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Effectiveness of Laws Related to Medical Negligence in Bangladesh

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Abstract. Medical negligence is a violation of the rights to health and life perpetrated by members of the medical professional group entrusted with preserving those rights. Because of increased issues related to medical negligence, numerous countries have introduced new legislation and established independent courts to enhance their healthcare laws. Sadly, medical negligence and malpractice are an issue in Bangladesh in the lack of elaborate or specific rules. In Bangladesh, many laws include numerous legal obligations for health professionals but are not adequately established. As a result, medical negligence and malpractice are causing substantial social consequences that neither the government nor the society expected or condoned. Given the problems and consequences, the goal of this study is to provide a depth elaboration of medical negligence, analyse the laws that currently exist in Bangladesh regarding medical negligence and identify the significant weaknesses in those laws, and, finally, make some recommendations for how Bangladesh can take practical steps toward preventing violations of patients' rights to health care.

Keywords: Medical law, Medical negligence, Patients' rights, Bangladesh

Abstrak. *Kelalaian medis adalah pelanggaran terhadap hak atas kesehatan dan kehidupan yang dilakukan oleh anggota kelompok profesi medis yang dipercayakan untuk menjaga hak-hak tersebut. Karena meningkatnya masalah terkait kelalaian medis, banyak negara telah memperkenalkan undang-undang baru dan membentuk pengadilan independen untuk meningkatkan undang-undang perawatan kesehatan mereka. Sayangnya, kelalaian medis dan malpraktik menjadi masalah di Bangladesh karena kurangnya aturan yang rumit atau spesifik. Di Bangladesh, banyak undang-undang memasukkan banyak kewajiban hukum bagi profesional kesehatan tetapi tidak ditetapkan secara memadai. Akibatnya, kelalaian medis dan malpraktik menyebabkan konsekuensi sosial yang substansial yang tidak diharapkan atau dimaafkan oleh pemerintah maupun masyarakat. Mengingat masalah dan konsekuensinya, tujuan dari penelitian ini adalah untuk memberikan penjelasan mendalam tentang kelalaian medis, menganalisis undang-undang yang saat ini ada di Bangladesh mengenai kelalaian medis dan mengidentifikasi kelemahan signifikan dalam undang-undang tersebut, dan, akhirnya, membuat beberapa rekomendasi untuk bagaimana Bangladesh dapat mengambil langkah praktis untuk mencegah pelanggaran hak pasien atas perawatan kesehatan.*

Kata kunci: *Hukum medis, Kelalaian medis, Hak pasien, Bangladesh*

1. Introduction

The term "negligence" means more than mere carelessness in legal contexts. It is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent and reasonable man would not do.[1] As a form of professional negligence, medical malpractice occurs when a healthcare provider commits an act or omission that lowers the quality of care provided to patients below the generally recognised standard of care in the medical community. As a result, patients may sustain injuries or even die due to the care they receive.[2]

Throughout the past, medical negligence, which includes carelessness on the part of doctors, physicians, nurses, health assistants, and other health professionals, has become a pervasive phenomenon in Bangladesh's health service system, attracting unprecedented levels of public attention.[3] Furthermore, the culture of impunity granted to concerned professionals adds a new dimension to the malpractice. Consequently, the number of fatalities and health deterioration directly linked to negligence is rising.[4] It is a well-established concept based on legal directives in Bangladesh that every citizen has a fundamental right to health which is the universal communal goal, and all individuals should have prompt access to healthcare.[5] Therefore, the Bangladesh government is liable to secure the healthcare of its citizens.[6]

Unfortunately, medical professionals in Bangladesh are not held accountable and make extensive use of their professional indemnity because of the country's ineffective and incompetent legal framework.[7] The problem worsens as doctors spend more time in their private offices or chambers than with patients. Public media often feature stories about preventable medical errors. The deceased's family often makes claims of negligence that become widely reported. The situation remains unchanged.[8] Active errors by doctors, nurses, or other workers, such as

[1] S Radhakrishnan, *Medical Negligence*, 4 MLJ 1, 8 (2002).

[2] Md Zahidul Islam, "Medical Negligence in Malaysia and Bangladesh: A comparative study," *IOSR Journal of Humanities and Social Science (IOSR-JHSS) Vol* 14, no. 3 (2013): 82-87.

[3] Islam, "Medical Negligence in Malaysia and Bangladesh: A comparative study".

[4] Khandakar Kohinur Akter, "A contextual analysis of the medical negligence in Bangladesh: laws and practices," *Northern University Journal of Law* 4 (2013): 67-81.

[5] Md Rabiul Islam and Shekh Farid, "Negligence in Government hospitals of Bangladesh: A dangerous trend," *Journal of Social Sciences* 4, no. 5 (2015): 12-18.

[6] Aqib Mohammed Nur and Ms Sadia Siraj, "A research on "Medical Negligence: Law and Practice in Bangladesh", (2016).

[7] Islam and Farid, "Negligence in Government hospitals of Bangladesh: A dangerous trend".

