

REFLECTIONS ON THE RIGHT TO PALLIATIVE CARE IN BANGLADESH: LEGAL REGIME REVISITED

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ABSTRACT: Patients with life-limiting illness and their families face many problems and complexities. The gravity of such problem is often escalated with the fact of the patients' deprivation of the proper care as a corollary to their fundamental health rights. The legal aspects of the palliative care thus concern the issues of concentrating more on the rights of the patients in getting relief from sufferings of all kinds, physical, psychological and spiritual. As such, it may include the opportunity of getting legal interventions not only in the way of claiming the protection of palliative care (such as securing access to health and social benefits) but also in the face of dealing with other life-transactions of the patients and their families (such as protecting and disposing of property; planning for children and other dependents). This paper is an attempt to articulate these legal dimensions of the right to palliative care in the context of Bangladesh. The major focus of this paper will be founded on the wide-ranging constitutional obligation on the right to health, which offers a meaningful space for the right to palliative care by way of implications. More importantly, this paper will clarify the point that taking the right to palliative care seriously will at least result in sensitizing the health right of the people of Bangladesh, especially for the poor communities, having limited awareness of their human rights and limited access to and little experience of legal services.

Key Words: palliative care, constitutional obligation, fundamental right, right to life

INTRODUCTION: Palliative care is an approach that meliorates the quality of life of patients facing the problems associated with life-limiting illness. In essence, it relates to the prevention of and relief from suffering (and other problems for instance, physical, psychosocial and spiritual) by means of pain management ¹. Within the scheme of palliative care, some of the most perplexing and troubling ethical issues are nursing ethics and bioethics. The legal aspects of palliative care thus speak so much for the shift of the rights of the patients to have a holistic and humane treatment from ethical to legal domain. By implications, the right of the palliative care is recognized in some major international and regional human rights instruments ², encompassing the issue of health rights ³. However, in 2006, the World Health Organization (WHO) invited the International Association for Hospice and Palliative Care (IAHPC) ⁴ to develop an essential medicines list for palliative care in recognition of the centrality of pain management medication to basic health care. Apart from this, the WHO and the International Narcotics Control Board (INCB) ⁵ have called on governments to ensure availability of essential pain medication for all. In the national level, the constitutional provisions guaranteeing '*right to life*' ⁶ envisage the similar background of offering the commitment to palliative care. To fulfill this commitment, some countries ⁷ have established statutory legal regimes for directly regulating the right of the palliative care. This trend of treating the patients' right to palliative care as a legal right is getting growing relevancy. But in the context of Bangladesh, the issue of the right to palliative care is still negligible. The main reason of this fact relates to the lack of sensitivity and respect to the constitutional obligation to protect and promote public health. For the context

of Bangladesh, it is thus ironically true that while the rights of the people to the essential health or medical care is yet to cast a serious concern⁸, the issues of palliative care is supposed to be a mere intellectual sophistication.

THE METAPHOR OF PALLIATIVE CARE: 'THE MEANING OF LIFE IN THE FACE OF DEATH' : The legal dimensions of the palliative care can generally be determined with reference to the metaphor of palliative care. The logical link between the reduction of suffering from pain and the enhancement of the pleasure or quality of life is central to the metaphor of palliative care. Palliative care provides relief from pain and other distressing symptoms by affirming life and regarding dying as a normal process⁹. By integrating the physical, psychological and spiritual aspects of patients' care¹⁰, it positively influences the course of illness and offers a support system to help the patients live as actively as possible until death. The right to palliative care is thus founded upon the rationale that the patients are entitled to a 'meaningful life' even in the face of death. Seen in this light, the legal dimensions of palliative care encompass the idea of patients' care by offering a range of facilities including a support system for the family of the patients. This mainly includes the mechanism of overcoming the legal barriers to palliative care such as analyzing of policies and laws that limit access to opioids for pain management, developing the arguments necessary to take a complaint of denial of pain medication to a national, regional or international human rights body or court, providing provision of legal aid to palliative care patients, human rights body, etc.

