

Medical Negligence in Bangladesh: An Argument for Strong Legal Protection

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Abstract

Medical treatment facilities are the most important service provided by the state to its citizens. In Bangladesh, people face negligence in receiving medical treatment for many reasons. One of the reasons is that, the citizens of Bangladesh cannot claim medical treatment facilities as their fundamental right. Until now, the Constitution of the People's Republic of Bangladesh (hereinafter stated as the Constitution of Bangladesh) has inserted the medical care facilities as fundamental state policy which cannot be enforced by existing law. People can have few methods to remedy this situation and the insufficiency of the law can even lead to death due to negligence on part of doctors, nurses or hospital authorities and pathologists or pathology centers. Thus, a strong legal protection is necessary for saving the people of Bangladesh from medical negligence.

Keywords: Constitution, Legal Regime, Medical Negligence, Medical Professionals, Right to Health, Violation

I. Introduction

The people of Bangladesh have faced many problems in regarding medical services such as a shortage of medical professionals, the high cost of medical services, and the most common is medical malpractice or medical negligence. Undoubtedly, people encounter medical negligence in public hospitals, pathology centers and private clinics countrywide, as well as medical service and service providers, including the administration at these institutions. According to The Universal Declaration of Human Rights (UDHR), the right to health means a standard of living adequate for the health and well-being of a person and their family, including medical care and necessary social

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services.¹ However, people in Bangladesh cannot access the right to health due to inadequate legal protections for enforcing health rights. Although medical care and right to health are indirectly mentioned in many articles of the Constitution of Bangladesh, it does not provide health as a fundamental right or protect the people from medical negligence in any way.² A complete legal regime is also absent for the protection of people from medical negligence or medical malpractice. For this reason, there are many consequences, such as the violation of health rights, a lack of punishment, increase in medical negligence, dissatisfaction within the public, violence committed on health professionals by the families of victims from malpractice as well as doctors going on strike.³ The vulnerable people in these situations currently have insufficient legal protection in Bangladesh.⁴

Sometimes law is essential to perform some ethical or moral duties therefore a complete code for proper medical service and practice is essential in Bangladesh to control the present situation. For example, the government of Bangladesh, passed an act in 2013 (*Pita Matar Varon Poshon Ain 2013*) for observing a moral duty of its citizens to take care of their ageing parents. Thus, a specific law (related to medical service and practices) which may be termed as the Code of Medical Practice, is urgently needed in Bangladesh to reduce medical negligence. Medical practitioners have a fundamental and moral duty to give treatment without negligence, but unfortunately, they do not complete their duties with care and diligence in Bangladesh which creates a serious problem. Moreover, the right to health should be declared as fundamental and enforced like other constitutional rights. This constitutional guarantee will force medical practitioners to fulfill their moral duties and acts as a remedy to the current situation.

Thus, this paper is mainly focused on the medical negligence, legal remedies

¹ Article 25, UDHR 1948

² *Constitutional Protection and Claims for Medical Negligence in Bangladesh*, Bangladesh Law Digest <http://bdlawdigest.org/constitutional-protection-and-claims-for-medical-negligence-in-bangladesh.html> (last accessed December 11, 2017).

³ *Suspension of Four Errant BCL Intern Doctors Sparks Countrywide Strike*, Dhaka Tribune <http://www.dhakatribune.com/bangladesh/nation/2017/03/05/suspension-four-errant-bcl-intern-doctors-sparks-countrywide-strike/> (last accessed December 25, 2017).

⁴ *Farida Akther, Wrong Treatment or Negligence*, Ubinig <http://ubinig.org/index.php/networkdetails/showArticle/1/17/english> (last accessed December 22, 2017).

available to these problems, and suggestions to decrease the incident of medical negligence in the future.

II. Objectives

The main objective of this paper is to focus on the public perception on health right and medical negligence in Bangladesh. The other objectives are:

- To discuss the present state of medical negligence in the Bangladesh healthcare system and its consequences
- To analyze the legal remedies available to patients and the adequacy of the law regarding medical negligence in Bangladesh
- To focus public opinion on the necessary steps for reducing medical negligence in Bangladesh
- To recommend some potential steps to reduce medical negligence

III. Methodology

This paper is mainly based on the analytical study of the different statutes and policies concerning medical practices and some documents relating to medical negligence, medical treatment facilities which is stated in the fundamental state policy of the Constitution of Bangladesh. To understand the different varieties of medical negligence, newspaper articles were studied due to the scarcity of scholarly published reports on this topic. Thus, an empirical study has been conducted to focus on the real picture of medical negligence and the necessity for strong legal protection. The empirical study also helps to find out the appropriate solutions and to justify the researcher observation and thinking.

A questionnaire in Bengali was used to collect the data from 100 people who have completed the minimum of Higher Secondary Examination aged 18 to 50 in Dhaka in 2016 (January to June). The respondents were from different urban and rural areas of Bangladesh who came to Dhaka for medical treatment or to visit their patients. The questionnaire was in descriptive nature, so respondents marked the most suitable options

(if more than one option could be selected) from the specified descriptive answers given in every question. The respondents were purposely selected and interviewed through the structured questionnaire. The options for answers to every question were drafted through literature review and were put together after observing the present situation of medical negligence in Bangladesh. Medical professionals were also interviewed to collect their opinions about medical negligence. And last of all the observation of the researcher regarding medical negligence in Bangladesh helped to finalize the paper. Thus, this paper covers both qualitative and quantitative data from primary and secondary sources to fulfill the stated objectives. The researcher is indebted to the students of LLM 5th Batch Department of Law, Jagannath University for helping with the survey.

IV. General Idea of Medical Services in Bangladesh

Bangladesh as a developing country cannot facilitate free medical services throughout the country. In every district and sub-district or thana (thana means police station; people generally use the term thana instead of sub-district in Bangladesh), the government has established one hospital for the local people; however, these are not sufficient to meet the necessary health care demands of the large population of Bangladesh. Thus, the government has given licenses to private clinics throughout the country that fulfill certain conditions under Section 9 of the Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance 1982. Presently in Bangladesh 2,761 private clinics and 4,704 diagnostic centers are registered, while 390 private clinics and 691 diagnostic centers are registered in Dhaka.⁵ The number of health complexes regulated by the government directly is only about 490.⁶

The Act defines “private clinic” as a clinic, hospital or nursing home, owned by any person, other than the government, where patients are admitted and kept for treatment.⁷ This ordinance also gives a broad definition of medical practice, but it

⁵ *List of Registered Private Clinics and diagnostics*, Bangladesh Private Clinic Owners Association http://www.bpcdoa.com/clinics_and_diagnostics.html (last accessed December 21, 2018).

