clinic. Medical mistakes within the diagnosis and treatment of hospital patients are unfortunately among the foremost common cases of hospital malpractice. As of complex nature of the practice of drugs , it's no surprise that even the littlest mistake by a doctor can have life-altering (even life-ending) effects on his or her patients. There are many various sorts of medical negligence are seen in medical science.

Actually there are only a few works as like thesis and journals about it. But in our country there are newspaper reports about the victimization the patients. That's why I interested to review about it.

2.2 Definition of Major Concepts

Negligence is the failure to practice proper and ethically regulated care that should be used in certain situations. Torture referred to as negligence involves loss in the world of law, perhaps due to failure to act as a kind of negligence with a worrying situation. The basic premise of negligence is that people should take proper care in their actions, considering the potential damage that could cause damage to people or property. Medical negligence is the poor quality of care that a medical professional provides to a patient who is directly injured or has an existing condition.

2.3 Present Scenario in Bangladesh

First of all, no doctor wants to kill his patient. So the question here is not of murder but of negligence, error and incompetence. Although medicine is unique as a profession, physicians are not unique. They are the people of this land. Some of the people in other professions are selfless philanthropists, some are extreme professionals and some are selfish. This also applies to doctors. And so with the service of skilled hands, there are also cases of negligence, mistakes and inefficiencies. There is no area of the country where there are no such allegations of negligence, anarchy, corruption. So in the case of doctors, everyone will be fine, it cannot be expected. Do doctors also get good treatment or cooperation by visiting all the offices or any other need?

Physicians are told in the context of making mistakes; The mistake that can easily get your claim denied is to fail. Not all mistakes are the same. It is not the same thing to mistakenly give less than one teaspoon of cough syrup and mistakenly cut the left kidney instead of the right kidney or give any other deadly medicine instead of one medicine. No excuses are acceptable for some mistakes. In these cases, there are also rules for revoking the doctor's license and other punishments. So if someone dies due to the incompetence, negligence or carelessness of the doctor, he must be punished subject to proof. But it is not the doctor's fault that the patient dies. We need to keep in mind that doctors cannot treat all patients well. Patients with a stroke or heart attack, liver or kidney damage are more likely to die. The causes of many diseases are still unknown and the treatment of these diseases has not yet become possible in many developed countries of the world. In many advanced technology countries, mistakes are often made, although not intentionally. And in the absence of the knowledge, medicine, technology or other

infrastructure we know here, it cannot be applied for a long time. Patients are more likely to die in a CCU or ICU because the dying patient is admitted there and in many cases the condition is so complicated that nothing can be done.

Many times treatment requires the consent of the patient. In this case, it is seen that the relatives who are with the patient make their own decisions one by one. It is too late to decide whether to admit the patient, where to do it, whether to have surgery, whether to spend the necessary money. It is a waste of time. But then the doctor is blamed if the patient dies. Many times wealthy patients come to reputed expensive hospitals abroad for treatment. He then compared such an expensive service to the service of a government hospital or a small clinic in our country and said, "The treatment here is very bad." It is not logical at all.

Our medical system also makes mistakes inevitable in some cases. Since the number of doctors is much less than required, they have to see many patients in a short time. Hospitals have excessive patient pressure, so the number of errors is increasing. Even the number of specialist doctors is significantly less than the number of patients. So many people go to private chambers in the hope of better treatment but do not get the necessary medical services or face difficulties. This is because the specialist doctor who will treat the patient is also under excessive pressure and is struggling to provide services. On the other hand, most of the people are poor and cannot afford medical treatment. Stay away from exams, you can't even raise money to buy medicine. In this case, the doctor has to use his skills and qualifications to provide services. Even dying patients have to be given medical services without examination. The risk of error is increasing but there is no other way. Most of the patients have to return home without treatment or get treatment but they have to bear the cost by selling their house and land which is impossible for many.