However, Life-limiting illness can mean pain and difficulty in a time of bewilderment. It can also bring practical problems, some with legal overtones. These can increase stress for patients and families, and make coping harder. Thus, the statutory regime regulating the rights of palliative care should also encompass the system of overcoming other complicated legal challenges such as: protecting and disposing of property, planning for children and other dependents, and securing access to health and social benefits, empowering others to make medical decisions; and writing of wills and so forth. It appears that the legal dimensions of palliative care should offer a support system¹¹ to help the family cope during the patient's illness and in their bereavement, and should use a team approach¹² to address the needs of patients and their families, including bereavement counseling. In this way, the scheme of palliative care is thus intended to ensure that every patient deserving palliative care is coupled with the right of getting a holistic and humane treatment so that the meaning of life of the patients remains unaffected even in the face of death.

Constitutional Obligation to the Right to Life: Searching the Space for Palliative Care: The Constitution of the People's Republic of Bangladesh does not specifically provide for the right to the palliative care. Under Article 15(a), the Constitution however, makes it a fundamental responsibility of the state to secure the provision of the medical care for its citizens¹³. Again, it is mentioned in Article 16 that the state shall adopt effective measures for the improvement of public health¹⁴. Apart from this, Article 18 of the Constitution speaks for the protection and promotion of public health as among its primary duties¹⁵. As a matter of law, the obligations of the state relating to medical care or public health do not offer any enforceable rights for the people, because of the fact that these Articles fall within the domain of the *Fundamental Principles of State Policy*¹⁶. Thus, the most important provision relating to the health right of the people can be found under Article 32 of the Constitution¹⁷, which guarantees the *Right to Life* as fundamental rights. Compared to the provisions of Article 15(a) and Article 18, this Article is more sanctified and effective¹⁸ in the sense that it offers a precise space for the right to health care as a corollary to the right to life. Thus, the combined reading of

these Articles seems to cast an obligation on the state as well as on the individual to be sensitive to the rights of the patients suffering from life-limiting diseases.

This proposition can be substantiated with reference to the trends of judicial interpretation touching the issues of right to life in Bangladesh. The case of *Dr. Mohiuddin Farooque v Bangladesh* is the most striking example of the illuminating interpretation of right to life. In this case, the court gives an extended and more liberalized interpretation by observing that the term 'right to life' means a meaningful life—a life where men can live with dream and dignity. Here, the court showed its adherence to exclude anything which might affect the enjoyment of life. The Court observed that:

“...articles 31 and 32 of our Constitution protect right to life as fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life”¹⁹.

The court in this case further opined that the word 'life' can not be given any restrictive interpretation when it is used particularly with human being and a human life must be distinguished from animal life. The court said:

“.....word life is very significant and broad as it covers all facets of human existence. The word life has not been defined in the constitution but it does not mean nor can it be restricted only to animal life or mere existence from conception of death. Life includes such amenities and facilities that a person born in a free country it entitled to enjoy with dignity- legally and constitutionally”²⁰.

In another case the Supreme Court (SC) of Bangladesh extended the term 'right to life' specifically in two cases. *Firstly*, to the protection of health; and *secondly*, to the normal longevity of an ordinary human being. So, the protections of health and to ensure normal longevity are the constitutional obligation to the persons concerned and a right to the citizen. The SC observed:

“...if right to life under Articles 31 and 32 of the Constitution means right to protection of health and normal longevity of an ordinary human being endangered by the use of or possibility of any contaminated foods, deeds, etc then it can be said that fundamental right of right to life of a person has been threatened or endangered”²¹.

It thus appears from this interpretation that the provision guaranteeing right to life is suggestive of at least among others, a) providing the protection of health; b) stabilizing the normal longevity of an ordinary human being; and c) ensuring a dignified life where the persons are entitled to 'the interest in dying with dignity.'

In general, the trend of judicial activism in Bangladesh does also reflect that our Constitution offers space for grounding the rights to palliative care as a constitutional right. In the case of *Advocate Zulhasuddin v Bangladesh (2009)*, the court's²² invalidation of imposition of VAT²³ on the medicine and medical care exemplifies that the issue of medication is of prime consideration. Again, the recent decision of the court to the point that the treatment of the patient should not be postponed on the requirement of police certification signifies the same respect to medication and pain management²⁴. Seen as such, it can thus be argued that the right of the patient to the palliative care undoubtedly has constitutional overtones.

