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# Medical Negligence and Deceptive Medical Practices in Bangladesh Health Segment: an Appraisal

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## Abstract

Recently, medical negligence and deceptive medical practices in Bangladesh health sector has become a common episode that received a supreme level of attention from all sectors since the issue poses as the biggest threat endangering right to life of an individual or patient in the society. Though almost every day we come across the news of such medical malpractice and negligence in the public and private hospital and clinic of the country through media, but the factual scenario is more intense than what is manifestly seen. To this context, this paper, however, tries to trace out the diverse nature of medical negligence and deceptive treatment repeatedly committed by the physician, health professionals such as nurse, ward boy and other health assistants against the patients and their attendants in hospitals of the country. This paper further seeks to analyse the existing legal frameworks in connection with the laws and regulations involving medical negligence in Bangladesh. Finally this study also suggests to develop the medical professional conducts and to formulate effective and unique legislation to regulate medical negligence deceptive medical practices in Bangladesh. It is believed that this study will contribute to facilitate advancement of the legal regime of the Medical Negligence and to upgrade the proper enforcement of laws to ensure the right to life by putting an end to medical negligence in very near future.

**Keywords:** Medical negligence, Medical law, Enforcement, Public and private hospitals, Right to life.

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## 1. Introduction

The right to life is said to be one of the basic human rights as well as it is mentioned as a fundamental right of every citizen as per the constitution of Bangladesh. But such right is now under the black cloud of medical negligence. Medical professionals with such a noble service hold the place of ultimate saviour of life. It is not only a common expectation of the patients but also the medical jurisprudence that physicians are imperatively under an obligation to perform their duties and responsibilities towards the patients with 'standard of care'. A slight delusion in professional service can endanger the valuable life of a patient.<sup>3</sup> While defining 'standard of care' McNair J. very rightly said "The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not to possess the highest expert skill at the risk of being found negligent. It is a well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular act". According to the World Medical Association (WMA) Declaration of Geneva 1948, a medical professional shall solemnly plight stating that health of the patient will be a physician's first deliberation.<sup>4</sup> It is very prudent that all medical professionals must have a marginal level of knowledge, experience and skill in medical science as this profession deals with a basic right of human life. But unfortunately it has become a common phenomenon of medical professionals to make money by treating the patients as consumers. Though, interestingly, patients are considered one of the vital classes of consumers but now they belong to the worst and neglected groups. Best physicians are only available at their private clinics though there is a huge crowd of ill-fated patients in public hospitals. Many of the physicians demand high rate of fees and frequently prescribe a long list of pathological tests from which they usually get commissions. Very often proper care is seen from other medical assistants. Such malpractice in medical sector causes uncountable intimidation towards health rights every year.

It is a lamentable matter that in Bangladesh there is no precise, unique and ample legal framework to deal with medical negligence, deceptive Medical practices and the misconduct of health professionals. As a result, by using this haziness the wrongdoers are very often beyond the grip of law. Every health service provider must be accountable for his misconduct to the patient or to his family but actual system of accountability of medical professional is absent and such lack of accountability explicitly gives them a black license to commit deceptive medical practices and negligence. Accordingly such inhuman practice is taking the form of disaster day by day. Due to lack of

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<sup>3</sup> Reddy, Dr. K.S. Narayan, (2012), *The Essentials of Forensic Medicine and Toxicology*, A.P.509002, 13<sup>th</sup> ed., pp.37-41.

<sup>4</sup> World Medical Association (WMA) Declaration of Geneva (1948), Adopted by the General Assembly of the World Medical Association at Geneva in 1948, Available at: [http://en.wikipedia.org/wiki/Declaration\\_of\\_Geneva#cite\\_note-1](http://en.wikipedia.org/wiki/Declaration_of_Geneva#cite_note-1)

effective legal framework, the health service providers have almost forgot their professional etiquette. Many of the worst cases of medical negligence are mostly seen in public hospitals.<sup>5</sup> Physicians, nurse or other health assistants show grievous negligence to patients in government hospitals of Bangladesh. Because of such negligence and misbehave of medical professionals the patients lose their mental strength and confidence to recover from disease. Some patients even under such circumstances do not feel free to explain about their health complications.