One thing everyone should keep in mind is that thousands of patients are recovering every day at the hands of our doctors. Hundreds of operations are being carried out every day in the capital alone. Almost everyone is getting better and going back home. Kidney or liver transplantation is taking place in the country with major complex heart operations and the tendency to go abroad is also declining. But these never get publicity in the media. It can be seen that even if there is a minor mishap in the case of one or the other accident, it is the one that gets more publicity in the media. Even attempts are made to tarnish the standard of treatment. This one-eyed policy of the media has created misconceptions in the minds of the people about doctors. If one person is personally responsible for it, blaming all the doctors together or pouring propaganda cannot be desirable.

Many patients often complain that they have been hospitalized for a long time, no doctor or nurse comes properly, does not look well, does not give medicine properly and so on. These are desirable and in the true sense doctors or nurses should see the patient regularly. Many patients or their relatives feel that the services will be available as soon as they go to the doctor or hospital or expect the doctor to come and see them again and again. Everyone seems to have the most problems with his patient. But when the doctor has to serve many patients at the same time, someone has to wait a little. Many people hope that by admitting the patient under a professor, that professor will see the patient immediately. However, the professor not only has the responsibility of seeing more than one patient but also has to fulfill his academic and administrative responsibilities including teaching students and taking exams.

2.4 Nature of medical negligence

Most physicians, nurses and healthcare providers are highly skilled professionals who are committed to providing the most postgraduate medical assistance. Occasionally, however, tragic mistakes are made in the hospital or clinic. Physician specialists in the diagnosis and treatment of hospitalized patients are unfortunately found in the most common cases of hospitalized treatment.

2.4.1 Surgical error

Treatment neglect is usually associated with operational theater with complex surgical treatment, such as heart, spinal or brain surgery that can cause fatal damage or even fatal minutes. However, even among the most primary care providers, including colon, vascular, gynecological, laser vision correction or sinus surgery, surgical errors and treatment-related problems can occur. It is a well-known fact that doctors perform most surgeries throughout Bangladesh. Unfortunately, surgical laxatives occur much more than many of us realize. Urgent surgical treatment requires a huge level of skill, and even the slightest mistake can have a profound effect on the patient. A variety of surgeries can also be performed in the medical field such as unnecessary surgeries, incorrect site surgeries, errors in anesthesia, etc. One of the most dangerous risks in any surgical treatment is the excision, laceration or perforation of an artery, organ or vein. It is a well-known fact that doctors perform a lot of surgeries every day in Bangladesh, which is a possible mistake a surgeon can make during an operation. Unfortunately, surgical accidents happen more often than not many of us.

2.4.2 Unnecessary surgery

Now a days, most doctors are running after them. They need to lose the mentality of service education and forgotten objectives. So that they perform unnecessary surgeries for his own benefit, not for the patient's citizenship. Unnecessary surgical treatment is also associated with amydiagnosis of patients' symptoms or with treatment decisions outside the proper consideration of other options or risks.

Alternatively, sometimes surgery is chosen for his or her success over more conventional treatments and is relatively easy compared to other options. Among the most common non-invasive surgeries

- i. Pacemaker implants
- ii. Coronary bypass surgery
- iii. Cesarean section
- iv. Hysterectomy

2.4.3 Preparation of negligence anesthesia

Sometimes the anesthesiologist uses anesthesia negligently and recklessly without reviewing the patient's medical history, history, previous medications, allergies, and requirements during the operation, which causes the patient's limbs and instant death. In addition, an incompetent anesthetist may be responsible for the patient's death. In the case of *Rajmal v. State of Rajasthan*, (AIR 199 Raj Raj. 60) the wife of the petitioner died. It was observed that there was no negligence on the part of the physician continuing the treatment, nor could his honesty or effort be questioned. The obvious explanation for the patient's death was the lack of adequate restorative facilities in sorting out the appropriate equipment, even as a trained and qualified anesthetist. Held, a part of the hospital was neglected and so the government was sensitive in paying compensation

Chapter Three

National Legal Framework to Prevent Medical Malpractice and Negligence

3.1 Law on Medical Negligence

A recommendation with the draft of 'Health Act 2018' has been sent to the Ministry of Law and Health. The concerned ministry will review the draft and take necessary steps to implement it.