HEALTH RELATED LAWS AND RIGHT TO PALLIATIVE CARE IN BANGLADESH: In Bangladesh, there are nearly 90 laws that are found to be related with health or health related subjects²⁵. These 90 enactments fall under the seven broad subject-areas of health legislation: Vital Registration and Welfare Legislation, Public Health, Communicable Disease Control, Food and Drugs Control, Health Education and Health Practice, Environmental Health, and Protection of Children and Women²⁶. Of all these enactments, none has precisely addressed the issue of palliative care. As such, there is still a serious legal vacuum relating to the right of the patients deserving palliative care.

However, a patient's rights may occur at different levels even under the existing legal regimes. In recent times, there has been a tendency of elevating the position of the patient's right, containing a significant bearing upon the rights to palliative care. For example, in 2003 the Ministry of Health and Family Welfare published a list that recognizes some important rights of the patients, such as- right to receive information from the physician about the service; right to safe and continuity of health care; right to confidentiality; right to get respect and dignity; right to share idea; right to get redress; right to inform the highest authority when the rights are violated; right to choice treatment and the method of family planning; right to get all documents relating to treatment; and right to receive all information about the treatment.

So, owing to the absence of this legal vacuum in the legal fields relating to palliative care, a kind of indifference to the patients who need palliative care is noticeable. The care which is provided in this arena in different hospitals and clinics is scattered and not made following a holistic approach. So, in order to bring this matter as a fact of significance, specific substantive legal mechanism and compliance are necessary both in terms of content and quantity of law addressing various matters of palliative care.

1. Criminal Law, Negligence and Pain Management: As a matter of fact, the right to palliative care can well be derived from the law of negligence. The standard of care in palliative medicine may, in addition to the above areas of pain management, also include taking an adequate history, examining the patient, addressing symptoms and, where reasonable, referring on to other experts. The unreasonable failure to do any of the above may constitute a breach of the doctor's duty of care to a patient with a life-limiting illness. It is important to note that the law of negligence consistently requires of doctors only what is reasonable in the circumstances of the case. In many jurisdictions the courts will be guided by current accepted professional standards shown by, amongst other things, authoritative guidelines in Palliative Care practice²⁷.

In many common law countries, the issues of medical negligence are governed under the purview of tortious liability²⁸. But in Bangladesh, the concept of tortious liability has been accommodated within the fabric of criminal liability. Thus, the redress to the medical negligence can be found under the criminal laws of the country. For example, Section 284 of the Penal Code, 1860²⁹ deals with negligent conduct with respect to poisonous substance which states that whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly, or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against probable danger to human life from such poisonous substance shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, which may extend to five thousand taka or both. Again, section 304A of the Penal Code deals with causing of death by negligence. Thus, a doctor may be liable under this section, if he gives by his business to the patient a toxic medicine in place of the appropriate one. It appears that the right of the patient to get relief from

suffering may be protected under these sections. Apart from these provisions of general law governing the issues of negligence, the Code of Medical Ethics, 1991 touches the matter in a triviality. Moreover, the Bangladesh Medical and dental Council's power is very confined, because they lack power to address the 'negligence' issue.

2. Constitutional Obligation and Public Interest Litigation: As discussed earlier, the Constitution of Bangladesh offers a space for grounding the right to palliative care. Thus, a patient deserving palliative care can seek constitutional remedy by invoking Article 32 of the Constitution guaranteeing the right to life. In so doing, the patient deprived of the rights can rely on the interpretive value³⁰ of the fundamental principles of the state policy which relate to the commitment of protecting and promoting the health rights. More importantly, all the doctors and all other public employee of the Hospitals can be held liable on the ground of negligence in the duty by invoking Article 21(2) of the Constitution³¹. Thus, the Constitution of Bangladesh offers the plausibility of the 'Public Interest Litigation'³² in respect of the right to palliative care³³. For example, in a case filed by the Ain O Salish Kendra, the High Court Division of the Supreme Court has promulgated a *rule nisi*³⁴ directing to the concerned authorities to provide the citizens proper and sufficient health service by abiding the provisions of law³⁵. All such remedies are provided under the writ jurisdiction of the High Court Division of the Supreme Court of Bangladesh. Under Article 44, the Constitution of Bangladesh recognizes the right to go to the court for the enforcement of such right itself as fundamental right.