In Bangladesh, there are few scattered laws which generally deal the cases of medical negligence although not in appreciable manner. As a result, the medical wrongdoers are availing full privilege and indemnity of their profession by considering themselves free from the jurisdiction of law. Surprisingly such kind domestic legal lacuna increases the suffering of the victim patients while taking legal action against any medical professional for his/her professional negligence. In last decade though a good number of allegations regarding medical negligence are brought into legal action but very insignificant numbers of allegations are legally disposed. Neither specialized legislation nor separate court is established to handle the cases of medical negligence in our country.

To this end, the imperative intention behind this text is, however, to explore the diverse nature of medical negligence and deceptive medical treatment frequently perpetrated by the physician, health professionals and other health assistants against the patients and their attendants in public and private hospitals of the country. This paper also aims to analyses the existing legal regime in connection with the laws and regulations involving medical negligence in Bangladesh. Another objective of this study is to realize appropriate way out to upgrade the domestic legal regime on medical negligence for the promotion of public health.

Taking the present perspective into consideration along with the existing facts of medical negligence and deceptive medical practices over the country this paper, primarily, tries to focus on the concept and modes of medical negligence and the current scenario of medical negligence in Bangladesh with special reference to some incidents happened in health sector. Then the article examines the existing domestic legal regime and attempts to points out the drawbacks of the present legal system involving medical negligence in Bangladesh. Finally this study suggests to develop policy and to formulate effective and unique legislation to regulate medical negligence and deceptive medical practices in Bangladesh.

In this article analytical method has been used following qualitative and descriptive study which is based on secondary sources of information like text

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<sup>5</sup> Islam, Md. Rabiul. (2015). Negligence in Government Hospitals of Bangladesh: A Dangerous trend, *International Research Journal of Social Sciences*, Vol.4 (5), pp.12-18.

books, national and international journals, research reports and news reports. Relevant literature also collected from different websites. An examination of substantial background was considered for finding out the true application of laws of Bangladesh for the victims of medical negligence.

## 2. Meaning of Medical Negligence

According to the law of torts “negligence” means more than mere inadvertency. It refers to lack of proper care, careless conduct or remissness. The term “Negligence” indicates to the inadvertence or deviation to provide care which a sensible man would not do in that circumstance.<sup>6</sup> Medical Negligence is the shortcoming of any kind of medical professionals such as physician, nurse or other health service providers to achieve their standard of care and conduct. According to Austin- “In cases of negligence, the party performs not an act to which he is obliged; he breaks a positive duty”. It becomes a medical negligence if the mode of service and conduct fails to satisfy the due standard of a medical service provider. L.B. Curzon in dictionary of Law defined the term ‘negligence’ as an infringement of legal duty to take care, resulting in harm to the climate which was not desired by the defendant.<sup>7</sup> Negligence is generally a kind of careless conduct which bears huge risk of causing harm to another.<sup>8</sup> Medical negligence is the professional malpractice by act or omission of a health care provider in which the mode of care and treatment does not meet the reasonable standard of practice in medical community and injures the patients.<sup>9</sup> Professionals providing psychological care can be equally liable for medical negligence in respective field. From very ancient time punishment for medical malpractice and wrong treatment was a common phenomenon in Indian sub-continent.<sup>10</sup>

The judiciary of our neighbouring country India has established significant and progressive constitutional components of medical negligence by means of judicial precedents. As per the judgments of apex court, deficiency in diagnostic or treatment procedures,<sup>11</sup> shortage of preparation for an operation,<sup>12</sup> or incompetency to sterilize properly<sup>13</sup> are treated as instances of medical negligence.