In this regard, the chairman of the law commission told Samakal that allegations of negligence and harassment of citizens are not new. The Law Commission has finalized the draft of the Healthcare Act. I believe that proper follow-up and implementation of this law will be able to play an effective role in modernizing medical management, improving the quality of medical services and improving the quality of life of the citizens, including achieving the health policy targets. Hopefully, those concerned will take necessary steps in this regard.

A review of the draft law and recommendations shows that there are a total of 65 sections in the law. Divided into 14 chapters, the second paragraph of the draft outlines the rights and responsibilities of health care recipients. Article 4 of the Act states about the right of the recipient of health care, "Any person suffering from any disease and seeking health care shall be entitled to receive health care from any doctor in the country or from all types of medical service providers including government or private hospitals."

Section 5 of the Act provides that any recipient of health care is entitled to receive free medical prescriptions at government hospitals, free medicines subject to stocks, quality food and diet at free or permitted prices, and necessary surgical or ancillary examination services. The same section deals with the provisions for conducting medical activities including admission of patients in private hospitals, ensuring confidentiality of medical information and storage of information.

3.2 Constitutional safeguards

There is no single law in Bangladesh yet for the disposal of complaints of wrong treatment or medical negligence and legal remedy. In Bangladesh in 2016, the government proposed a law called 'Patient and

Healthcare Providers and Institutions Protection Act'. But this law has not yet come into force. However, there are opportunities for legal redressal for medical negligence in various scattered laws.

Constitutional remedy: The constitution is the highest law of the country. Of the Constitution of Bangladesh

The basic needs described in paragraph 15 include 'health'.

Article 17 deals with the protection of public nutrition and 'public health'.

The 'right to life' described in Article 32 is recognized as a fundamental constitutional right and is enforced by the courts. Medical negligence and failure to protect health violate this fundamental right to life. So there is an opportunity to file a writ or public interest litigation in the Supreme Court if the treatment is neglected.

3.3 Medical and Dental Council Act, 1980

Patients pay good fees for civil and house surgeons but they do not get proper health and treatment services from them. The council can then remove a medical professional in accordance with the law (Section 1980). When a physician or dentist is found guilty of dishonesty in his or her profession, the council may refuse to allow the person to register (Article 26I). The council may also order the removal of the name of a registered medical person or the dentist from the article accurately or for a specified period of time due to professional misconduct (Section 29ii). The provisions of Code 5 (a) of Medical Ethics state that medical and dental practitioners may also resort to substantial misconduct to justify the suspension or removal of their name from the Register for widespread negligence in their duty to their patients.

3.4 Medical Practice and Private Clinics and Laboratories (Control) Ordinance, 1982

Both medical staff, private clinics and government hospitals are responsible for caring for patients. Personal practice is fully displayed during office hours (Section 4) In private clinics and diagnostic centers, patients pay a fee for his treatment. Therefore, patients become consumers there and are entitled to apply for appropriate services. The prerequisites for setting up a private clinic are a good environment for patients, a minimum of eighty square feet of floor space for each patient, air-conditioned operating theater, almost all necessary equipment, adequate supply of life support and necessary medicines, required number of full-time registered medical The law, which specializes in the operation, treatment and supervision of practitioners, nurses and other staff and patients, has also given top powers to the

Director General of Health. 119 The Director General or any other officer authorized by him shall have the opportunity to examine any chamber of registered medical man, private clinic, private hospital or pathological laboratory or they have not violated any provision of this Ordinance or have not sued (Article 11). In determining any violation of the provisions of this Ordinance, the Director General may, in the case of medical octopuses, recommend to the authorities only in the case of public clinics "> if medical authorities are prohibited from conducting public practice" to revoke the license by a private hospital and to close it In the case of pathological laboratories. It is very unfortunate during this ordinance that no punitive action is often taken without imposition of fines (Mr. Ahmduzzaman Mia and Mr. Shamsia Hussain, 2009).

3.5 Civil and criminal liability

The news that a housewife has been killed for conceiving a girl child, or that a pagan husband and his family members have tortured and killed a girl after finding out that she is a girl child, or that the fetus of a girl child is being repeatedly destroyed at the behest of the mother-in-law. .