CONCLUSION: Palliative care is about achieving the highest quality of life (QOL) and promoting comfort and dignity for patients with incurable and life limiting diseases. Palliative care advocacy has been strengthened by pronouncing that 'the provision of palliative care is a human right.' International covenants have agreed upon this. There are huge unmet needs of patients with life-limiting illnesses in Bangladesh as well as in the world³⁶. Hence, formal palliative care policies and an integrated palliative care services to meet basic standard guidelines in the provision of palliative care is a *sine qua non* for addressing the issue.

The nature of the right entails strong legal dimensions which essentially require a legal web i.e., enactment, statutory framework covering both substantive and procedural provisions. But Bangladesh is still in the need of statutory regime directly addressing the rights to palliative care³⁷. At this point, it is thus indispensable for Bangladesh to develop a home-grown approach of protecting the right to palliative care, based on the general constitutional obligation to the right to life. Towards this end, it may follow the different models for a statutory framework which have already been started to be used globally to address this issue. The first is an explicit statutory statement of the right to pain relief. The second model is a statutory protection for doctors. An example is contained in the South Australian *Consent to Medical Treatment and Palliative Care Act* (1995) that protects medical practitioners, in their care of terminally ill patients, from any criminal or civil liability if they administer treatment "*with the intention of relieving pain and distress*" providing such treatment is given with consent, in good faith, without negligence, and in accordance with "*proper professional standards of palliative care.*" The third model is a wider package of statutory requirements for pain management and education.

Many analysts may however disagree about the establishment of a distinct statutory regime protecting the right to palliative care in Bangladesh. The major argument leading to such disagreement can be found from the fact that the Government of Bangladesh has been tremendously failing to satisfy the standard of primary health care to the larger portion of its citizen. In such a context, the concern for the right to palliative care may thus seem to be a mere

intellectual sophistication. However, the viable response to this argument is that any initiatives to uphold the right to palliative care will result at least in sensitizing the state as well as the individual to the fundamental health rights of the people.

REFERENCES:

1. The World Health Organization <http://www.who.int/cancer/palliative/definition/en/>, (accessed on 14 November 2013).
2. The right to health is the [economic, social and cultural right](#) to a universal minimum standard of health to which all individuals are entitled. The concept of a right to health has been enumerated in international agreements which include the [Universal Declaration of Human Rights](#), 1948 [International Covenant on Economic, Social and Cultural Rights](#), 1966 and the [Convention on the Rights of Persons with Disabilities](#), 2006.
3. The human right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment. On the other hand, the human right to health care means that hospitals, clinics, medicines, and doctors' services must be accessible, available, acceptable, and of good quality for everyone, on an equitable basis, where and when needed. The design of a health care system must be guided by certain human rights standards and principles like, universal access, availability, acceptability and dignity, quality, non-discrimination, participation and accountability. See more at: <http://www.nesri.org/programs/what-is-the-human-right-to-health-and-health-care>, last accessed on 15 November 2013.
4. IAHPIC is a global non-profit, charity organization dedicated to the promotion and development of palliative care. The Mission of this organization is to collaborate and work to improve the quality of life of patients with advanced life-threatening conditions and their families, by advancing hospice and palliative care programs, education, research, and favorable policies around the world.
5. The INCB is the "[independent and quasi-judicial](#)" body for monitoring member states' implementation of the UN drug control treaties. Its primary [functions](#) consist of a) ensuring that there is adequate supply of licit drugs for scientific and medical purposes ; b) helping to prevent the diversion of licit drugs and precursor chemicals into illicit supply channels ; c) identifying weaknesses in international and national drug control systems, and recommending measures to address those weaknesses ; and d) maintaining a permanent dialogue with governments to assist them in complying with their obligations.
6. *The United Nations Charter, 1945* does not define the term 'right to life'. However, the term can be interpreted through the concept of 'well-being'. Later on, the *UDHR, 1948* affirms the right to life (Article-3) and a right to a standard of living adequate for health and well-being (Article- 25). The *ICCPR* and the *ICESCR* affirm that every human being has the 'inherent right to life' and the right of everyone 'to the enjoyment of the highest attainable standard of physical and mental health. In environmental terms the 'right to life' may include a positive obligation on the state to take steps to prevent a reduction of or an extension of life expectancy. For example, by providing better drinking water or less polluted air. Article 8 of the *European Convention on Human Rights* incorporates the right to be free from interference with one's home and property. The limited case law in this area usually deals with noise pollution, for example, in alleged nuisance complaints about excessive aircraft noise at Heathrow Airport the *European Court on Human Rights* found that the benefits to the community out-weighed the individual's right to bring a claim. However, in the case of *Lopez Ostra v. Spain* (20 EHRR 277 of 9 December, 1994), the Court ruled that the applicant suffered health problems from the fumes of a tannery waste treatment plant operating a few meters away from her home. Again, Economic, Social and Cultural rights include the right to a healthy environment, a decent working environment, decent living conditions and to health. These rights are covered by various treaties which establish the close relationship between socio-economic development, environmental and human rights concerns. The *1981 African Charter on Human and Peoples' Rights* was the first human rights treaty to expressly recognize the right of '[a]ll peoples' to a 'satisfactory environment favorable to human health and development'. Within Europe, the *Organization of Economic and Development (OECD)* stated that a 'decent' environment should be recognized as one of the fundamental human rights.
7. For example, South Australia has already enacted an Act namely, Consent to Medical Treatment and Palliative Care Act, 1995.