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<sup>6</sup> Ratanlal & Dhirajlal, (2002), *Law of Torts*, 24<sup>th</sup> edition, edited by Justice G.P. Singh; pp. 441-442.

<sup>7</sup> Islam, Md. Zahidul. (2013), Medical Negligence in Malaysia and Bangladesh: A Comparative Study, *IOSR Journal of Humanities and Social Science (IOSR\_JHSS)*, 14(03), pp.82-87.

<sup>8</sup> Kumar, Dr. Lavlesh. (2011), Medical negligence-Meaning and Scope in India, *Journal Nepal Medical Association*, pp. 49-52.

<sup>9</sup> Karim, S. M. Towhid. (2013), Medical Negligence laws and Patient Safety in Bangladesh: An analysis, *Journal of Alternative Perspectives in the Social Science*, Volume 5 No 2, pp. 424-442.

<sup>10</sup> Modi, Jaising. (2006), *Modi's Medical Jurisprudence and Toxicology*, LexisNexis, New Delhi, 23th ed., p.154.

<sup>11</sup> *Dr. Kunal Saha v. Dr. Sukumar Mukherjee & Ors*, III (2006) CPJ 142 (NC).

<sup>12</sup> *Dr. Ravishankar v. Jerry K. Thomas and Anr*, II (2006) CPJ 138 (NC).

<sup>13</sup> *Pravat Kumar Mukherjee v. Ruby General Hospital & Ors*, II (2005) CPJ 35 (NC).

### 3. Modes of Medical Negligence in Bangladesh

Being a fundamental right, the right to life and good health is a very sensitive issue and in this context proper treatment and due care is must by the health care providers. Both the physicians and other medical care providers must have expertise and skill in respective health service. But it is a matter of panic that tragic errors are often made in both public and private hospitals of Bangladesh. Very few of such incidents are reported in media but many remain untraced. A very silly delusion by a physician, dentist, health assistant, nurse and even by an executive of the concerned hospital may cause irreparable damage to the health of a patient.

#### 3.1 Misbehave by Medical Service Providers

It is often an allegation of the patients that they face misbehave from the physicians and other health professionals. Many physicians refer the patients to their private chamber and ask for high rate of fees. It is also found that some physicians do not make a free conversation by keeping necessary information secret and frequently prescribes unnecessary clinical test as well as surgery from which they gain financial interest. One of the common problems occurs when a physician's handwriting in his prescription becomes very cumbersome to understand for the patient and even for another physician. If a prudent man fails to read out the names of medicines in prescription then this is a gross negligence by the concerned medical professional. It is a foremost duty of a physician to disclose the effects and side effects of the medicines to the health of the patient along with the quantities and proper timing of taking medicines.<sup>14</sup> Unfortunately the physicians get disturbed when detailed queries are made to them about the prescribed medicines. The health care providers often forget that they have a momentous duty towards the patients. A medical practitioner goes under an obligation to serve a patient as long as it requires attention if he consents to serve the patient.<sup>15</sup>

#### 3.2 Oversight in Surgery and Processing of Anesthesia

Though surgery and anaesthesia are the two common treatments in health service but they are required expert knowledge and ability to perform. Some surgeries like heart, skull, spine or eyes must be performed with high care. Little error in such surgeries may cause lifetime damage to the vital organs of a patient or even death. Major parts of the surgeries must be carried out only by the expert physicians but sometimes these are left in the hand of medical assistants having no adequate knowledge in relevant field. It is often found that big mistakes were made in minor surgeries like leaving some sort of

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<sup>14</sup> Akter, K. Khinur. (2013), A Contextual Analysis of the Medical Negligence in Bangladesh: Laws and Practice, *The Northern University Journal of Law*, Volume IV, p. 69.