Due to the patriarchal attitude of the society and the immoral behavior of some doctors, demonic incidents are happening every day in the country. Uneducated, semi-educated women are not able to protest against this injustice due to religious tension and shame. But it would have been possible to save the fetuses of thousands of girls if the doctors had not disclosed to the parents of the patients that they were morally strong in the ultrasonogram report. In some countries of the developed world, including China and Japan, there are special restrictions on sonologists to disclose the information whether the fetus is a boy or a girl before birth, but no such rule is being followed in Bangladesh. On the contrary, our sonologists are competing with each other on how short a child's gender identity can be. Not only that, but there have also been cases of misleading reports due to lack of necessary training and skills. Everyone from the upper class to the lower class is destroying the fetus of the girl child in the hope of having a son. The matter has been banned by law in India. There is no law in this regard in our country. There is no monitoring or survey on who is doing what and where. 'Since abortion is religiously forbidden in our country, the issue is not being addressed here. But abortions are happening all the time in maternity clinics and many mothers are dying as a result of abortions.

Medical treatment in Bangladesh: There is very little responsibility and accountability in medical treatment in Bangladesh. As a result, doctors can easily get through even after serious negligence crimes. If you want to know when a doctor can be charged with negligence, you need to know about negligence. Someone can be accused of negligence for three reasons.

1. When a person has the responsibility to pay proper attention and care to another person.
2. When that person fails to perform this duty. And
3. The person suffers extreme loss or dies due to not fulfilling his responsibilities.

If these three reasons are present, a doctor can be accused of negligence.

Basically, medical negligence refers to medical negligence. Medical negligence refers not only to the negligence of doctors, but also to the ancillary arrangements, nurses, hospital authorities, technicians, drug suppliers and suppliers. The only reason for this is that there is no accountability anywhere. If someone is transferred somewhere, there is political lobbying. They live in the existing tabiyate ghurefire. So much comfort, money, wealth, influence has fascinated doctors.

Although the law provides for remedial measures for various crimes in medical care, most people are not aware of it. Although there is a need for clear legislation for this, it is not being done. As a result, the crime related to medical negligence is increasing day by day. Influential, wealthy people do not come to government hospitals unless they are fully responsible. Such negligence in the field of medical treatment and the occurrence of various crimes has become a daily occurrence in the context of Bangladesh. According to the constitution of Bangladesh, medical care is one of the basic needs of the citizens of the state, but the medical system has been in a state of extreme anarchy for a long time.

Many specialist doctors work in private clinics while on duty in government hospitals, which is a crime. Again many give up many fake foreign degrees next to their earned degree, which is unfair and deceptive. It is a crime to misrepresent medical reports or postmortem reports, to fabricate reports and to forge. In addition to this, disobedience to provide the original documents of the patient, repeated harassment of the patient, not allocating the required seats in the hospital and making arrangements elsewhere are also included in the crime of negligence. It is also unjust to demand a fee in excess of the prescribed fee for the operation. It goes without saying that there are not many medical cases in Baladesh.

People. The Bangladesh Penal Code clearly states that if a person causes the death of another person through negligence or arbitrary action, that person shall be deemed to have committed an offense under Section 304 (a) of the Penal Code. When a patient seeks the help of a physician and the physician assumes the responsibility of treating that patient, the physician cannot in any way evade the liability under section 304 (a) if the patient dies due to the negligence of the physician. In the case of this crime,

words like hot act, carelessness, negligence or reckless act etc. are used. In the case of Rashidullah v. State (21) DLR (609), it has been said that reckless or hasty work means taking the risk of any dangerous work and performing the work with caution. Medical negligence will also be included in this section of the Penal Code.

In addition, under section 314, abortion-related offenses and under sections 323 to 326, various offenses related to negligence can be punished. In addition, according to Section 337 of the Penal Code, if death or security is disrupted due to reckless work or negligence, there is a maximum imprisonment of 3 months and a maximum fine of Tk 250. Section 337 of the Penal Code also provides for a maximum imprisonment of six months and a maximum fine of Rs 500 for hitting due to negligence. Section 337, however, is quite consistent with the remedy for medical negligence-related offenses. This section mentions that in case of injury due to any kind of reckless act or negligence, a maximum of two years imprisonment or a maximum fine of five thousand rupees or both can be given together.