[8] Zelina Sultana, "Medical Negligence in Bangladesh: An Argument for Strong Legal Protection," *Asia Pacific J. Health L. & Ethics* 12 (2018): 69.

administering the wrong amount of medication during an emergency procedure, and latent errors, such as poor equipment maintenance or design, or poorly organised health care delivery, such as inadequately following up on a patient's emergency, make up the vast majority of medical errors in Bangladesh. The inability of individual caregivers to detect latent and systemic flaws makes them challenging to address.[9]

In considering the issues and consequences therein, this study aims to define medical negligence from a legal perspective, assess the state of medical negligence legislation in Bangladesh, and focus on potential reforms to bring this underdeveloped area of law up to date for the good of society. The study deploys a qualitative research methodology with a descriptive-analytical approach to report the findings. The study gathers data using primary sources such as laws and regulations and secondary sources such as the legal literature available in the field.

2. Medical Professionalism

Professionalism in the medical field is more than just an activity that straddles the line between market competitiveness and governmental control.[10] The term "medical professionalism" refers to a set of behaviours that doctors are expected to show in order to fulfil their responsibilities to their patients, their communities, and their profession. These behaviours may be broken down into many categories.[11] Swick identifies nine (9) behaviours that constitute medical professionalism. He emphasises that professionalism in medicine means that a doctor is prepared to put the needs of their patients ahead of their own interests in order to provide the highest level of care. It exemplifies the doctor's obligation to act as the patient's advocate and the fiduciary connection between the patient and the doctor.[12]

Doctors have certain obligations to their patients, and failing to uphold even one of those obligations might be considered medical non-professionalism.[13] One of the responsibilities of a doctor is to practice their profession with a level of ability and expertise commensurate with their position. Looking for disease

[9] Sheikh Mohammad Towhidul Karim, Mohammad Ridwan Goni, and Mohammad Hasan Murad, "Medical Negligence Laws and Patient Safety in Bangladesh: An analysis," *Journal of Alternative Perspectives in the Social Sciences* 5, no. 2 (2013).

[10] Sounding Board, "Medical professionalism in society," *The New England journal of medicine* 341 (1999): 1612-16.

[11] Herbert M. Swick, "Toward a normative definition of medical professionalism," *Academic medicine* 75, no. 6 (2000): 612-616.

[12] Swick, "Toward a normative definition of medical professionalism."

[13] Louise Arnold and David Thomas Stern, "What is medical professionalism," *Measuring medical professionalism* (2006): 15-37.

symptoms in another person and adding them to an existing patient list is enough to trigger the obligation of care owed to that person. Even though the patient is being treated for free, he is obligated to do this responsibility.[14]

In addition, when a doctor agrees to see a patient, he is responsible for continuing to attend to the case for as long as it demands care.[15] He is only allowed to withdraw his participation after providing adequate notice. If he is unable to treat the patient when it is necessary, he may offer to supply the services of a replacement physician who is qualified and experienced. The doctor has to provide his patients with comprehensive instructions via their prescriptions on how to utilise their medications and what they should eat properly. He needs to record the specific name of each medication, the quantity to be taken, and the dose time. Patients need to be informed of the potential bad events, urged to discontinue medication use in the event of a response, and then referred to a physician without delay.[16]

In addressing the issue of medical non-professionalism, the notion of the standard of care is also a significant paradigm for regulating the professional etiquette of doctors.[17] The famous English case *Bolam v. Friern Hospital Management Committee* established this concept and ended any further debate.[18] To define what is meant by the term "standard of care," according to McNair J., "The test is the standard of the average skilful individual practising and purporting to have that exceptional talent." An individual does not need to acquire the most significant possible level of expert expertise for there to be a possibility that he may be declared negligent. It is well-established law that it is adequate if he demonstrates the usual proficiency of an ordinary competent individual practising that specific craft. Through several different court rulings, the Judiciary of India has also determined key constitutional aspects of medical non-professionalism, which has led to considerable and progressive advancement in this area. Inadequacy in diagnostic or therapeutic processes,[19] lack of preparation for surgery,[20] or inability to sterilise adequately[21] are all regarded as evidence of medical non-professionalism, as stated by the decisions.

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[14] Arnold and Stern, "What is medical professionalism."

15 *Dr. Laxman Balkrishna Joshi* v. *Dr. Trimbark Babu Godbole and Anr.*, AIR 1969 SC 128.

16 *A.S.Mittal v. State of U.P.,* AIR 1989 SC 1570.

17 Jaising Prabhudas Modi, *Modi's Medical Jurisprudence and Toxicology* (Law Publishers, 2011).

18 *Bolam v. Friern Hospital Management Committee* (1957)1 WLR 582.

19 *Dr. Kunal Saha v. Dr. Sukumar Mukherjee and Ors.* III (2006) CPJ 142 (NC).

20 *Dr. Ravishankar v. Jery K. Thomas and Anr,* II (2006) CPJ 138 (NC).

21 *Pravat Kumar Mukherjee v. Ruby General Hospital and Ors,* II (2005) CPJ35(NC).