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

surgical instruments inside the patient's body and sometimes incautious stitch after the surgery. It is really pathetic that many of the surgical errors are never realized by patients. Preparation and use of anaesthesia are sometimes done by health assistant instead of anaesthesiologist without considering the past and present condition of the patient's health.<sup>16</sup>

### **3.3 Fruitless Medical Tests and Misdiagnosis**

Unnecessary pathological test and diagnosis have added a new dimension in medical negligence and deceptive medical practices. Such test and diagnosis are not always done in due time and proper manner; consequently patient suffers fatal diseases like diabetes, heart attack, trauma injury or cancer and prevention becomes ponderous. Dereliction to diagnose Cancer, to identify DVT and Pulmonary Embolism, to recognize Meningitis, to diagnose Appendicitis are some common forms of misdiagnosis

### **3.4 Negligence during Child Birth**

Medical negligence is often alleged to occur in case of childbirth and caesarean section. Intensive care and conduct is always a requirement in caesarean section to save the life of both mother and baby. Several complications may arise during a child birth. A caesarean section must be handled by expert medical professional, gynaecologist and staffs. In case of forced extraction of a baby, using of forceps and suction bears big risk. In both cases of caesarean section and forced extraction the doctor usually gets few crucial minutes to determine the next approach. During the delivery of a baby while inducing labour to avoid caesarean section, errors due to negligence can take which is highly hazardous.

### **3.5 Rashness by Unnecessary and Long Term Treatment**

Many times, medical negligence may take place due to long term treatment of a patient. If a physician makes fault to monitor the overall progress of the patient and to mitigate the side effects of the medicines, another chronic disease may nestle inside the patient's body. It is largely seen that in case of many fatal diseases medical professionals suggest to continue the treatment just to make money rather than interest of the patient. They keep those patients under their treatment for a certain period and make some financial gain. Sometimes the health care providers do not prescribe the proper medicine to linger the disease. Redundant use of medication in time of emergency case, poor equipment maintenance, not property following up on a patient's blood pressure and diabetes have become some common medical negligence in everyday scenario of both public as well as private hospitals.

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<sup>16</sup> Karim, S. M. Towhid. (2013), Medical Negligence laws and Patient Safety in Bangladesh: An analysis, *Journal of Alternative Perspectives in the Social Science*, Volume 5, No. 2, pp. 424-442.

#### 4. Incidents and Cases of Medical Negligence in Bangladesh

Misbehave by health care providers, error in diagnosis, wrong medical reports, unnecessary and delayed surgery or prescribing wrong medicines are some shabby instances of medical negligence in Bangladesh. For example, on August 15, 2011 Dr. Mridul kanti Chakroborty who was a teacher of University of Dhaka died in Labaid Cardiac hospital. By this incident serious allegation of negligence was brought against Labaid Cardiac Hospital and in 2012, some physicians were summoned in the High Court Division of Bangladesh for allegation of negligence. Dr. Mridul unfortunately received treatment after an hour of being admitted in Labaid hospital and this gross negligence by hospital caused his death. Labaid Cardiac Hospital had compensated 50 lakh taka directed by the order of High Court Division. Almost similar incident happened by the death of another professor from University of Rajshahi named as Professor Abu Nasser M Saleh. Mr. Saleh was wrongly diagnosed at emergency department of Rajshahi medical College. He was supposed to refer at cardiology department instead of respiratory unit. On February 17, 2008 one of the famous cinema celebrities Manna died due to heart attack in United Hospital. It was claimed by his wife that though he rushed to hospital with chest pain but there was no specialist doctor in the hospital.<sup>17</sup> These factors of medical negligence drew the attention of national media.