⁶ *All Upazila Health Complex Phone Number*, Bangla News Live <http://www.banglanewslive.com/upazila-health-complex-phone-number/> (last accessed December 26, 2018).

imposes a very limited punishment for the clinics that violate the provisions.⁸ The result is that many clinics, even in Dhaka are operating without licenses. If gross medical negligence occurs and it attracts the attention of the media, most people already know about the situation regarding unlicensed clinics or diagnosis centers. Unfortunately, no data is available about the number of illegal clinics and diagnostic centers in Bangladesh; however, the High Court Division ordered an immediate shutdown of 14 private hospitals and diagnostic centers that operate illegally just in Mohammadpur Dhaka in 2018,⁹ which shows that the number of legal clinics is less than the illegal clinics in Bangladesh.¹⁰ Another dangerous thing is that pharmacists in Bangladesh will sell medicine and drugs to people without prescriptions and it is common to take treatment of medicine specialist from the dentist and the vice-versa. In fact, in Bangladesh a medicine specialist gives treatment for your dental problem and a dentist gives treatment for diseases that may be cured by a medicine specialist. There is no tradition of sending a patient back to the proper medical professional. Sometimes surgery can also be performed by a person who has no specialty in surgery. These things all occur in Bangladesh for money.¹¹

Moreover, the cost for staying overnight and pathological or other diagnostic tests is very expensive at private clinics and the price varies among cities and clinics. A patient cannot go for an inexpensive option because the medical practitioners have financial agreements to send their patients to specific clinics for testing and the patients must follow the recommendations of their doctors. However, the service quality of

⁷ Sec 2(d), The Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982

⁸ Sec 13, Ibid

⁹ *HC Orders Shutdown of 14 Illegal Hospitals, Diagnostic Centres in Mohammadpur*, Bdnews24.com <https://bdnews24.com/bangladesh/2018/09/11/hc-orders-shutdown-of-14-illegal-hospitals-diagnostic-centres-in-mohammadpur> (last accessed December 29, 2018).

¹⁰ *71 clinics out of 96 in CHT Illegal*, The Daily Star <<https://www.thedailystar.net/news-detail-16533>> 2007; Mostafa Kamal Majumdar, *Pvt Clinics, Diagnostic Centres Running Illegally in Khulna: 29, Out of 155, Do Not Have License*, Green Watch <http://greenwatchbd.com/pvt-clinics-diagnostic-centres-running-illegally-in-khulna-29-out-of-155-do-not-have-license/>; Serajul Islam, *300 Clinics, Diagnostic Centres Operate Illegally in Kusthia*, The Daily Observer <http://www.observerbd.com/2015/03/16/78087.php>; *61 Clinics, Out of 83 in B' Baria, Are Illegal*, Bangla News 24 <http://www.banglanews24.com/national/article/6877/61-clinics-out-of-83-in-Bbaria-are-illegal> (last accessed December 23, 2018).

¹¹ Md Mustakimur Rahman, *Medical negligence in Bangladesh*, Daily Sun <http://www.daily-sun.com/arcprint/details/132763/Medical-negligence-in-Bangladesh/2016-05-01> (last accessed March 2, 2019)

public hospitals needs more improvement than the private clinics in Bangladesh.¹²

The survey respondents know that doctors sometimes unnecessarily send patient to the diagnostic centers for their own benefit. Doctors can receive up to 50% of the fee from every patient they refer to a specific clinic. Medical personals such as doctors, dentists and surgeons and the clinics independently determine the fees for their services and can even increase it every year. On the other hand, patients in public hospitals pay lower fees that has been fixed by the government. And in another case a nominal payment for outdoor treatment (patients who do not need to be admitted to the hospital, normally come within specified time from 10 am to 1 pm to take temporary treatment is called “outdoor treatment”) is 10Tk to 50Tk fees in the cities and in a village or in town outdoor treatment is free. The rate of consultancy is also high (500TK to 2000TK) in every private chamber (sometimes doctors arrange personally in his own capacity) or clinic of Bangladesh. These facilities are available in private clinics or chambers after 4 pm on work days and whole day at the weekend. The private clinic which is not affiliated with its own medical college hospital does not provide any outdoor service. These private clinics are only facilitated for the purpose of consultancy and pathology services. However, the private medical college hospitals provide outdoor service with 100/TK to 300/Tk fees. The low-income patients pay these high fees and charges and sometimes cannot afford to pay the treatment cost at the private clinic. People with health insurance policies will have their treatment fully covered by the insurance companies, but health insurance is not considered common in Bangladesh. The exact data of insured people by the employers or by the personal capacity is hard to come by. The economic condition of the average person does not allow them to maintain an insurance premium. Thus, the medical service of Bangladesh is not planned in a proper way within any strong legal regime.

V. Concept of Medical Negligence and Its Causes and Consequences

In Bangladesh, medical negligence has generally been found by the act or omission (doing any unlawful act or not doing any lawful obligation) by a medical professional,

¹² Andaleeb, S. S. “Public and Private Hospitals in Bangladesh: Service Quality and Predictors of Hospital Choice” *Health Policy and Planning* 15, no. 1 (2000): 95-102.

such as a physician, doctor, medical intern, surgeon, dentist, nurse, medical assistant, pharmacist or any other medical service providers.¹³ There is no definition or discussion of medical negligence in any Act of Bangladesh or even its Supreme Law of the Land (the Constitution of Bangladesh). Medical negligence is discussed very little in tort law, while only general negligence is discussed significantly in tort law. ‘Negligence means more than headless or careless conduct, whether in commission or omission it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing.’¹⁴ However, the term “duty” is complex because it is not specified and can be just explained that a prudent person should do anything to exercise his/her knowledge. Thus, every person has duties and obligations as a person and those are expected as their general duties. And if they commit any illegal duty or refrain from doing any legal duty, it may cause any damage or injury to another which is called “negligence.” Medical negligence is committed by practitioners of medical services who engage in misconduct or malpractice.¹⁵ Important elements are required in order for an action to constitute medical negligence such as intentional negligence on part of medical professionals, breach of their duty to care towards the patients and patients’ sufferings with damages or loss for this negligence. Absence of any of these elements will not be considered as medical malpractice or negligence.