3. Conceptual Analysis of Medical Negligence

Negligence is denoted in Roman law by the phrases '*culpa*' and '*negligentia*.' Care or the lack of '*negligentia*' is referred to as '*deligentia*.' The term diligence in this meaning is no longer used in contemporary English, although it is preserved as a legal jargon archaism.[22] Careless behaviour that puts another person at an unreasonable risk of injury is called negligence and is penalised by law.[23]Medical negligence is defined as culpable carelessness in medical science that jeopardises the health and well-being of a patient.[24] Some medical malpractice regulations say doctors may not be liable for undesirable consequences beyond their control.[25] However, if their mistakes were caused by ignorance or a lack of knowledge, they are responsible because they willfully caused them; they should have known better or refused the case for which they were unfit.[26]

In admitting the concept, Hippocrates, the founder of Western medicine, provided a doctrine for health professionals that "when they cannot function well, they must be restrained from causing harm to people in need."[27] It implies that health professionals aim only to do good and protect. Health professionals must save patients' health safety because they owe their patients professional, legal, and moral obligations.[28] Such professionals must always maintain high professional standards and preserve human life from conception to death. According to the World Medical Association Declaration of Geneva 1948, a doctor's first interest is the patient's health.[29] Deviating from such established professional norms is considered an irresponsible medical practice that may be considered medical negligence in its narrower sense.

22 Patrick John Fitzgerald, ed. *Salmond on jurisprudence* (Sweet & Maxwell, 1966).

23 L. Kumar and B. K. Bastia, "Medical negligence-meaning and scope in India," *Journal of the Nepal Medical Association* 51, no. 181 (2011).

24 Daniele Bryden and Ian Storey, "Duty of care and medical negligence," *Continuing Education in Anaesthesia, Critical Care & Pain* 11, no. 4 (2011): 124-127.

25 For example, Robert B. Leflar, "The regulation of medical malpractice in Japan," *Clinical orthopaedics and related research* 467, no. 2 (2009): 443-449; and Dean M. Harris and Chien-Chang Wu, "Medical malpractice in the people's Republic of China: the 2002 regulation on the handling of medical accidents," *Journal of Law, Medicine & Ethics* 33, no. 3 (2005): 456-477.

26 Mohammad Nurunnabi and Syed Kamrul Islam, "Accountability in the Bangladeshi privatized healthcare sector," *International Journal of Health Care Quality Assurance* 25, no. 7 (2012): 625-644.

27 Islam, "Medical Negligence in Malaysia and Bangladesh: A comparative study".

28 Islam, "Medical Negligence in Malaysia and Bangladesh: A comparative study".

29 World Medical Association (WMA) Declaration of Geneva, adopted by the General Assembly of the World Medical Association at Geneva in 1948, Wikipedia, The Free Encyclopedia, Available at <http://en.wikipedia.org/wiki/Declaration_of_Geneva#cite_note-1 > Accessed on August 12, 2022.

In a negligence case, a professional is deemed liable if their actions or inactions cause injury to a client; nevertheless, it must be shown that otherwise, members of the same profession would have done differently in the same situation.[30] There should be four (4) elements to prove the medical negligence, including (a) the doctor owed the patient a duty of care.; (b) the doctor's actions fell below the legally required level of care.; (c) the patient suffered some legally-recognised suffering or injury due to the breach of obligation; (d) the whole scope and amount of the damage caused by the breach of duty are legally recoverable.[31] Doctors, therefore, should be accountable, and the law is one tool for demonstrating and enforcing this. Therefore, the law should aid in advancing medication, protect doctors, and promote patients and society by being concise, comprehensive, well-balanced, adaptive, and enabling.

4. Historical Background of Medical Negligence Laws

The idea that every professional should take responsibility for errors can be supported without reservation. However, the ways to end this responsibility on the part of professionals are varied, and many different approaches have been tested throughout history.[32] The first known source that addresses medical negligence is found in the Code of Hammurabi, which was created by Babylon's monarchs some twenty centuries before the beginning of the Christian period. It also established the prices for the therapy and the penalties for inappropriate treatment. Roman law, with its wonderful fascist undertones, was also intended to punish those who committed medical malpractice. The legislation of the Middle Ages also exemplifies punishment for negligent "barbers and surgeons" in the same harsh manner.[33]

Throughout the Indian subcontinent, medical negligence, also identical to the term "mithya," which means false, inaccurate, wrong, and inappropriate, has been used to criticise negligent medical care from the earliest Indian medical literature. It is mentioned that doctors who act up or provide incorrect treatment are susceptible to penalty, and the quantity of the punishment varies according to the status of the victim, which is specified as being 500 panas (silver coin).[34]

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[30] Page Keeton, "Professional Malpractice," *Washburn LJ* 17 (1977): 445.

[31] Islam, "Medical Negligence in Malaysia and Bangladesh: A comparative study".

32 K Mathiharan, *State control of Medical Malpractice, Law & Medicine*, An annual publication of the Institute of Law and Ethics in Medicine, National Law School of India University, Bangalore, Vol 4, (1998): 88.

