



Review Article

Medical Negligence and Malpractice in Bangladesh: Issues and Legal Remedies

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Abstract

Medical negligence and malpractice are common health issues in Bangladesh. People face various problems in the health service sector of Bangladesh. People get services from government hospitals as well as private hospitals and clinic but services and facilities for health care is not satisfactory. Beside these there are lots of health problems issues in the health services has found and negligence and malpractice are two of them. For these reason legal remedies plays an important role in this regard so that fundamental health service can be ensured and people can get protection of Laws. However, the present health service in Bangladesh is facing some problems like negligence for poor as well as rich people. This paper focuses on all existing health issues and legal remedies of health services and proposes some policy recommendations of how to overcome medical negligence and malpractice of medical professionals.

Keywords: Medical negligence, Malpractice, Legal remedies, Medical professionals, Health care service.

Introduction

Mistakes in healthcare can have severe consequences, endangering patients' well-being and their fundamental rights to life and access to quality healthcare^{1,2}. Medical malpractice refers to the failure of healthcare personnel to satisfy the established standards of care, which harms the patient². In Bangladesh, negligence and malpractice pose a significant threat to individuals' rights, highlighting the need for improvement in the healthcare system³.

Medical negligence in Bangladesh encompasses several instances, such as misdiagnoses, unwarranted procedures, erroneous medication prescriptions, and other forms of negligence. Such negligence not only jeopardizes patient well-being but also affects their rights to quality healthcare^{3,4}. The prevalence of false

or negligent medical treatment in government hospitals further exacerbates the problem, resulting in substandard care. The inadequate conditions and lack of adherence to proper standards in both public and private hospitals contribute to the overall problem of negligence and malpractice⁵⁻⁷.

Unnecessary prescription of drugs and medical tests in Bangladesh's healthcare system drives up costs, confuses patients, and poses potential health risks⁸. Addressing these issues requires comprehensive reforms, including stricter regulations, increased accountability, and enhanced transparency within the healthcare system⁹.

Seeking legal remedies for medical negligence or malpractice in Bangladesh requires establishing three essential elements: duty of care, breach of duty, and direct causation of injuries³. However, individuals with limited resources or those who have lost faith in the public healthcare system face challenges in pursuing legal action¹⁰.

To effectively address negligence and malpractice in Bangladesh's healthcare system, significant changes

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are necessary. Stricter regulations, proper training and oversight of healthcare professionals, promotion of ethical practices, and effective channels for patient concerns are essential. Improving the conditions and accountability within public and private hospitals, enhancing regulations, and raising awareness about patient rights are vital steps toward a transformed healthcare system prioritizing safety, quality care, and accountability^{3,11}.

Major Problems in the Health Care Service in Bangladesh

Negligence in the healthcare industry, including errors in diagnosis or treatment and failure to properly diagnose a condition, is a significant concern in Bangladesh. The lack of accountability for physicians and other medical personnel exacerbates the problem, leading to poor healthcare outcomes. Corruption and mismanagement have also plagued the health service sector, particularly in hospitals and clinics. Between March 10, 2020, and June 15, 2020, the media reported 218 cases of corruption related to aid. Many of the convicted individuals were elected officials and prominent public figures, including leaders and activists affiliated with the governing party. These individuals embezzled the aid intended for the public or engaged in fraudulent spending on healthcare and medical supplies budgets¹².

In July 2020, a hospital owner and several individuals were found guilty of selling fake COVID-19 test certificates. This incident highlights the ongoing issue of fraudulent practices in healthcare. The issue of fraudulent COVID-19 test certificates was widely reported, and more details can be found in the media coverage¹³.

Every year, hundreds of people, particularly children, die due to clinical negligence in Bangladesh. The country's overpopulation exacerbates the situation, as the healthcare system struggles to meet the growing demands. The healthcare system faces several challenges, including^{2,7,12,13} Emranul Huda :

- **Corruption:** Corruption remains the primary obstacle to effective healthcare delivery in Bangladesh, impacting both public and private sectors.
- **Shortage of medical professionals:** The absence or illness of healthcare workers, along with the general shortage of medical professionals, hampers the quality of care provided to patients.