However, while medical practice including surgical operation, conduction of labor, pathological or radiological examination and any other medical examination or service are defined in “The Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982,” medical negligence is not mentioned in this document.¹⁶ So, in this paper the term medical practitioners or professionals will be used to refer to anyone who is covered by the definition of medical practice under this ordinance. In Bangladesh, causes of medical negligence include inadequate medical facilities,

¹³ *A Study on Medical Negligence and Fraudulent Practice in Private Clinics: Legal Status and Bangladesh Perspective*. Report. 2014.

¹⁴ *Lochgelly Iron & Coal Co. v. Mc Mullan*, 1934 Ac 1 (HL) at p.25. **quoted in** Law of tort by B M Gandhi, 3rd Ed. 2006.

¹⁵ Akhter, *supra* note 4.

¹⁶ Section 2 (b), The Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982

insufficient number of doctors and nurses, high rate of medical treatment services, greediness on part of doctors or owners of private clinics, but the main reason is inadequate legal protection against medical negligence.

In Bangladesh, patients have faced many harassments and medical negligence both in public hospitals and private clinics as well as in diagnostic or pathology centers.¹⁷ People suffer and sometimes die because of medical negligence, not being able to afford developed medical facilities, or insufficiency of medical facilities. In most cases people become unhappy and dissatisfied with the available medical treatment facilities that are inadequate and insufficient to meet the need of large number of people in Bangladesh.¹⁸ In the 2016 survey, 73% people are dissatisfied with the existing medical services whereas only 27% has claimed that they are satisfied.¹⁹

Table 1. Percentage of People Satisfaction on Medical Treatment and about the Adequacy of Medical Treatment

Category	Percentage	Category	Percentage
Satisfied	27%	Adequate	15%
Not Satisfied	73%	Inadequate	85%

Source: Survey Conducted by the researcher in Dhaka, Bangladesh from January to June 2016

Only 15% of people surveyed believed that Bangladesh has adequate medical treatment facilities and that those high profile clinics such as international medical care facilities in Dhaka City are out of the reach of people with an average income.²⁰ Interestingly, complaints of medical negligence are more common in these well known hospitals or clinics.²¹ However, 85% of people believe that the available medical service is inadequate for the people of Bangladesh. According to the World Health

¹⁷ Akhter, *supra* note 4.

¹⁸ Table 1

¹⁹ Ibid

²⁰ Respondents claimed that Apollo, Square, Asgor Ali and United Hospital in Bangladesh are high profile clinics.

²¹ *Govt. Official Dies of Square Hospital's 'negligence*, Newsbangladesh <http://www.newsbangladesh.com/english/details/656> (last accessed March 15, 2015)

Organization (WHO) estimate, Bangladesh has a shortage of 60,000 doctors and 280,000 nurses.²² The doctor to nurse ratio in Bangladesh is 1:0.48 and the nurse to bed ratio is 1:13, whereas the standard global ratio is 1:3 for doctor to nurse and is 1:4 for nurse to bed or 1:1 for specialized beds. Physician and population ratio is 1:3,297, for which the standard is 1:600. Nurse to population ratio is 1:11,696 and there is only one medical technologist for every 27,842 people.²³

Sometimes the health workforce, which is permitted under the Directorate General of Health Services (DGHS), does not fulfill completely. According to the Transparency International Bangladesh (TIB) report, about 20% (22,618) of the total sanctioned posts (115,935) is vacant, with the highest being non-doctors (56%), and the second highest being doctors (28%).²⁴ A significant portion of vacant posts comes from third-class as well as fourth-class employees; however, with this huge working forces shortage, the people of Bangladesh have been disappointed by many problems they faced in receiving medical treatment. From emergency service to Intensive Care Unit (ICU) service people have faced negligence and very few of these cases have been reported or addressed for the inadequacy of proper legal remedy, along with the low number of doctors, nurses or hospitals in Bangladesh.²⁵

At present, people face negligence from either service providers or medical practitioners. Most of the time, this negligence is caused by the authorities or by the medical professionals. The clinic and hospital authorities are the main violators of the right to health or the wrong doers for medical negligence. Research has found out that the highest proportion of people in Bangladesh believes that hospitals and clinics are responsible for medical negligence.²⁶ 40% of the people have noticed that they have faced negligence from the doctors or medical practitioners. 29% of the people believe

²² Sadab Mahmud, *Health workforce in Bangladesh*, Bdnews24.com, <https://opinion.bdnews24.com/2013/03/24/health-workforce-in-bangladesh/> (last accessed March 24, 2013).

²³ Transparency International Bangladesh (2014) *Governance Challenges in Health Sector and the Way Outs* [Executive Summary]. P.5, 6.

²⁴ Ibid

²⁵ Liamana Solaiman Mridha, *Medical Negligence*, The Independent Weekend, <http://www.theindependentbd.com/arprint/details/64814/2016-10-21>. (last accessed October 21, 2016).

²⁶ Table 2

that they have faced harassment from pathology center while about one third of the people surveyed believes that nurses are showing negligence to the patient.²⁷

Table 2. Percentage of People Facing Negligence from Whom/ Which Places²⁸

Whom/Where	Percentage	Option Choose	Percentage
Doctor	40%	More Option	43%
Nurse	34%	Single Option	47%
Hospital/ Clinic	49%	No Option	10%
Pathology Centre	29%	Total	100%

Source: Survey Conducted by the researcher in Dhaka, Bangladesh from January to June 2016

As a result, medical negligence and violation of health rights have made people violent towards those responsible. Medical practitioners, doctors in particular have been confined and harassed many times by patients or their relatives. Sometimes clinics or hospitals and even medical associations or medical college hospitals (both public and private) had to suspend their service because of mass protest.²⁹ However, suspension of service by the medical practitioners had only increased the sufferings of the patients.