33 Robert S Toth, *Medical Malpractice, Physician as Defendant, Legal Dynamics of Medical Encounters*, American College of Legal Medicine, St. Lois, The CV Mosby Co. (1988): 482-491.

34 Modi, *Modi's Medical Jurisprudence and Toxicology*.

5. Laws Relevant to Medical Negligence Applied in Bangladesh

Medical negligence is a grave violation of the right to life and health, which are basic and fundamental human rights to survive.[35] In Bangladesh, various legal measures are meant to protect and guarantee both rights. For example, the Constitution of Bangladesh has declared that the "right to life"[36] is a fundamental right, which signifies (a) adequate safe and clear food, (b) safe drinking water, (c) public health - sanitation, (d) reasonably comfortable sleeping accommodation, (e) medicine and healthcare, and (f) security of life and property. In other words, the "right to life" encompasses all the abovementioned rights. Indeed, under its Fundamental Principles of State Policy, the state has been required to guarantee the "basic essentials of life, including food, clothes, housing, education, and medical treatment, and to raise the level of nutrition and the enhancement of public health.' Since it is the primary responsibility of the state to increase the overall level of nutrition and improve public health, additional constitutional remedies can be pursued in situations where there is a threat to a citizen's health under Articles 15 and 18, when read in conjunction with Articles 31, 32, 44, and 102. These articles serve as guards of the citizen's health rights.

Although citizens' health care is the constitutional directive, regrettably, Bangladesh does not have any specific law that can exclusively address the issue of medical negligence; nonetheless, some legislations provide remedies. In Bangladesh, the law of torts is not codified as an act; nevertheless, rules related to tort law are included in and enforced by several statutory provisions. For example, the Penal Code of 1860 contains sections 304A, 314, 323-326 that outline the punishments for causing death through negligence, death caused by an act done with the intent to cause a miscarriage, the punishment for voluntarily causing hurt and grievous hurt, and the punishment for voluntarily causing hurt and grievous hurt using dangerous weapons or means. According to the penal Code, whoever causes the death of another person by doing any negligent act that does not amount to culpable homicide shall be punished with imprisonment of either description for a term that may extend to five years, with a fine, or with both.[37]

Under penal laws, the term "negligent act" has been defined as doing an action carelessly, without taking the appropriate precautions, and while knowingly exposing oneself to danger.[38] In addition, punishments may be found in sections 336-338, which are particularly associated with incidents involving medical negligence. Whoever causes hurt or grievous hurt to any person by doing any act

35 Daniela Tatu, *Medical negligence: In the case-law of the European Court of Human Rights*. Vol. 70. Key Editore, (2018).

36 Article 32 of the *Constitution of Bangladesh*.

37 Section 304 of the *Penal Code*,1860.

38 *Rashidullah v. State* 21 DLR 709.

so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to in respective of six months to two years, or with a fine which may extend to five hundred and five thousand taka, or with both.

According to the Medical and Dental Council Act of 1980, the Council may, at its discretion, order the removal of the name of any registered medical practitioner or dentist from the register if they have been found guilty of infamous conduct in any professional regard and have been convicted of a criminal offence.[39] In this context, the term "convicted" refers to a court that has been properly formed. However, the clause has some latitude and is flexible.[40]

In addition to being a broad legal venue for dealing with the problem of medical negligence, the Consumer Rights Protection Act of 2009 may also be used. The sanctity of protecting and enforcing patients' rights applies equally to cases involving medical negligence, particularly concerning the Act.[41] This is because a patient receiving medical treatment is seen as a customer, while medical institutions or doctors are regarded as service providers. The penalties for failing to provide a product or service after having committed to doing so have been outlined in this Act.[42]

In addition, a further penalty has been imposed for the breach of the rules and regulations outlined in this Act or legislation, the infraction of which might jeopardise the customer's life or safety. In addition, the section that can be further directly connected to medical negligence is section 53. This section stated that if any service provider causes damage to money, health, or the life of the service receiver by negligence, irresponsibility, or carelessness, they will be punished with imprisonment for a term not exceeding three years or with a fine not exceeding two million taka, or both. Furthermore, this section can be directly connected to medical negligence. However, these sanctions are insufficient since the fine does not proportionately reflect the loss or damage that the service providers incurred.[29]

Medical negligence concerns may also be handled under the Contract Act of 1872, which is unsuitable since delivering medical services and upholding

39 Section 28 of The Medical and Dental Council Act, 1980.

40 Bangladesh Medical and Dental Council-1980, *Professional Ethics and Code of Medical Conduct*, p1-8 Available At <http://www.bmdc.org.bd/docs/codeofmedicalethics.pdf> accessed on 20 June 2022.

41 Dr. Belal Hosain Joy, *Health care laws in Bangladesh,* 4 October 2011, Available at<http://www.scribd.com/doc/67389243/Healthcare-Laws-in-Bangladesh-Final>Accessed on 20 June 2022.