Besides, there is a law in Bangladesh called The Medical Practice and Private Clinics and Laboratories (Registration) Ordinance, 1982. So that clear rules have been formulated in the case of private practice of doctors and in the establishment and operation of private clinics. According to the law, a registered physician who is employed in a government service cannot engage in private practice in any hospital, clinic or nursing home during office hours and appropriate action may be taken against him. One of the reasons for this is the lack of clear laws. Even then, inadequate legal systems can include medical negligence as both a civil and a criminal offense. Tort law refers to negligence, the failure of another to fulfill his legal obligation to take as much as he can.

Complaints can be filed under the Tort Act or in a civil case against medical negligence for harassment, defamation, and false temptation. But in our country, civil cases are quite complex and cost a lot of money to manage, which is difficult for the poor to raise. There are also complications in taking evidence. In such cases, the doctor or the person concerned has to be the witness. As a result, it becomes impossible to reveal the truth about the incident and remediation is not possible. At the first meeting with the patient, the doctor advised to do many tests. If 10 types of tests have been done, then most of the test results are normal. In other words, there is no abnormality of the patient in the test. It is a common misconception that physicians recommend additional tests. Naturally the question arises why do they advise patients to

undergo additional tests? The answer is very simple, when a patient comes to a diagnostic center for a test with a doctor's advice, the patient is charged double the fair test fee and the name and address of the counselor are noted. Later, 40-50 percent of the charges collected from the patient were secretly brought to the doctor. The doctor also accepted the money without hesitation. Is it not cheating or corruption of doctors with patients?

3.6 Duty and Care

Responsibilities may be the legal environment in which physician practitioners, siblings, or other medical professionals and their patients refuse treatment to establish the medical standards necessary to treat the disease. Explains a duty whenever a hospital or healthcare provider cares or treats a patient. For example, as the case may be, the patient has been able to prove that the physician or hospital failed to develop relevant adequate care.

3.7 Negligence

Medical consultants or healthcare providers must provide quality care to their patients during treatment. In order to neglect to prove any material (usually the patient himself) must show that the physician needs to care for the patient, the doctor was negligent in his management and harmed the patient as output. Also, a patient can identify expert witnesses, evidence of customary practice, or indirect evidence.

3.8 Efficacy

The second important factor is causation. The reason is that the limitations of the quality care of the healthcare professional contribute or cause some harm to the patient. In other words, the patient may say, the effectiveness is that the damage occurred which would not have happened otherwise. There is a causal link between negligence and therefore harm, such as injury, loss and loss can be direct consequences of treatment neglect.

Chapter Four

Problems of Existing Laws Dealing with Medical Negligence in Bangladesh

4.1 Introduction

At present Bangladesh regulates medical negligence through various rules which directly or indirectly prosecute the wrongdoers as mentioned earlier. However, there is no full legal forum to address the issue of medical negligence and often people do not agree to resolve their grievances. The main problems with current laws are as follows:

4.2 Absence of specific law:

There are provisions in several laws or they are not appropriate and amended so the victims are confused to decide which court they should go to or under which law they will sue the medical wrongdoers. For example, sometimes criminal cases are filed under the penal code, which is not commendable, because a complaint does not mean that civil and house surgeons are guilty, so if a criminal case is filed against them, it can be a problem for physicians.²⁶ In fact, civil court Cannot punish; They only have the authority to determine the amount of compensation for damages. In contrast, under the Buyer Protection Act, treatment negligence is often prosecuted. So it can create multiples of suits. There is, of course, a trend that the Law Commission of Bangladesh has recently made an effort; It has been raised with a proposal to form an assessment to address the widespread acquisition of medical negligence within the country. The legislature has however predicted on a preliminary basis to increase the quality of medical services for the public without disregarding the needs of professionals and this is undoubtedly a good advice.