8. Bangladesh has made great strides in improving the health of its population. Although, problems still remain in reducing child malnutrition and maternal mortality in particular, the aggregative results achieved in the last three decades are quite impressive. These achievements have certainly gone a long way although overall progress of the health sector of Bangladesh suffers from a number of inadequacies that militate against the rights-based approach to health. These include persistent inequities in access to healthcare (including gender inequity, and inequity along the poor versus non-poor divide), lack of meaningful participation of citizens in the running of the health system, and the absence of effective accountability mechanisms through which the providers of healthcare can be held responsible for their actions. See, Chowdhury, Omar Haider and S.R. Osmani, *Towards Achieving the Right to Health*, Vol. XXXIII, March-June 2010, Nos. 1 & 2, The Bangladesh Development Studies.
9. Cancer Control, Knowledge into Action: Palliative Care, the World health Organization, 2007, Geneva.
10. Palliative care includes all aspects of care, medical and non- medical, and as such is described as total care. This aligns with the WHO definition of health as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. The requirement for a multidisciplinary team is necessary in order to be able to provide this comprehensive care. Many health care professionals have viewed palliative care as a 'soft option' and equate it with withdrawal of care. However, palliative care is active therapy, assessing and managing difficult symptoms and psychosocial and spiritual issues. Appropriate assessment of patient problems enables the care team to develop an individualized care plan for each patient in consultation with the patient. Available at: <http://hospicecare.com/uploads/2013/7/7/Legal%20Aspects%20of%20Palliative%20Care%20-%20Entire%20book.pdf>. Last accessed on 15 November 2013.
11. Ibid.
12. Ibid.
13. Article 15 (a) of the Constitution of the People's Republic of Bangladesh states that It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens – the provision of the basic necessities of life, including food, clothing, shelter, education and medical care.
14. Article 16 of the Constitution of the People's Republic of Bangladesh states that The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and public health, in those areas, so as progressively to remove the disparity in the standards of living between the urban and the rural areas.
15. Article 18 of the Constitution of the People's Republic of Bangladesh states that The State shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.
16. Part-II of the Constitution of the People's Republic of Bangladesh contains the provisions relating to the fundamental principles of state policy which are not judicially enforceable. This is because article 8 (2) of the said constitution states that the principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable.
17. Article 32 of the Constitution of the People's Republic of Bangladesh states that No person shall be deprived of life or personal liberty save in accordance with law.
18. Article 32 of the *Constitution of the People's Republic of Bangladesh* is judicially enforceable as it is placed within Part-III of the said constitution (Fundamental Rights). The provisions of this part can be enforced by the higher judiciary through writ petition as article 44 (1) states that he right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by Part- III is guaranteed.
19. 49 DLR 1997 AD 1, para-102.
20. Ibid., the same view was expressed in a Pakistani case namely, Ms. Shehla Zia vs. WAPDA PLD 1994 SC 693.