42 Section 45 has dealt with the punishment of not selling or delivering the promised product or service that provides imprisonment for a term not exceeding 3 years, or with fine not exceeding 2, 00,000 taka, or both. Section 52 has dealt with the punishment of not selling or delivering the promised product or service that provides imprisonment for a term not exceeding 1 year or with fine not exceeding 50,000 taka, or both.

commercial commitments are two distinct types of difficulties. According to the Act, when a contract is broken, the party who suffers as a result of the breach is entitled to compensation from the party who violated the contract for any loss or damage caused to him that naturally resulted from the breach or that the parties knew, at the time the contract was made, was likely to result from the violation.[43] However, it is challenging to substantiate the claims made in this Act. The damages or compensation awarded are on a different legal basis.[44]

Recently, the Bangladesh Government has adopted a National Health Policy. However, it primarily concentrates on strategic design for the right to health, such as obtaining mass-scale consensus and commitment to socio-economic, social, and political development to facilitate appropriate implementation of the Health Policy or to prevent diseases and promote health to achieve the fundamental objective of "Health for All." Furthermore, it has been stated that an adequate procedure will soon be designed to strengthen accountability and ensure quick and strict legal disposal of cases relating to negligence of duties.[45] However, this policy merely focuses on the provision of negligence against health rights, and thus it ignores the prosecution and prevention of medical malpractice.

6. Critical Analysis of Laws on Medical Negligence in Bangladesh

As shown in the earlier section, Bangladesh governs medical negligence via various legislation, each directly or indirectly leading to the prosecution of the wrongdoers. However, there is no legitimate legal venue to discuss the problem of medical negligence, and most of the time, individuals are unwilling to seek remedies for their complaints. This study identifies some strengths and weaknesses of existing laws on medical negligence, as described below.

The most significant weakness of current laws on medical negligence is their inefficiency. There are provisions in many statutes, but they are not transparent or codified, making it difficult for victims to decide which court to go to or under which Act they may file a lawsuit against medical wrongdoers. For example, criminal proceedings are sometimes brought under the Penal Code, which is regrettable since accusations do not always imply wrongdoing on the part of the doctors. Thus, it would be troublesome for them if criminal charges were brought against them. However, civil courts only have the power to determine the number of damages, not to punish the defendants.

43 Section 73 of the Contract Act, 1872.

44 Prof. SK Verma, *Legal Framework for Health Care in India*, Indian Law Institute Publication, 1st ed, (2002): 158.

45 Bangladesh Health Policy, Wikipedia, the free encyclopedia, Available at <http://en.wikipedia.org/wiki/Bangladesh_health_policy> Accessed on 23rd July 2022.

Similarly, a claim for medical negligence may be brought forward under the Consumer Protection Act. Therefore, it may result in many legal actions being taken. Recently, an effort has been made by the Law Commission of Bangladesh; it has come up with a proposal to establish laws on the topic to address the prevalent charges of medical negligence in Bangladesh.[46] The solution made by the Law Commission is unquestionably a good one. It is founded on the sole fundamental concept of improving the quality of health care provided to the general public without jeopardising the interests of medical professionals.

Another issue involving current laws on medical negligence is the higher court expenses. The average litigant in Bangladesh cannot pay the high costs of bringing a case before a court since it requires a significant amount of money and has higher filing fees. Because of this, victims often do not seek help via legal procedures. In contrast, individuals in neighbouring country India do not have to pay any court costs to file an action for medical malpractice under the Consumer Protection Act. This encourages people to go to court to get prompt and efficient remedies.

The most critical issue involving medical negligence is the burden of proof of negligence. The complainant is the one who has the burden of proof on the problem of negligence. Suppose the claimant cannot offer substantial evidence in court that demonstrates inappropriate treatment on the medical professional's part. In that case, there will be no legal remedy open to him. Furthermore, the complexity of medical concerns becomes much more complicated since a doctor must show the carelessness of another doctor accused of being negligent. Since they are both members of the same profession, doctors do not often provide information that may be used against their colleagues.[47]

In Bangladesh, judges are only given the training necessary to handle cases with conventional concerns. However, situations involving medical negligence are of a peculiar kind and need further competence. Because of medical concerns' complex and technical nature, judges are not always seen as qualified individuals who can assess what aspects of a given case are reasonable and what are not.[48] It is possible that one solution to this issue would be to pass over responsibility for this role to regulatory authorities and medical professionals who are better suited to deal with the situation.

The incompetency of medical regulators also dramatically impacts the legal remedy procedure in terms of a medical negligence claim. In Bangladesh, the

46 S.M. Masum Billah, Law Commission's proposal of making medical negligence law, *The Daily Star*, (April 20, 2013).

47 S. Damayanti, *What is medical negligence? What are the standard of care principles*, (15 July 2011), Available at < http://pharmacyzoneustc.blogspot.com/2011/07/part-vi-implementation-of-existinglaws.html>Accessed on 21 June 2022.

48 Sultana Nishat, "*Medical Negligence in Bangladesh; An Introduction",* Law Vision, Issue: 9, Department of Law, University of Chittagong, (2004-2005): 52.