People of Bangladesh have lost their faith in this noble profession and now travel to neighboring countries for medical treatment. Very recently this number has increased dramatically, with about 300 to 400 patients travelling to India and Thailand every month for medical treatment, which is 1.94% of the country's total GDP.³⁰ Not only does this situation create a negative impact on the entire medical services industry, but it also badly affects the national economy. Moreover, medical treatment, medicine and pathology, among other services are costly in Bangladesh,³¹ where 15% of the sick

²⁷ Ibid

²⁸ It is a multiple choice question and respondents can select more options than one.

²⁹ Akhter, *supra* note 4.

³⁰ Afrose Jahan Chaity, *Bangladeshis Flock to Indian, Thai Hospitals in Huge Numbers*, Dhaka Tribune <http://www.dhakatribune.com/feature/health-wellness/2017/11/30/doctor-trust-bangladesh> (last accessed November 30, 2017).

³¹ According to table 5 around 50% people feel that medical treatment is very costly in Bangladesh and out of their income.

people in Bangladesh could not afford medical treatment due to the high cost of health care.³² About 48% of the respondents demand that medical treatment should be cheap and cost less.³³ Around 6.4 million or 4% of the people in Bangladesh becomes poorer every year due to excessive health costs.³⁴ However, excessive health cost leads to extreme loss to the medical industry and ultimately imposes a serious threat to the overall economy of Bangladesh. The people of Bangladesh have faced problems such as wrong diagnosis, delaying the diagnosis, the high cost of different diagnoses, unnecessary diagnosis, unnecessary hospitalization, errors in anesthesia or surgery, and the very common practice of performing unnecessary surgery. People now believe that surgeons or doctors in Bangladesh often suggest having surgery even when medicine can cure a patient just to earn more money.

VI. Existing Legal Remedies for Medical Negligence in Bangladesh

In Bangladesh, there are some legal remedies available for medical negligence but none of these are effective to resolve the existing problems of the health sector in Bangladesh. Moreover, the available remedies are inadequate, or it is very hard to find a fruitful remedy by using the existing legal remedies. However, in Bangladesh, constitutional remedy, civil remedy and criminal remedy that is, all types of remedies are available. In practice, the people of Bangladesh are reluctant to impose the existing legal remedies through applying those existing legal regime for costly and lengthy court procedures, unpopular procedures and inadequate remedies and penalties.

The available remedies and their limitations are:

- Constitutional remedy by filing a Public Interest Litigation (PIL).³⁵ The constitutional provision for health is found under articles 15, 18 (fundamental

³² Pavel, Md Sadik, Sayan Chakrabarty and Jeff Gow. "Cost of Illness for Outpatients Attending Public and Private Hospitals in Bangladesh." *International Journal for Equity and Health* 15, no.1 (2016).

³³ Table 5

³⁴ Huda, Tanvir, Jahangir A. M. Khan, KararZunaid Ahsan, Kanta Jamil, and Shams Ei Arifeen. "Monitoring and Evaluating Progress Towards Universal Health Coverage in Bangladesh." *PLoS Medicine* 11, no. 9 (2014).

³⁵ Article 32 (Right to life), Article 44 (Enforcement of Fundamental Rights), Article 102 (High Court jurisdiction) of the Constitution of Peoples' Republic of Bangladesh

state policy and cannot be enforced by law), and should be read with articles 31, 32 and 44 (fundamental rights which can be enforced by law). And the enforcement of such rights can be exercised through the writ jurisdiction of the High Court Division under article 102. In Bangladesh, to ensure medical care or health service Dr. Mahiuddin Farooque took the first step in 1994 by filing a PIL³⁶ for protecting people from sufferings during a lengthy strike of government doctors (BCS Health Cadre) at public hospitals countrywide. The court ruled that the doctors failed to perform their statutory and constitutional duties and issued a mandatory injunction to ensure health services and medical care would continue for the general public.³⁷ Thus, ensuring medical service and medical care to the public is constitutional and statutory duty of a doctor. The PIL, a constitutional remedy has its significance on protecting fundamental rights in Bangladesh, but it has some limitations since health and medical treatment are not fundamental rights in Bangladesh. Indirectly, this constitutional remedy can be applied for saving lives with proper care and negligence-free treatment, but this is costly, time consuming and basically unfamiliar to the general public in Bangladesh.

- Monetary compensation is the traditional remedy for medical malpractice.³⁸ This type of negligence is due to a simple lack of care and is civil in nature, unlike criminal negligence where there must be *mens rea*.³⁹ And simple lack of care may constitute civil liability but not criminal liability under section 304A of the Indian Penal Code (IPC).⁴⁰ In Bangladesh this criminal liability cannot be charged under section 304A of the Penal Code 1860. Thus, people can claim a civil remedy for lack of care as well as for breach of contract if there is a

³⁶ *Mohiuddin Farooque v. Bangladesh & Others* Writ Petition No. 1783/1994 (Doctor's Strike Case), archived at: <<http://www.scribd.com/document/161875940/List0of-PIL>>.

³⁷ *Ibid*

³⁸ Raisul Islam Sourav, *Medical-Negligence: A Wake-Up Call*, Daily Sun archived at: <http://www.daily-sun.com/arcprint/details/178109/Medical-negligence:-A-wakeup-call/2016-10-26>(last accessed October 26, 2016).

³⁹ Gandhi, B.M. *Law of Torts: With Law of Statutory Compensation and Consumer Protection*. Lucknow: Eastern Book Company 2006. 230.

⁴⁰ *Irappa alias Virappa v. State of Karnataka*, (1988) 15 R (Karn) 577, quoted in Gandhi, B.M. *Law of Torts: With Law of Statutory Compensation and Consumer Protection* (Lucknow: Eastern Book Company 2006), 230.

service contract between the patient and medical professionals or service providers. According to Contract Act 1872⁴¹ for breach of contract or service, if the patient is entitled to receive compensation for any loss or damage caused to him/her from the violator of the contract. Such compensation is not to be given for any remote and indirect loss or damage sustained due to the breach. The Specific Relief Act 1877⁴² can also impose temporary and permanent injunctions against medical professionals or authorities for violation of contractual obligations. Moreover, under the law of tort, negligence as tortious or civil liability, medical professionals or authorities can be liable for compensation for damages.