Very recently on July 29 of 2018, Rafida Khan Raifa, a 28 months old girl died in Max Hospital of Chittagong. An antibiotic dose was given to Rafida at Max Hospital which triggered convulsions in her body and later on injection was administered which led to her death. The Director of Directorate General of Health Service (DGHS) directed a three members committee to investigate the case and served a notice on the Max Hospital authority regarding irregularities and medical negligence in the hospital. Rafida's parents alleged that their daughter died due to wrong treatment in the hospital and subsequently a case was filed by her father.<sup>18</sup> In another case a Homoeopathic physician having no idea of effect prescribed 24 drops of stramonium along with a leaf of dhatura to a patient who was suffering from a guinea worm. Subsequently the patient died and the Homoeopathic practitioner was held guilty of causing death by negligence under the Penal Code, 1860.<sup>19</sup> In another case of preparing medicine where a compounder without reading the label of the medicine bottle added poisonous strychnine hydrochloride and caused death of seven patients. The compounder like Homoeopathic physician was also held guilty under section 304A of Penal Code, 1860.<sup>20</sup> Similarly few criminal cases of medical negligence were filed in several regions of Bangladesh. One of the leading human rights NGOs in Bangladesh namely

<sup>17</sup> See wife-blames-manna-s-death-on-hospital at <http://bdnews24.com/bangladesh/2008/03/05>

<sup>18</sup> See allegation-of-medical-negligence-in-Chittagong at <http://www.dhakatribune.com/2018/05/07>

<sup>19</sup> Karim, Md. Ershadul. (2005), 'Examining Liabilities Arising from Doctor's Negligence', 16 *Dhaka University Law Journal*, p.166.

<sup>20</sup> De Souza (1920), 42 All 272.

Ain O Salish Kendra (ASK) revealed in a report<sup>21</sup> that 504 cases of medical negligence took place in between June 1995 to September 2008 and many of these cases unfolded the frightening standard of our medical sector. Unfortunately many gross cases of medical negligence are not covered.

In *Parmanand v. India*<sup>22</sup> the Supreme Court of India held “No law or state action can intervene to avoid/deny the discharge of the paramount obligation cast upon members of medical profession. The obligation being total, absolute and paramount, law of procedure whether in statutes or otherwise which would interfere with the discharge of the obligation cannot be sustained.”

In fact, no specific and authoritative judgment of Bangladesh Supreme Court is found regarding medical negligence and medical malpractice. In *Saleemullah v. Bangladesh*<sup>23</sup> and *RAJUK v. Mohsinul Islam*<sup>24</sup> the Supreme Court stated that state is under an obligation to secure the health and longevity of the citizens. But these observations by the Supreme Court of Bangladesh do not make any strong implication in the field of medical negligence.

## 5. National Legal Framework to Restrain Medical Negligence

There is no comprehensive, balanced, precise and/or unique legislation to prevent medical negligence except few scattered provisions of Constitutional law, civil and criminal statutory law. Although medical negligence comes under the umbrella of Tort but liability under the Law of Tort is rarely followed in our courts. The Bangladesh Medical and Dental Council (BMDC) is the body corporate under the Bangladesh Medical and Dental Council Act, 2010 to deal with the standard and quality of medical practice, registration of medical professionals and investigation of complaints against physicians. A plaintiff has to establish four vital elements of negligence for an effectual medical malpractice claim which are (i) the physician owned a duty of care, (ii) the physician failed to provide the reasonable standard of care, (iii) a compensable injury was suffered by the person; and (iv) the patient is entitled to damages.<sup>25</sup>

### 5.1 Constitutional Measures

There is no any direct provisions covering right of a patient in the Constitution of Bangladesh. Right of a patient is indirectly incorporated in Article 32 which represents ‘right to life’. This Article however, symbolizes something really

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<sup>21</sup> Islma, Md. Rabiul. (2015). Negligence in Government Hospitals of Bangladesh: A Dangerous trend, *International Research Journal of Social Sciences*, Vol.4 (5), p.12.

<sup>22</sup> AIR 1989 SC 2039.

<sup>23</sup> (2003) 55 DLR 1.

<sup>24</sup> (2001) 53 DLR (AD) 79.