21. Dr. Mohiuddin farooque v. Bangladesh 48 DLR 1996 HCD 438, paras 18-21.
22. The High Court Division of the Supreme Court of Bangladesh.
23. Value Added Tax.
24. The direction of the HCD in this regard has been given to the Ministry of Health and Family Welfare in 2013.
25. Barkat, Abul, Muhd. Azizul karim, Md. Motiur Rahman Saha, Md. Ibrahim Ali, Health Legislation in Bangladesh: A Content Analysis and Scope for Improvement, WHO, 2001.
26. Health laws by broad groups (categories, segments): Out of the total of 90 health related laws, 23.3 percent are related to Food and Drugs Control; 18.9 percent related to Environmental Health; 16.7 percent each related to Vital Registration and Welfare Legislation, and Health Education and Health Practice; 11.1 percent are related to Public Health, 8.9 percent are related to Protection of Children and Women; and only 4.4 percent are related to Communicable Disease Control.
27. Margaret Somerville has long argued that the unreasonable failure to provide adequate pain relief constitutes negligence. There is a solid foundation for this assertion. The emphasis in law regarding *medical negligence* is the taking of reasonable care in all aspects of patient management. There are several aspects of pain relief where doctors may potentially breach their standard of care: an unreasonable failure to take an adequate history of pain from the patient (*Giurelli v Girgis*)¹²³; an unreasonable failure to adequately treat pain (*Estate of Henry James v. Hillhaven Corporation*)⁷²; and in the context of uncontrolled pain, an unreasonable failure to consult an expert in pain management (a general principle of referral is stated in *Dillon v LeRoux*¹²⁴ and *O'Shea v O'Sullivan*)¹²⁵. Somerville also points to what she refers to as "systems negligence" when health care institutions fail to take reasonable steps to establish systems that offer patients ready access to pain management.^{101,126}
28. Legal obligation of one party to a victim as a result of a civil wrong or injury. This action requires some form of remedy from a court system. A tort liability arises because of a combination of directly violating a person's rights and the transgression of a public obligation causing damage or a private wrongdoing. Available at: <http://www.businessdictionary.com/definition/tort-liability.html#ixzz2kmH4GEoi>, last accessed on 16 November 2013.
29. Act No. 45 of 1860.
30. Within the meaning of the *Constitution of the People's Republic of Bangladesh*, the Fundamental Principles of State Policy are not judicially enforceable whereas the Fundamental Rights are enforceable in the courts. It seems to give higher legal status to the latter in comparison to the former. But, by virtue of article 47(1) it can reasonably be stated that the constitution has maintained a balanced relationship between these two. It provides that no law shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges, any of the fundamental rights, if Parliament in such law (including, in the case of existing law, by amendment) expressly declares that such provision is made to give effect to any of the fundamental principles of state policy set out in part II of this constitution.
31. Article- 21 of the *Constitution of the People's Republic of Bangladesh* states that it is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property and every person in the service of the Republic has a duty to strive at all times to serve the people.
32. Lexically the expression '*Public Interest Litigation*' (hereinafter referred to as PIL) means litigation filed in a court of law for the protection of 'Public Interest', such as pollution, terrorism, public safety, constructional hazards, livelihood and so forth. PIL is not defined in any statute. It has been interpreted by judges to consider the interest of public at large. Although, the main and only focus of such litigation is on 'Public Interest' there are various areas where a PIL can be filed. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. The court can itself take cognizance of the matter and proceed *suo motu* or cases can be commenced upon the petition of any public-spirited individual in that situation. See, Wadehra, Basant Lal. *Public Interest Litigation: A Handbook*. Universal Publishing Limited, 2009, at p. 47.
33. An example of litigation based on the public interest in better pain management occurred in India in 1998. On behalf of the nation's cancer patients and Drs. SR and RB Ghooi, the All India Lawyers Forum for Civil Liberties filed a public interest suit in the Delhi High Court. They requested a court order to state governments to simplify the procedures for the supply of morphine for cancer patients. The applicants were successful. The Court ordered that every application for licenses or supplies of morphine must be attended to expeditiously. State governments were asked to allot morphine without delay and aggrieved persons were granted the freedom to approach the Court if

dissatisfied. Again, a rights-based discourse entered the final judgment: *"It is a right of patients to receive any medication they need, particularly morphine. Any official standing in the way will be viewed very seriously by the court."*

34. A rule or order upon condition that is to become absolute unless cause is shown to the contrary.

35. Writ Petition no 1783/1994.

36. Khan, Farzana, Nezumuddin Ahmad, Mostak Anwar, Palliative Care as a Human Right, *Journal of the Bangladesh Society of Anesthesiologists*, Vol 21, No 2 (2008).

37. The Law Commission of Bangladesh recommended for enacting a separate medical negligence law.