4.3 Problems related to evidence of negligence:

The burden of proof on the negligence issue falls on the shoulders of the plaintiff and no legal remedy is available if he fails to provide the necessary evidence before the court showing undue treatment on behalf of the medical professionals. And the medical issues make it completely tactical to make a doctor sick to prove the negligence of another doctor who was accused of negligence. ²⁶ But usually a doctor agrees to provide information against the opposite civil and home they are surgeons as belonging to the same profession. Even medical institutions refuse to provide patients with the necessary paperwork. As a result, the required documents and evidence are not available; Negligence cases become very difficult to prove. In most cases in Bangladesh, the medical institutions concerned refuse to provide them unless directed by a judicial court

4.4 Incompleteness of Judges:

Judges in our country are only trained to handle cases with traditional issues that are criminal in nature or civil in nature. And cases of medical negligence are special in nature for which additional skills are required. Due to the technical nature of the treatment, judges are sometimes not considered the right person and can decide which is reasonable and which is not the case in particular. Perhaps the solution to the current problem is that more equipped doctors and regulatory agencies may be assigned this function to handle the complaint.

4.5 Monitoring of private and public hospitals Unfinished medical regulatory agencies:

In our country, the Bangladesh Medical and Dental Council (BMDC) will need to take disciplinary action and recognize or withdraw any institution and so if its effectiveness proves to be substandard, the qualifications presented by it will be achieved. More importantly, it is the only proper body management and the need for acceptable action in case of efficient conduct and negligence of the doctor. Another disadvantage is that BMDC suffers from some limitations when its jurisdiction results in hard working disciplines. Measurements. The Director General of the Ministry of Health and Health will take action in such cases, but they will only use their performance in this regard. Even recently the Law Commission has acknowledged that specially regulated fact that the power of the BMDC is extremely limited to affect the “negligence” issue.

4.6 Lack of public awareness:

In our country, individuals do not seem to be aware of their healthcare rights which they are even familiar with with the idea of medical ethics in addition to government. . Not showing anything interested in flowing information about medical ethics or efficient negligence, only a huge event occurs, then we discover some articles in newspapers in our country and reports from completely different TV channels.³ But no awareness-building programmer is sadly found.

Chapter Five

Concluding Remarks

5.1 Findings:

1) Specific law enforcement laws:

Several statues have provisions but they are not proper and coded so the victims are confused to decide which court they should go to or under which law they will sue the medical wrongdoers. For example, sometimes criminal cases are filed under the legal code which is not commendable, because the complaint does not mean that the doctors are guilty, so criminal cases against them can be a problem for the doctors. In contrast, civil courts cannot convict defendants; They only have the authority to determine the extent of the damage. Even under the Consumer Protection Act, lawsuits are often filed for medical negligence.

2) Absence of special health court and high court fees:

There is no special health court and usually the shell of the complaint is tried in the same court. So the victims face the incompetence of the judges. External cash is usually required for filing cases in court, as well as higher fees that poor judges in Bangladesh cannot afford. This is why victims often do not seek help from the legal process. However, in our neighboring country India, there is no need for a court fee to file a case of medical negligence under the Consumer Protection Act which prompts people to travel to court for a quick and effective remedy.

3) Lack of accountability:

The process of uncovering patient complaints should be monitored by the general public and private medical agencies, such as investigation money, advice boxes, patient satisfaction surveys, etc. In addition, the patient or parent should be informed of the illness, treatment protocol, and therefore the conversation with the patient should be recorded in the patient's chart. This may later prove to be the epitome of limitation.

4) Incompleteness of judges, lawyers and journalists:

In Bangladesh, judges are only trained to handle cases with traditional therapeutic issues, and medical negligence cases are special in nature, which requires additional expertise. Due to the technical nature of the treatment, judges are sometimes not considered the right person and can decide which is reasonable and which is not the case in particular. A possible solution to the current problem might be to assign this function to physicians and regulatory agencies who are more equipped to handle the case.

5) Medical regulatory agencies unable to monitor private and public hospitals

In Bangladesh, the Bangladesh Medical and Dental Council (BMDC) needs disciplinary action and has been given the power to withdraw recognition or revocation of any institution, so if its effectiveness proves to be substandard, it qualifies. To add, it is the sole authority to manage and control the professional behavior of the physician and to take appropriate action in case of negligence. However, the steps taken by the council are only a few. Another problem is that BMDC suffers from some limitations in disciplined practice because its jurisdiction is limited to physicians who practice privately or who are staff of private clinics. In this case only the Director General of Health or the Ministry of Health can take action, but they rarely use their work in this case. Even recently the Law Commission has acknowledged the absolute truth that the power of the BMDC to deal with the issue of “negligence” is ultimately limited.