<sup>25</sup> Islam, Md. Rabiul, (2005), ‘Negligence in Government Hospitals of Bangladesh: A Dangerous Trend’, *International Research Journal of Social Science*, Vol. 4(5), p. 13.



more than animal existence.<sup>26</sup> It comprises the right to live consistently with human dignity and decency,<sup>27</sup> right to the bare necessities of life such as proper nutrition, clothing and shelter<sup>28</sup> and the facilities for reading, writing and expressing oneself in various forms, to move freely and mixing with other human beings<sup>29</sup> and everything that has meaning and relevant to man's life<sup>30</sup> including his culture, tradition and lifestyle.<sup>31</sup> In fact, the norm of right to life of a person also conveys health and medical care, security of life, proper sanitation, safe food and drinking water. The Constitution in its Fundamental Principles binds the government to ensure all basic necessities of life such as food, shelter, clothing, medical care, education and to raise the level of alimentation as well as the betterment of public health. Articles 15, 18 read with Articles 31, 32, 44 and 102 are considered as protectors for citizen's health rights if there is any risk regarding health. As the right to health falls within the arena of fundamental rights of the Constitution, any person deprived of such health rights can go to High Court Division of the Supreme Court to ensure his or her right.

## 5.2 Provisions of the Medical and Dental Council Act, 1980

According to the Medical and Dental Council Act, 1980 any physician taking good amount of fees but not providing reasonable treatment may be removed by the council. The Act further describes that the council may reject to provide registration or remove the name from registrar to any medical professional if he/she is found guilty of gross negligence, malpractice or misconduct towards the patient. Private practice is prohibited during office hours and all private clinics are bound to give high and reasonable standard of treatment as the patients become consumers by paying money for service. In addition, this law empowered the Director General of health to supervise and to inspect any private clinics, private chambers, private hospitals or pathological laboratories.

## 5.3 Remedy under the Consumer Rights Protection Act, 2009

The Consumer Rights Protection Act, 2009 is another weapon for the patients to defend medical negligence and get remedies.<sup>32</sup> Section-2(22) of this Act says "Service means any service of transport, telecommunication, water supply, sanitation, fuel, gas, electricity, construction, residential hotel and restaurants, and health, which are made available to the consumers in

<sup>26</sup> *Munn v. People of Illinois*, (1877) 94 US 113.

<sup>27</sup> *Vikram v. Bihar*, AIR 1988 SC 1782.

<sup>28</sup> *UP Avas Evam Vikash Parishad v. Friends Co-op Housing*, AIR 1996 SC 114.

<sup>29</sup> *Francis coralie v. Union Territory*, AIR 1981 SC 746.

<sup>30</sup> *HP v. Umed Ram*, AIR 1986 SC 847.

<sup>31</sup> *Ramsharan v. India*, AIR 1989 SC 549.

<sup>32</sup> Joy, Dr. Belal Hossain, (2013). *Health care laws in Bangladesh* at <http://www.scribd.com/doc/6789243/Healthcare-in-bangladesh-Final>

exchange of price but this will not include free of service”. Accordingly patients are the ultimate consumers as they deserve medical service from medical practitioners. Under this Act a medical professional or hospital will be punished with imprisonment for a term not exceeding one year or with fine not exceeding 50,000 taka or both if promised medical care is not provided in exchange of money or fees. Besides, for endangering life or security and for causing damage to money and health of a consumer the offender will be penalized with confinement for a term not more than three years or with fine not surpassing 2,00,000 taka or both. However, this legislation does not directly encompass medical negligence in the transaction of physician and patient.

#### **5.4 Criminal Liability under the Penal Code, 1860**

In Bangladesh, victims can invoke the jurisdiction of criminal court under Section-284, 304A, 323, 325, 326, 336, 337 or 338 of the Bangladesh Penal Code, 1860 against physicians for causing medical injuries like death by negligence, wilfully causing hurt and grievous hurt by hazardous weapons, death by act with intention of causing miscarriage, resulting in loss of life or injury by rashness on the part of medical professional.<sup>33</sup> As per the Penal Code, 1860 whoever causes the death of any person by doing any negligent act, not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to five years or with fine or with both.<sup>34</sup>

#### **5.5 Liability under the Civil Laws**

The kinship between a physician and a patient may also be discussed under the Contract Act, 1872. Under the Act, if there is any contravention of contract the party who suffers any loss by such contravention is entitled to receive damages. In this context an aggrieved patient may also file civil suit against the medical service provider for compensation. This is how a medical professional has civil liability as well as criminal liability under the laws of Bangladesh namely the Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982, the National Health Policy and Code of Medical Ethics under Bangladesh Medical and Dental Council for any malpractice in the health sector.