Bangladesh Medical and Dental Council (BMDC) is authorised to initiate disciplinary action against any institution and to suspend or revoke recognition of the degrees awarded by that institute if it is determined that the institute is operating below acceptable standards.[49] In addition, it is the sole authority that may govern and oversee the professional behaviour of the doctor, as well as take the proper steps if the doctor has been negligent. However, the Council has only taken a limited number of acts.[50] Another issue is that the BMDC is constrained in its ability to carry out its disciplinary duties since the scope of its jurisdiction is restricted to only include doctors who work in private clinics or operate their independent private practices. In such a scenario, the only entity with authority to take action is the Director General of Health or the Health Ministry; however, none of these entities often carry out their duties concerning this matter.[51] Even the Law Commission has admitted that the BMDC's ability to solve the "negligence" problem is limited.[40]

Although the Consumer Protection Act of 2009 includes remedies for medical negligence, filing a lawsuit is very difficult. For instance, if a consumer wishes to file a complaint against such a purpose, he must first file a complaint before the Director General or another authorised person in the department within thirty days of the date the cause of action accrued.[52] Suppose the charge sheet is not brought before the magistrate by the Director General or any authorised person of the department within ninety days of the complaint being filed. In that case, the magistrate will not accept any offence within his jurisdiction.[53] This indicates that even if a customer suffers financial loss, he cannot register a complaint directly with the magistrate. As a result, the customer often does not indicate that he is interested since this process takes a lengthy time. On the other hand, in the case of the private sector, the Director General has the authority to discover flaws and deficiencies by inspecting the health and nursing care; however, he will not take any preventative action; instead, he will merely inform the secretary of the Health Ministry and the Director General of the Health Directorate.[54] As a result, there is a significant barrier to punishing medical professionals employed in the private sector; consequently, the number of instances of professional negligence in private clinics is steadily growing.

49 Health ethics in six SEAR countries, World Health Organization (WHO), Health Ethics in South-East Asia,(1991), Available at< http://www.hf.uib.no/i/filosofisk/seahen/vol1rev3.PDF>Accessed on 22 June 2022.

50 Damayanti, What is medical negligence? What are the standard of care principles.

51 Billah, Law Commission's proposal of making medical negligence law.

52 Section 60 of the Consumer Protection Act, 2009.

53 Section 60 of the Consumer Protection Act, 2009.

54 Section 73 of the Consumer Protection Act, 2009.

Last but not least, people in Bangladesh are unaware of their rights concerning medical treatment, and many are not even acquainted with medical ethics. Again, the government does not demonstrate much interest in disseminating information relating to professional ethics or medical ethics; the only time this occurs is when a significant incident occurs, at which point a few articles appear in newspapers, and reports appear on a variety of television channels. Regrettably, though, there are no programs available that are intended to raise awareness.

7. Findings of the Study

Even if medical negligence is accountable for the breach of a person's right to health, the perpetrators of such cases—the medical practitioners involved—rarely face the consequences for their actions. The primary factors contributing to the problem are the absence of comprehensive legislation on the law governing medical negligence, the complexity of current laws dealing with carelessness, and a lack of public knowledge. Within this context, Bangladesh may initiate some effective measures as prescribed below.

7.1. Enactment of Special Legislation on Medical Negligence

In Bangladesh, it is time to adopt specific legislation to handle the problem of medical negligence by establishing a clear definition of the word "medical negligence" with its nature and originality. This sector has gone unobserved for a long time. However, independent and effective laws have been introduced into the legal systems of certain industrialised nations, and they are reaping the benefits. Furthermore, the Legislation Commission of Bangladesh recently argued why a new code is unavoidable since the current criminal law is either frivolous or vexatious.

The laws of torts, which originate from common law, also exist in legal limbo in Bangladesh; without clear statutes, robust case law jurisprudence development has been hindered.[55] In this vein, it is worth noting that the state has an international responsibility to ensure that the right to health is fully realised, which requires adequate healthcare facilities and services as well as appropriate legislative, administrative, budgetary, judicial, promotional, and other measures. Victims of violations of the right to health should also be entitled to appropriate reparation, such as restitution, compensation, satisfaction, or assurances of non-repetition.[56]

55 Billah, Law Commission's proposal of making medical negligence law.

56 Fact Sheet no.31 on the Right to Health, Office of the United Nations, UN Office of the High Commissioner for Human Rights (OHCHR) (2008), Available at < http://www.ohchr.org/Documents/Publications/Factsheet31.pdf > Accessed on 20th September 2022.

Furthermore, victims are always better served by the law when it is both precise and comprehensive, making it feasible for them to seek legal redress promptly via a process that is both clear and accessible. For example, it is worth noting that in the United Kingdom, instances of medical negligence are heard under a separate Act that provides a redress package that includes an offer of compensation, explanation, apology, and report of action to avoid repeat incidents.[57] Patients, judges, and attorneys have all praised this Act for its effectiveness in settling medical malpractice cases. Under the Family Courts Ordinance of 1985, family courts were set up in Bangladesh to help settle disputes between family members that ordinary civil courts had previously struggled to resolve. Also, our government must pass legislation as soon as possible to deal effectively with medical negligence.