In Bangladesh before any type of surgery, a patient must sign a document of consent that gives doctors immunity from all liability. Moreover, if the patient dies in the Operation Theater (OT) due to negligence on the part of the medical practitioners, nobody can claim or prove the civil or criminal negligence against the responsible person. These procedures have been prepared by the concerned authority for their own protection and not for the benefit of the patients. In emergency services (24 hours open for emergency patients) and in outdoor service only registry books are kept for maintaining the information of the patients. Thus, in Bangladesh, there is no tradition of establishing a contractual obligation or relation between patients and medical practitioners or authorities and therefore people cannot use the law of Contract or The Specific Relief Act for receiving monetary compensation. Moreover, law of tort is hardly popular in Bangladesh for claiming remedy for medical negligence or medical malpractice. Thus, this civil remedy exists in Bangladesh in theory, but is rarely used in practice.

- Criminal liability can also be used as a remedy. The first penal law of Bangladesh, Penal Code 1860, has imposed a penalty for medical negligence in its many sections.⁴³ Unfortunately the scope of the provisions of this Act is very limited with the only punishment for a death caused by medical negligence being found in section 304A that imposes five years imprisonment and/or a fine. According to section 314, a person shall be imprisoned for ten years and fine if

⁴¹ Section 73 of the Contract Act 1872

⁴² Section 53 of the Specific Relief Act 1877

⁴³ Sections 304A, 314, 323-326 and 336-338 of the Penal Code 1860

he or she is responsible for a miscarriage, the death of a woman during childbirth. One can get remedy under sections 321, 322, 323, 324, 325 and 326 of the Penal Code but penalty is from one year to ten years based on harm or injury or grievous harm or injury. However, the penalties found in sections 336, 337 and 338 are from two month to two years imprisonment and 250TK to 500TK fine for acts committed so rashly or negligently as to endanger human life or the personal safety of others. Penalties which are expressed in the 160 years old Penal Code are insufficient and inappropriate for the loss caused by the offenders. Again, the exemptions and immunities given in sections 88 and 92 of the Penal Code 1860, which depend on good faith doctrine, limit the scope for criminal action against medical negligence in Bangladesh. The procedure of proving criminal intention of the responsible party is very difficult, and if proved, the penalty is very much less compared to the damage or cost.

Some other laws and regulations that impose penalties on medical professionals for their negligence also exist in Bangladesh and maintain some provisions for professional duties as well as set some guidelines for conducting duties more ethically and legally. First of all, the Medical Practice and Private Clinics and Labs (Regulation) Ordinance 1982⁴⁴ has made some provisions for controlling medical practice and giving licenses to private clinics. This Act ensured that registered government doctors must work during their office hours. If the provisions of this ordinance have been not followed by any private clinic or any government doctors, the director general or authorized officer can cancel the license of the private clinic and recommend barring him or her from carrying on private medical practice in the future. However, this Act is hardly used to punish the doctors of private clinic or government doctors in Bangladesh for many reasons. In 2017, the Ministry of Health and Family Welfare suspended the four intern-doctors from the *Shaheed Zia* medical College Bogra on recommendation of a probe investigating alleged assaults, which resulted in intern doctors countrywide going on strike until the penalty was revoked.⁴⁵ This threat of strike makes it very much difficult to implement the penalty provisions according to this Act. Therefore, the

⁴⁴ Sections 4 and 11 of the Medical Practice and Private Clinics and Labs (Regulation) Ordinance 1982

⁴⁵ *Countrywide Intern Doctors Strike*, Dhaka Tribune <http://www.dhakatribune.com/bangladesh/2017/03/05/countrywide-intern-doctors-strike-continues/> (last accessed March 5, 2017).

provisions of this Act are inadequate to check the present problems in the health sectors of Bangladesh.

The Consumers Rights Protection Act, 2009⁴⁶ includes some penalty provisions for negligence by service providers but the penalties are inadequate and insufficient. The provisions of this Act cannot apply to the victims of medical negligence as they are not treated as consumers. Section 2(19 d and e) states that the person if hires, avails or enjoys any service for consideration shall be treated as consumer. And section 2 (22) clearly provides that service means transport, telecommunication, water supply, drainage, fuel, gas, electricity, construction, residential hotel and restaurant and health services, which is made available to its users in exchange of price but does not include the services rendered free of cost. Thus, cost free health service provided by the government in Bangladesh is not treated as health service in Bangladesh. Unfortunately, it does not mention about medical negligence or medical malpractice at all, the provisions regarding penalties for negligence cannot be applied to the service industry in Bangladesh. The law only covers the rights of a consumer whose rights are infringed upon by purchasing medicine or medical goods; however, the complaint filing process by the consumer under this Act is very complex in nature.⁴⁷

The government has enacted the Medical and Dental Council Act in 2010 through which the statutory body Bangladesh Medical & Dental Council (BM&DC) was established. BM & DC has the responsibility of establishing and maintaining high standards of medical education and recognition of medical qualifications in Bangladesh.⁴⁸ The Council has a Code of Professional conduct, etiquette and ethics to be followed by registered doctors and dentists. The code is intended to let the community know what they can expect from the doctors or dentists. However, the Code also regulates some provisions of disciplinary action for serious disregard or negligence in professional duties, keeping improper personal relationship with patients, giving false certificates or

⁴⁶ Sections 45, 52, 53 of the Consumer Rights Protection Act 2009

⁴⁷ *To Deal With Medical Negligence*, <http://www.thedailystar.net/law-our-rights/deal-medical-negligence-71959>(last accessed May 20, 2015); *Tasmiah Nuhiya Ahmed, Legal Remedy to Medical Negligence*, New Age <http://www.newagebd.net/article/48258/legal-remedy-to-medical-negligence> (last accessed; Khandakar March 8, 2019) Kohinur Akter, "A Contextual Analysis of the Medical Negligence in Bangladesh: Laws and Practices." *The Northern University Journal of Law, Volume IV (2013):72*.

⁴⁸ Khan, Atiqur Rahman. Bangladesh Medical & Dental Council (BM&DC), archived at:<<http://bmdc.org.bd/how-it-works/>>.

documents, improper delegation of medical duties to a non-qualified person, misuse of professional skills, or if previously convicted and imprisoned for criminal offence.