#### **5.6 Other relevant laws regarding healthcare service in Bangladesh**

In the texture of Healthcare laws, there are also The Bangladesh Nursing Council Ordinance, 1983, The Bangladesh Homoeopathic Practitioners Ordinance, 1983, The Bangladesh Unani and Ayurvedic Practitioners

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<sup>33</sup> Karim, Md. Ershad, (2005), ‘Examining Liabilities Arising from Doctor’s Negligence’, 16 *Dhaka University Law Journal*, p. 166

<sup>34</sup> *Ibid* at p. 166.

Ordinance, 1983, The Drug Act, 1940, The Pharmacy Ordinance, 1976, The Bangladesh Drug Control Ordinance, 1982 and many more. It is pertinent to note that the government is formulating a new law named as the Medical Services Act which describes medical negligence as a cognizable offence and bears the provision of confinement of maximum three years along with fine up to five lakh taka.

## **6. Loopholes and drawbacks of existing laws to deal with medical negligence**

It is very confusing for both the aggrieved patients and lawyers to choose an appropriate law to file a case against medical wrongdoers. Filing a criminal case under the Penal Code, 1860 against any medical practitioner may not often ensure proper justice. Apart from that under the civil laws of Bangladesh any victim of medical negligence will only get certain amount of money as compensation. Actually no balanced legal framework is there mentioning the specific rights of a victim patient due to medical negligence.

It is seen that due to lack of proper legislation to regulate medical negligence a victim usually has to file several litigations. Generally for filing and running these cases of medical negligence, a victim has to provide several types of fees to court and bear many other expenses. Beside, a court fee of our country is sometimes too high that keeps the victim away from asking remedy from court. Moreover, police are not always very friendly with every type of victims. Aggrieved patients of medical negligence feel discouraged to take legal action due to long and complex legal proceedings and investigation carried by police.

Many complex issues of health and medicine become very difficult to prove in the eye of law.<sup>35</sup> Some physicians are there not even willing to provide any data against another physician. Technical problems arise as most of the lawyers and judges of our country are not very much attached and trained with cases of medical negligence as there is no particular law.

The Bangladesh Medical and Dental Council (BMDC) has the authority to take action only against those physicians who are practicing privately.<sup>36</sup> Even the Law Commission avowed the issue that the BMDC's power is very limited to address the negligence issue.<sup>37</sup> Another unfortunate matter is that public awareness regarding health rights in our country is in awfully zero

<sup>35</sup> Damayanti, S. (2011). *What is medical negligence? What are the standards of care principles?* Available at: <http://pharmacyzoneustc.blogspot.com/2011/07/part-vi-implementation-of-existing-laws.html>

<sup>36</sup> World Health Organization (WHO) (1991), 'Health ethics in six SEAR countries, health Ethics in South-East Asia', at <http://www.hf.uib.no/i/filosofisk/seahen/vol11rev3.PDF>

<sup>37</sup> Billah, S.M. Masum (2003), Law Commission's proposal of making negligence law, *The Daily Star*, April 20, 2013.

level. No remarkable step has yet taken to develop the relationship of patients and medical professionals from the side of the government. The procedures to get remedy for medical negligence under the Consumer Protection Act, 2009 are very complex as the victim patient as a consumer can not directly lodge a complaint to the magistrate.