7.2. Establishment of Health Court

The idea of a health court is relatively recent, but many governments known for their progressive policies are beginning to see its value. Health courts are suggested as specialised courts to hear claims of medical negligence. These courts are distinguished from traditional ones because they use specially qualified adjudicators, independent expert witnesses, and predetermined damage awards.[58] In health courts, healthcare conflicts would be resolved by knowledgeable judges who have received specialised training. They would give written judgements that provided direction on the appropriate levels of care requirements. These decisions would establish precedents on which patients and medical professionals may depend.[59]

Research and the collection of resources are still necessary steps in establishing a health court in Bangladesh. First, Bangladeshi courts are already overworked with many civil and criminal cases, and a medical negligence lawsuit might be an additional burden. This is one of the reasons why this proposal should be supported. A plaintiff's harm may have been the product of a medical mistake or simply an unfavourable outcome. Health courts are viewed as able to decide this question with more speed and accuracy than traditional courts. Second, health courts are more effective because they guarantee the presence of an expert panel of judges and attorneys for all sides of the dispute. Furthermore, thirdly, the courts have the authority to offer essential orders and precedents that may be used in the future and have the requisite expertise to do so. Even if it may not be simple for the government to create health courts without previous evaluation and planning,

57 The NHS Redress Act, 2006.

58 Health court - Wikipedia, the free encyclopedia, Available At <en.wikipedia.org/wiki/Health court> Accessed on 12th September 2022.

59 Establish Health Courts, Common Good, Available at www.commongood.org/pages/establish-health courts Accessed on 12th September 2022.

they need to bear in mind that healthcare is one of the fundamental requirements that warrant the utmost concern.

7.3. Amendment of Consumer Safety Legislation

The Consumer Rights Protection Act has to be amended before a new Act is created. The Act is insufficient since section 2 does not explicitly include the word "medical profession." In this connection, it should be noted that section 2(1)(o) of the Consumer Rights Protection Act, 1986 in India, now includes the phrase. The Indian Supreme Court ruled in a case[60] in 1995 that their country's consumer protection statute should include the health profession.[61] This phrase should be incorporated in our Act so that it is clear that anyone whose medical mistakes have harmed must go to the consumer court and seek redress under this Act. Including this phrase in our law will make it clear that anyone harmed by medical malpractice must go to the consumer court to seek redress under this law. Although there is debate over whether medicare should be seen as merely a product, it has dramatically aided some creative legal strategies in cases of medical negligence in our neighbouring country, India, where medical negligence litigation is credited with bringing about safer practices in the healthcare provisions.[62] Dr. Faustina Pereira, a well-known human rights advocate, and campaigner, also stresses a Consumer Protection Act on this matter, which is on par with the Right to Information Act.[63] The Consumer Protection Act of Bangladesh should thus be amended to make it more valuable and adaptable to legal cases involving medical malpractice.

7.4. Healthcare Supervision

The management of both public and private medical facilities must keep an eye on the investigation of procedures used to find patient complaints, such as suggestion boxes, patient satisfaction surveys, etc. Additionally, the diagnosis and treatment plan should be explained to the patient or guardian, and the dialogue with the patient should be recorded in the patient's documentation. This might then be used as proof of the statute of limitations.[64] An efficient complaint process may be built in this way. The Ministry of Health and the Bangladesh Medical and Dental Council (BMDC), the regulating organisations, must be strict in overseeing the complaint procedure to maintain those institutions' responsibility. For instance,

60 *Indian Medical Association v. VP Shantha* 3 CPR (1995) 412.

61 Modi, *Modi's Medical Jurisprudence and Toxicology*.

62 Billah, Law Commission's proposal of making medical negligence law.

63 Hana Shams Ahmed, *Changing Face of Health care*, (20 April 2008), Available At <http://hanashams.wordpress.com/2008/04/25/health-care/> Accessed on 13th August,2022.

64 Taha Nazir and Syed Muzzammil Masood Zaidi, "Review of the basic components of clinical pharmaceutical care in Pakistan," *Canadian Journal of Applied Sciences* 1 (2011): 168-173.

in 2008, in response to patient complaints, the Ministry of Health established the "Monitoring and Supervisory Committee," which resulted in the punishment of 104 government hospital employees who had been found guilty of mismanagement and corruption that had caused patients' suffering.[65] This was a commendable move on the part of the government.

7.5. Litigation Availability and Convenience

When an injured party visits the court to file a lawsuit alleging medical negligence, he must pay higher court costs, which should be reduced. Additionally, he finds it challenging to support his claims since medical organisations are reluctant to provide crucial details. The Right to Information Act 2009 may be used as a legal instrument to guarantee access to information about medical conditions. Additionally, the Medical and Dental Council Act of 1980 should be amended to include a clause requiring doctors to save and preserve medical records and make them accessible to patients or their family members upon request. Therefore, the government should take the appropriate actions to reduce this complexity and make seeking redress easy and comfortable for the party who suffered.