Table 3. Ways for getting Remedy from Medical Negligence⁴⁹

Ways for Getting Remedy	Percentage	Option Choose	Percentage
By Passing Specific Law (Code)	35%	More Option	55%
Increasing Awareness on Legal Remedy	42%	Single Option	45%
Changing the Mentality of Doctors by Law	52%	No Option	0%
Developing the Service of Hospital/ Clinic	40%		
More Government Allocation in Health Increase of Salary of Medical Personals	37%		

Source: Survey Conducted by the researcher in Dhaka, Bangladesh from January to June 2016

However, the working procedure of this council is complex and it is very difficult to use it as a tool to take disciplinary action. After filing a complaint against a healthcare professional, the council asked the complainant to submit relevant documents that would describe the nature of the negligence stated by the patient.⁵⁰ The council cannot go forward or investigate without getting the proper paperwork, email, registration number of the physician/surgeon in question and his or her present address. After getting all the necessary documents, Council asks the doctor to reply with an explanation within 15 days. The aggrieved party would get a chance to see the explanation.⁵¹ However, if they pursue the matter further, the council will forward it to a disciplinary committee that considers the grievance. Unfortunately, less than five out of 100 allegations of negligence were put forward to the disciplinary committee by the council as most cases cannot provide ample supporting documents.⁵² Till now a total of four healthcare professionals have faced investigations and have had their licenses revoked by the council in Bangladesh.⁵³ The Code is not exhaustive and cannot

⁴⁹ It was a multiple choice type question and respondents can select more options than one

⁵⁰ Liamana, *Supra* note 25.

⁵¹ *Ibid*

⁵² *Ibid*

⁵³ *Ibid*, Said by the Registrar of the BM & DC Dr. Md. Zahedul Haque Basunia

substitute any law. It does not address in detail the standards of practice within particular medical disciplines. Over all, this code is not a charter of rights of the patients.

The Bangladesh Nursing and Midwifery Council Act was passed in 2016 and provides some penalty provisions for nurses through Bangladesh Nursing and Midwifery Council (BNMC) such as removing any alleged nurses from the register list who do not follow professional standards.⁵⁴ Sections 27 and 28 also provide some penalties for false identity and false registration of nurses. In this new Act unfortunately, medical negligence and its punishment are not mentioned. Though the registration of nurses is regulated and managed by BNMC, it has no code of conduct, etiquette and ethics like BM&DC. It seems that no negligence is common among these categories of medical professionals in Bangladesh and for this, there is no mention of their punishment for medical negligence or medical misconduct. However, research has shown that 34% of people face negligence from the nurses in Bangladesh.⁵⁵ Accountability and transparency of medical professionals are necessary to reduce the problem, but the Council fails to monitor and supervise the medical practitioners. Thus, none of the above discussed Acts or authorities are sufficient to reduce medical negligence in Bangladesh.

VII. Reasons for Not Reducing Medical Negligence from Bangladesh and Ways Out

In Bangladesh, medical negligence has become very common for many reasons. As discussed earlier, that there are some legal safeguards, but none of them are directly effective against medical negligence. All existing legal safeguards remain unsuccessful to remove or reduce this problem. The reasons are mainly for two causes; limitation in legal regime and lack of moral and educational value.

A. Limitations in Legal Regime:

Inadequate Laws: In Bangladesh, until now no complete law exists related to medical

⁵⁴ Section 21 and 22, the Bangladesh Nursing and Midwifery Council Act 2016

⁵⁵ Table 2

practice and negligence. Generally, people believe that this legal insufficiency is the significant reason for the increase in medical negligence.⁵⁶ More than half of the people surveyed believe that lack of a specific law or code is the main cause for the present situations.⁵⁷ A specific law for preventing medical negligence and for regulating medical negligence can change the present situation.⁵⁸

Constitutional Mandate for Right to Health: Ensuring right to health through a constitutional mandate may create pressure on the state to ensure the health right mandatorily, as well as helping to enhance the responsibility of medical professionals towards their patients. 49% of the people think that this is the time to implement the right to health in Bangladesh through constitutional protection,⁵⁹ which may put a pressure on the state to pass specific laws for avoiding medical negligence from Bangladesh as well as developing medical service and facilities.

Weak Monitoring System: There is no one to watch the carelessness of medical professionals or check the corruption in Bangladesh. 45% of the people argue that lack of a strong monitoring system is a reason for the increasing medical negligence.⁶⁰ Monitoring and supervision are not strong in medical professionals and attendance of doctors in healthcare institutions.⁶¹ Thus, the legal regime of Bangladesh does not provide a strong legal monitoring system for the protection of the patients from medical negligence or preventing medical malpractice.

Less Number of Medical Professionals: According to WHO's report in 2006, there is a serious shortage of doctors and nurses in Bangladesh.⁶² According to a recent study, it was found that Bangladesh has only 7.7 doctors/nurses and, dentists per 10,000 people compared to 12.5 for Pakistan, 14.6 for India, 21.9 for Sri Lanka, and the WHO

⁵⁶ Table 4

⁵⁷ Ibid

⁵⁸ Table 5

⁵⁹ Ibid

⁶⁰ Table 4

⁶¹ Lochgelly Iron & Coal Co. *Supra* note 14 at 6.

⁶² Syed Masud Ahmed, Bangladesh Faces Severe Shortage of Health Workforce, Bangladesh Health Scenario <http://syedmasudahmed.blogspot.com/2012/06/bangladesh-faces-severe-shortage-of.html> (last accessed June 12, 2012).

estimates of 23.0 were required to fulfill MDG targets.⁶³ There is also an imbalance in distributing medical professionals in rural and urban areas in Bangladesh. The doctor to population ratio is 1:1,500 in urban areas and 1:15,000 in rural areas.⁶⁴ Around half of the people believe that the imbalance in medical professionals causes medical negligence, and 47% of the people stated that increasing the number of medical personals is an effective way to reduce it. Now in this respect, the government should take up policies to appoint more doctors and nurses every year to meet this crisis. At present, doctors are appointed through the BCS examination arranged by the Bangladesh Public Service Commission (PSC). Sometimes, it takes two or three more years to appoint only hundred doctors, thus the PSC is insufficient, and the government needs to establish an independent Bangladesh Health Service Commission (BHSC) for the appointment of medical practitioners like how the Bangladesh Judicial Service Commission of Bangladesh appoints subordinate or lower court judges. And for this, a specific legislation or a complete code is essential in Bangladesh.