## **7. Way forwards**

There is no alternative except to formulate a comprehensive, precise and effective law and policy to regulate the issues arising from medical negligence and deceptive medical practices in Bangladesh health sector. Being of the World Health Organization (WHO) Bangladesh has an international obligation to work for the betterment of standard of health and life of the citizens. The Constitution of Bangladesh which is the supreme law of land also imputes an assignment over the government to promulgate necessary laws for raising the life and health security of the people.

### **7.1 Promulgation of Comprehensive Law**

The government should enact the new, comprehensive law and effective laws to resolve the issues of medical negligence without further delay. The law must ascertain and includes the procedure of practice, punishment of malpractice, duties and liabilities of every medical care providers appropriately. The rights and remedies of the aggrieved patients must also be clearly and separately noted in the legislation.<sup>38</sup> The practicing mechanisms and rules of private practice shall also be explained in the law for those who want to practice in private clinics. The Government under the law shall time to time fix the rate of fees of the medical professionals. Under the new Act, the Government after consulting with the Ministry of health shall publish the rates of all kind of medical tests by gazette notification.

### **7.2 Setting up Special Court system**

After enacting special Acts on medical negligence there must also be the establishment of special health tribunal or court system which will dispose the cases of medical negligence. The courts will be equipped with judges specially trained with medical science. To provide speedy and effective remedy there may also be a Medical Negligence Board to provide expert knowledge for assisting the courts. Under the new Act there shall be a separate investigation department having certified knowledge on health issues, for investigation of cases of medical malpractice.

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<sup>38</sup> UN Office of the high Commissioner for Human Rights (OHCHR), (20008), *Fact Sheet no.31 on the Right to Health*, Office of United Nations, at: <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

### 7.3 Ensuring Study of Medical Laws before registration

There must be a mandatory provision that before taking registration as a medical professional he/she must study medical laws during all types of medical studies. Along with the topics of medical science there shall be necessary relevant laws to be studied compulsorily. Some sort of ethical programs or seminars must be arranged before providing registration to any health professional.

### 7.4 Improving the Standard of Public Hospitals

Instead of giving license to many private hospitals and clinics the government shall concentrate on the development of standard of the public and private hospitals. Increasing the numbers of private clinics without improving the service of public hospitals is not appreciable. Each and every hospital or clinic must have a visible chart of fees of all available medical tests.

## 8. Concluding remarks

From the jurisprudential view, it is obviously true that where there is a right, there is a remedy. Patients are the ultimate victims of medical negligence and such negligence may result in losing their valuable lives. In order to mitigate the sufferings of aggrieved patients, the government must take immediate and necessary initiatives to make a comprehensive and unique law to safeguard the right to life of the patients as to the constitutional mandate. It is pertinent to note that only enacting new law is not the solution but there shall be proper and true enforcement of the laws. If the law becomes difficult to execute, it will be nothing but a wild goose chase. Impartial investigation and speedy remedy have to be ensured in cases of medical negligence to encourage the victims to seek remedy. Creation of a specialized and expertise board has been also recommended to assist both the court and litigants in case of complex issues of medical science. Complaint mechanism against a physician must be patient friendly.<sup>39</sup> Formal court proceedings and high fees of court shall be avoided as well as accountability of every medical professional must be ensured. It is also recommended that the role of Bangladesh Medical and Dental Council (BMDC) must be visible and effective. Furthermore, creating public awareness is must to literate about the medical ethics and norms. Being a holiest profession of the world, a medical professional is sharply under an obligation not to treat a patient as a business hub rather they should always be aware of their holy duties and must abide by the existing rules and regulations of the country. The aim of the proposed law should not to be punished the medical practitioners but to create an amicable environment between patients and physicians. Eventually, it is expected that the newly proposed legal

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<sup>39</sup> Nazir, Taha (2011), 'Review of the basic components of clinical pharmaceutical care in Pakistan', *School of Pharmacy*, The University of Lahore. p.04

frameworks and recommendations regarding medical negligence can put a full stop to medical negligence in Bangladesh.

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