7.6. Ensuring Adequate Remedy

By issuing judgements and setting precedents, the courts have the potential to play an essential part in the process of effectively punishing irresponsible medical providers. In cases of breach of duty, the courts must pronounce rigid and hard-line judgments because it is the court's constitutional duty to protect the people's right to life and health. The trial courts can pass judgments, and the High court (under writ jurisdiction) to secure the health care laws. As an example, the High Court just recently issued a rule against the alleged doctor, the Home Secretary, the Health Secretary, and the Inspector General of Police, asking them to reply to the rule and explain why they did not follow the instructions relating to the investigation and arrest in the case against the doctor under section-304 (a).[66] In addition, only recently, the Supreme Court of India decided that the Kolkata-based AMRI Hospital and three physicians should pay a US-based Indian doctor of Indian ancestry a staggering Rs 5.96 crore in compensation for medical malpractice that resulted in the death of the doctor's wife in 1998.[67] This kind of moral court judgements might be established as legal precedents to avoid similar violations of health care rights and pursue the wrongdoers via the judicial process.

65 "Government concerned at the quality of services at government hospitals", *The Daily Ptothom Alo*, (22 September 2008).

66 High Court rules against doctor to take action, Bangla News 24, (September 14, 2013).

67 SC orders Kolkata hospital to pay Rs 5.96 crore for medical negligence, *Times of India*, (24 October 2013),

7.7. Raising Public Awareness

Although the "Code of Medical Ethics" was issued in 1983 by the Bangladesh Medical & Dental Council, the general public, including patients, is unaware of its existence. It is the responsibility of the Ministry of Health and Social Welfare to ensure that these papers get an adequate amount of publication so that patients are aware of the rights, obligations, and responsibilities that a medical practitioner is obligated to uphold following this Code. It is important to note that recent statistics in Canada found that the number of medical negligence cases has decreased. These statistics suggest that this decline is attributable to the recent widespread circulation of awareness-building programs relating to patients' and doctors' responsibilities and liabilities.[68]

In addition, an awareness-raising and training program addressing patients' rights might be implemented for nurses and ward boys working in hospitals, clinics, and any other institution related to health care. Those responsible for the planning, policymaking, and implementation of health care must give ethical concerns in medical and related education and medical practice high importance. To raise people's levels of awareness across a broader population, awareness programs may be broadcast on various television channels and published in newspapers.

7.8. Institutional Involvement

Even though the National Human Rights Commission (NHRC) in Bangladesh is working on this problem, the NHRC has to increase the amount of effort it puts into monitoring the health services provided by both public and private institutions on a more consistent basis.[69] Additionally, the duty of a watchdog should be played by consumer forums, patient rights organisations, and other institutions of a similar kind. In addition, several legal firms, such as The Lawyers and Jurists, Islam and Associates, and S. Ahmed and Associates, have been focusing on litigating medical malpractice in recent years. In addition, well-known nongovernmental organisations (NGOs) such as Ain O Salish Kendra (ASK) and BLAST have produced good research papers on this topic. Their combined power has the potential to make the situation far better than it was before. Therefore, the National Human Rights Commission (NHRC), private law firms, and nongovernmental organisations (NGOs) should give legal assistance to the plaintiffs and carry out countrywide formal and nonformal programs to take the next step in avoiding such violations of human rights.

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68 *Medico-Legal Handbook for physicans in Canada*, 7th ed., (2010), Available At <http://www.cmpaacpm.ca/cmpapd04/docs/resource_files/ml_guides/com_medico_handbook-e.cfm> Accessed on 24th July 2022.

69 NHRC team to visit hospitals to monitor services, *The Daily Star*, (15th September 2010).

8. Conclusion

The purpose of legislation regarding medical negligence is to prevent patients from having their right to health infringed upon and to maintain the integrity of healthcare laws. In addition, it assures that medical personnel who knowingly violate their professional obligations will be punished for their actions. In this article, an effort has been made to discuss the current legislative rules regarding medical negligence in Bangladesh. Bangladesh is now located in South Asia. In addition, it highlights the most significant shortcomings of such regulations. However, it is undeniable that the laws in place are neither appropriate nor sufficient to deal with the issue.

It is also well recognised that the state is required under the constitution to protect and uphold the rights of its citizens' rights and provide for their fundamental needs, including providing them with access to medical care. This paper also concluded with some recommendations that should be effectively considered so that the state can offer a guarantee of improvement to the patients in the healthcare delivery system that addresses the common good of public health. In connection with that, this paper also concluded with some recommendations that should be effectively considered. One of the proposals is the creation of a health court and the passing of an all-encompassing statute to prosecute medical negligence. Concurrently establishing an effective complaint mechanism, mass training, and awareness-raising programs are also suggested to mobilise information to be distributed to doctors, nurses, and patients in Bangladesh regarding the effects of medical malpractice and the available redress for it.

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