B. Lack of Moral and Educational Value

Lack of Awareness: 21% of the people in Bangladesh believe that the public is unformed about health rights and medical negligence,⁶⁵ while 42% wish for education on the legal protection against medical negligence.⁶⁶ Passing a specific law or code related to the legal remedies of medical negligence that is properly explained to the public may encourage them to use this method more often. However, the media plays a very vital role in increasing the awareness of this issue in Bangladesh such as with issues related to women and children. On behalf of the Ministry of Health and Family Welfare in Bangladesh, the media has successfully aired many programs meant to build awareness in the public about health-related issues and this strategy could also work to educate the public on the legal remedies as well.

⁶³ Ibid

⁶⁴ Ibid

⁶⁵ Table 4

⁶⁶ Table 3

Table 4. Reasons for not Reducing Medical Negligence in Bangladesh⁶⁷

Obstacles	Percentage
Not implementing Right to Health by Constitutional Mandate	49%
Discrimination for Financial Reason	41%
High Ambitions of Medical Personals	41%
Illiteracy Regarding Health Rights and Medical Negligence	21%
Insufficiency of Laws Relating Medical Negligence	52%
Less number of Medical Professionals	48%
Lack of Strong Monitoring System	45%

Source: Survey Conducted by the researcher in Dhaka, Bangladesh from January to June 2016

Discriminating Attitude of the Medical Practitioners: People who do not have enough money to go for treatment at private clinic or with a private doctor, face discrimination in Bangladesh. A drastic difference exists between the treatment facilities at the inexpensive government hospitals and expensive private clinics. Sometimes doctors will refer patients to their own private clinics for their personal financial gain. In Bangladesh, the same doctors will provide different treatments at public hospital than they will in their private practice; even their behavior is better. 41% of the people reported experiencing a discriminating attitude between doctors or nurses at public hospitals and private clinics. Medical professionals are trained to have a non-discriminating attitude towards patient along with the ethical and moral value of their professions. Respondents strongly recommended changing the mentality of doctors towards the way they charge for providing medical treatment. According to Table 3, more than 35% respondents believe that government allocation can reduce medical negligence from Bangladesh.

Greediness or High Ambition of Medical Professionals: The very fact is in the most public health complex, the doctors are absent rather they engaged in private practice.⁶⁸

⁶⁷ Here 50% choose more option and 50% Single

⁶⁸ ACC: 40% doctors absent in workplaces, Dhaka Tribune <https://www.dhakatribune.com/bangladesh/nation/2019/01/21/40-doctors-absent-in-11-govt-hospitals>(last accessed February 19, 2019).

However, the Anti Corruption Commission (ACC) has found the situation to be worse outside Dhaka, as 81 out of 131 doctors were absent in eight hospitals, with an absent rate of 61.8%.⁶⁹ It seems their greed for money reached a sky high level. The primary need in the health industry is to increase the budget for the health sector and to change the mentality of the medical professionals. 37% of people would like to see an increase in the government support for the health sector including the salary of medical persons.⁷⁰ However, in Bangladesh doctors bargain with the patients or their relatives for their payments like shopkeepers but at a hospital or clinic there is a fixed charge with no bargaining. These are all results of the erosion of moral and ethical values within this profession.

Medical Corruption: Medical professionals in Bangladesh are subject to longstanding and widespread allegations of corruption and random negligence against patients. In Bangladesh, more than 500 public hospitals have demanded bribes for services that should be free of cost.⁷¹ According to National Household Survey in 2012, conducted by Transparency International Bangladesh (TIB), 40.2% of surveyed people became victims to various irregularities and corruption in receiving services in public hospital s.⁷² According to patients interviewed by IRIN, however, even in emergency situations, many said they were unable to access services, including medicine, unless a bribe was paid first.⁷³ People had no choice but to pay extra money for receiving medical treatment and avoid medical negligence on the part of medical professionals. Thus, 47% of people argue that a strong monitoring system can reduce medical negligence from Bangladesh.⁷⁴

The broad two-fold causes of medical negligence may be reduced by passing a specific law or code regarding medical service and medical negligence. An independent

⁶⁹ Ibid

⁷⁰ Table 3

⁷¹ Irin, *Bangladeshi Health Sector Corruption hits Poor Hardest*, ReliefWeb <https://reliefweb.int/report/bangladesh/bangladeshi-health-sector-corruption-hits-poor-hardest>

⁷² *Supra* note 23. P. 3.

⁷³ *Supra* note 70.

⁷⁴ Table 5

monitoring body may be established through this law to control medical corruption by fixing the fees and working area for doctors, as well as specifying strict criteria for patient treatment. Moreover, violation of these rules should be penalized strictly. For doctors who give certain patients better treatment in private clinics for their own financial gain, allocation of money may be a solution for checking this problem. Unfortunately, from 2013-2014 Fiscal Year (FY) the allocation of money has been decreased gradually in the national budget for health sector.⁷⁵ However, a regional monitoring body should be established to take care of budget allocation, use of budget, and continuous development of the medical service of public/government hospitals.

Table 5. Ways to Reduce Medical Negligence in Bangladesh⁷⁶

Ways of resolving Obstacles	Percentage
Constitutional Guarantee for Right to Health/ and remedy for Medical Negligence	75%
Make Less Costly and Cheap	48%
Change the mentality of the Medical Professionals	55%
Increasing awareness regarding health Rights / Legal remedy through Media	52%
Specific Law for Preventing Negligence in Health Sector	64%
Increased the number of Medical Professionals	47%
Ensuring Strong Monitoring System	47%

Source: Survey Conducted by the researcher in Dhaka, Bangladesh from January to June 2016

Improvement of medical services as well as medical facilities is necessary for reducing medical negligence in Bangladesh. The introduction of CCU, ICU, CT scans or pathology systems at the district level or if possible at the thana level will remove the pain of patients and their relatives. In Bangladesh like with other facilities, the health facilities are centralized in the capital of Dhaka. Thus, decentralization in case of permitting private medical college is necessary countrywide to reduce public sufferings.

⁷⁵ *Supra* note 23.

⁷⁶ Is was a multiple-choice question and respondents can choose more than one; More option 72%, Single option 27%

The government should not permit new clinics or private medical colleges in Dhaka or in adjacent places in Dhaka like private universities.