5.2 Conclusion:

Neither the doctor nor the caregiver can be arrested in the first place if the patient is neglected or mistreated. If any member of the law enforcement force violates this law, legal action will be taken against him. And if a person acts violently towards a healthcare provider, vandalizing the institution will be considered a non-bailable offense. Doctors and others are being attacked and harassing cases are being filed against them for alleged medical negligence or wrongdoing. As a result, medical workers are not able to work in a normal environment. The law is also needed to ensure that patients are not harassed, neglected or harmed in any way.

The Bangladesh Medical and Dental Council (BMDC) is responsible for investigating allegations of medical negligence or incorrect treatment. Apart from this, the aggrieved person can file a case in the police station or court. There may also be lawsuits under the Consumer Rights Protection Act. But none of this has been able to play a very effective role. People do not know where to complain. BMDC officials say they receive an average of five complaints a month. However, only one incident has been addressed since independence. BMDC registrar Jahedul Haque Basunia said it was not possible for BMDC to work because it did not comply with the rules and regulations.

Golam Rahman, president of the Consumers Association of Bangladesh (CAB), said the Consumer Rights Protection Act provides for compensation in case of deprivation of purchase of goods or services. The aggrieved person gets up to 25 percent of the fine. But there is not much publicity about it. The most meritorious students of the country became doctors and engineers. But many allegations against them.

Guru Punishment for Minor Sin or Guru Minor for Minor Sin: Section 10 of the proposed Act states that if any person or group raises any allegation of negligence against a health care person or persons, the concerned health care person or persons cannot be arrested unless first confirmed. Section 9 states that the court shall, before making a charge of negligence, refer the matter to an expert committee consisting of three expert physicians (not below the associate professor / senior consultant) who are experienced in the matter. Section 6 states that negligence or criminal negligence in performing professional duties or providing medical treatment shall be deemed to be a crime. But this crime will be 'unenforceable' and 'bailable'. The proposed law stipulates that if a person acts violently towards a healthcare provider, vandalizing the institution will be enforceable and non-bailable. Police will not be able to arrest an accused person without a warrant for a felony or bailable offense. The accused can be arrested only after the police investigate and report. The proposed law defines medical care providers as registered medical practitioners, nurses, wardboys, midwives, medical assistants or other persons working in healthcare institutions.

The law specifically covers seven issues of professional ethics. Exceptions to these would be considered a crime. It is an offense to use a BMDC-recognized degree in this list, to be involved in providing specialized treatment in a particular subject without being properly trained or trained in any particular

subject. In addition, it would be an offense to issue a false certificate or bill about healthcare or to take rewards or examination expenses from the patient on the basis of partnership.

However, in case of death of a patient due to negligence while providing health care, it has been mentioned that Section 304A of the Bangladesh Penal Code can be applied against the person or organization concerned. This section provides for imprisonment of not more than three years. If the patient's life is in danger, there is a provision of imprisonment for not more than three years or a fine of two lakh rupees or both. However, if the patient and his relatives disobey the law, the proposed law provides for imprisonment of not more than three years or a fine of five lakh rupees or both.

Doctors say that no one can become a doctor just by passing MBBS. BMDC licenses doctors to serve in the public interest only after complying with certain conditions. The state does not allow any miscreant to receive medical treatment. Fearing that they might be humiliated, they are now reluctant to give the treatment they need.

Rashid-e-Mahboob, vice-chancellor of BSMMU, said that in a civilized society, allegations of negligence are settled under civil law, not criminal law. Compensation has to be paid if the allegations against doctors in the UK are proven. In India, consumer rights are being tried in courts. And here again the system of arrest of doctors is being finalized by arranging trial under criminal law. According to him, it will be difficult to ensure proper treatment if the law is not improved. Besides, the law does not mention any role of BMDC. This is also a weakness of this law.

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