However, legal provisions have done a good of changing the private practice of doctors in Bangladesh. For examples, doctors who work in a public hospital can now have a private practice or clinic after 4.00 pm. The government can set rules for the private practice of the government doctors (BCS Cadre on Health Service) after the office hours. For the public benefit, the government should set up a new and complete legal code to deal with medical service countrywide. According to my survey and observation of the country perspective, the following matters may be addressed in a proposed specific law or code to reduce medical negligence in Bangladesh.

1. Doctors' fees, different treatment fees, pathological test fees or diagnosis fees should be specified according to qualifications of doctors, or on different diseases and different tests. Treatment costs in public hospitals and private clinics should not differ greatly. The government can fix the number of private clinics and hours that a doctor can use for their private practicing. Doctors can be bound to practice in their local area or impose restrictions on where they can practice outside of this area, which could ensure the availability of doctors in all rural and urban areas and also help to control the flow of patients to Dhaka city.
2. Free medical treatment campaign for the poor and distressed shall be continued in all areas of Bangladesh. Laws regarding their promotion may determine a free treatment campaign in every month for all doctors as a part of their service.
3. Free medicine shall be provided regularly and be properly distributed by the hospital to the poor patients in rural areas. Strong monitoring is required to make sure this medicine is not sold on the black market, which leads to corruption among the authorities of local health complex.
4. In Bangladesh, doctors receive a percentage of the fee for every diagnosis or pathology test they perform. Due to this they often recommend patients take unnecessary diagnosis or pathology tests or sometimes go to in specific diagnosis centers. A doctor can earn commission between 30-50% depending on the number of patients they send to a specific diagnostic center.⁷⁷ Thus, the percentage system and

referring system for money shall be prohibited by creating a severe legal penalty. Diagnosis centers should be prohibited also in paying any percentage fee to doctors, making the centers cheaper and more patients friendly.

5. False medical practitioners, who have not passed MBBS or no knowledge of medical professionals, illegal clinics, hospitals and pathology centers and medicine factories shall be monitored by a law enforcement agency and punished severely when caught. People received wrong treatments or negligent service in those illegal facilities, which has led to death in some cases, but these remain unpunished in Bangladesh due to the insufficiency of the law. These illegal facilities should be closed temporarily and if they cannot improve their service within a specified timeframe then they should be closed permanently. The public should be informed of all known false medical practitioners and illegal clinics, hospitals or pathology centers to protect them from false treatment and violation of their health right.
6. Punishment for patient harassment shall be introduced. People want severe punishment for medical professionals, but medical professionals are against this idea and this would discourage doctors from providing treatment in the time of emergency or necessity. Strict punishment might create a negative impact on the existing health service system in Bangladesh; however, it may be specified and verified depending on different circumstances.
7. The Ministry of Health and Family Planning should act effectively and take action against all irregularities existing in the health service industry. They can control corruption from health sector and create a strong monitoring body from the capital city to the thana level. Moreover, electronic media can play a vital role in creating awareness of the people and focusing on the irregularities in health service including medical negligence.
8. Appointment system of public/government doctors shall be regulated by a different independent commission rather than the Public Service Commission (PSC). However, the new code also includes a provision for the establishment of a BHSC (Bangladesh Health Service Commission). This may regulate the appointment, promotion, tenure, salary, transfer or training of medical practitioners in Bangladesh,

⁷⁷ *Supra* note 23. P. 9

and also help to increase the number of all types of medical practitioners and reduce medical negligence.

9. The new code should also provide alternative dispute resolutions. A mediation process and mechanism shall be put into place for resolving medical negligence and malpractice related disputes in Bangladesh. If it fails, then the matter should be forwarded formally to the Court.
10. A separate court should be established in every district to deal with disputes related to medical negligence, medical malpractice, illegal medical practitioners or illegal clinics. Investigation and trial time shall be fixed to avoid delays in completing these types of cases. Then the wrongdoers may be afraid to commit any offence related to the above issues, and it may help to give justice to the victims within a short time.

As discussed above, all the reasons of medical negligence are due to inadequacy of a strong legal regime. A single law such as a law against medical negligence could solve a specific problem but not all the problems which are responsible for present situations. Enacting different laws and amending other laws will take a lot of time in Bangladesh. Thus, the government can form a committee that includes law and health experts who can create a complete code and in the meantime the government can declare health care as a fundamental right for the people of Bangladesh. Undoubtedly, medical negligence is continuing in all urban and rural areas of Bangladesh and the people cannot take any step against the wrongdoers because of the insufficiency of the current legal regime. However, the law commission of Bangladesh from 2012 to present has taken many steps to make recommendation to the government to pass a specific law against medical negligence only.⁷⁸ In its ongoing current activities, the law commission, not the government has given priority to prepare a reform of laws relating to medical negligence, so that it can make a strong argument to the government to enact law relating medical negligence. Surely, the law commission of Bangladesh has also taken the matter seriously.

⁷⁸ *Current Activities of Law Commission Bangladesh*, Law Commission - Bangladesh, archive at: <http://www.lawcommissionbangladesh.org/>

VIII. Concluding Observations

Existence and maintenance of any institution mainly depends on its smooth functioning and the faith of the general public. It is also true for existence and the continuance of the medical service in Bangladesh. Medical professionals should change the way they deal with patients in order to maintain the nobility of this profession. Extensive negligence on the part of medical professionals should be reduced to establish the faith and trust of the public. People cannot bear their measures by losing their near and dear one as well as their faiths have been lost also. When people lose their loved ones by the result of medical negligence, they can become arrogant and commit violence. However, the government has already passed some legislation in an attempt to establish and provide a better medical service throughout the country, but they still have not passed any legislation or code to address medical negligence or establish a right to health. To meet the present need, the government should pass a complete specific law or a complete code which can cover all the irregularities of medical service and medical negligence that includes the discussed suggestions for reducing medical negligence and malpractice. Moreover, the government should create a strong and effective monitoring system for the activities of medical professionals, as well as the functioning of public hospitals and private clinics. Service providers and medical practitioners should be responsible and accountable in discharging their duties. Thus, to provide a better medical service for all, and to reduce medical negligence and malpractice in Bangladesh, a specific and complete law or code is crucial and urgent.

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