- **Insufficient medical infrastructure:** The rapid population growth has led to a disproportionate demand for healthcare services, which the existing medical infrastructure is unable to meet.
- **Mismanagement in government hospitals:** Inefficiency and mismanagement in government-run hospitals are common issues, leading to suboptimal patient care.
- **Poor governance:** Lack of training and monitoring of healthcare workers and insufficient government oversight hinder the effective functioning of healthcare services.
- **Low investment in healthcare:** Investment in the health sector remains inadequate, further contributing to the inefficiencies and challenges in healthcare delivery.
- **Lack of high-quality hospitals and healthcare organizations:** The number of high-quality hospitals and healthcare organizations is growing at a slow pace, which makes it difficult to meet the needs of the large population.

The healthcare management system in Bangladesh is also struggling with technological advancements. There is an urgent need for collaboration between hospitals in Bangladesh and leading healthcare management companies from industrialized nations in the West and Asia to address these issues. Without such partnerships, it will be challenging for the country to modernize its healthcare system effectively and meet the needs of its growing population.

National laws relating to Health Care and Medical Services in Bangladesh

In Bangladesh, several legislative and regulatory frameworks have been established to safeguard patients and ensure the quality of healthcare. These include the *Pharmacy Ordinance of 1976*¹³, *Drug (Control) Ordinance of 1982*¹⁴, *Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance of 1982*¹⁵, *Bangladesh Unani and Ayurvedic Practitioners Ordinance of 1983*¹⁶, *Transplant of Organs and Tissues Ordinance of 1984*¹⁷, and the *Vaccination Act of 1880*¹⁸. These laws collectively aim to regulate healthcare professionals and institutions while promoting public safety.

In the medical field, the Bangladesh Medical and Dental Council Act of 1960 and the Bangladesh Medical Council Act of 1973 provide crucial guidelines

for medical practice¹. The Medical and Dental Act of 1980 further reinforces the standardization of entry-level and advanced medical training in medicine, dentistry, and healthcare¹. Additionally, the Bangladesh Nursing Council Ordinance No. LXI, 1983 was established to regulate and oversee the nursing profession in the country¹.

The Bangladesh National Health Policy 2011 plays a significant role in addressing the primary and emergency healthcare needs of the population. It emphasizes equitable access to healthcare services and focuses on improving the quality and reach of healthcare services across all segments of society⁶.

Legal Aid for the Medical Negligence's Victim

The Constitution of Bangladesh guarantees the fundamental right to life, which can be legally enforced in a court of law. According to the State's Fundamental Policy Principles, all citizens have a right to adequate nutrition, clothing, housing, education, and healthcare. The State is responsible for improving public health, which is one of its primary duties¹⁹. The High Court Division serves as the forum where citizens can seek redress for violations of their basic rights⁵.

In instances of professional negligence or misconduct by healthcare practitioners, such as doctors or dentists, the Council may refuse registration and remove the individual from the Register, either permanently or for a specified period. Medical or dental professionals who fail to meet their responsibilities are deemed to have committed misconduct, which may lead to their suspension or removal from the Register if adequate cause is established¹. Cases of medical negligence, particularly those that result in death, can lead to legal actions, with negligence considered a criminal act if physicians act recklessly or endanger patients' lives⁹.

However, a doctor is not liable for negligence if the conduct was carried out lawfully, in a legitimate manner, with due care and caution, and was merely a mistake or tragedy. Additionally, a doctor who acts in good faith, with the explicit or implicit consent of the patient to incur the risk of harm, is immune from criminal liability¹.

Sessions courts have jurisdiction over cases involving violations of Section 336 of the Penal Code, 1860. These courts may arrest without a warrant, even for bailable offences, and may impose sentences of up to five years in prison, a fine, or both⁹. Magistrates

also handle cases related to breaches of Sections 338 and 304A of the Penal Code, which pertain to bodily harm caused by negligence⁹.

The Specific Relief Act of 1877 permits the issuance of interim and permanent injunctions against healthcare practitioners who breach their contractual obligations or service commitments. Patients can demonstrate negligence on the part of the doctor to seek redress¹¹. To initiate a civil lawsuit for compensation, an ad valorem court fee is required. Civil courts are authorized to handle medical negligence cases and fraudulent practices in private clinics⁴.

In the case of *Dr. Mohiuddin Farooque vs. Bangladesh and Others* (Writ Petition No. 1783 of 1999), the court ruled that doctors participating in a strike failed to fulfill their constitutional and legal obligations to provide healthcare services. The court emphasized that the deliberate failure of BCS Health Cadre doctors to discharge their public duties violated both their legal and constitutional responsibilities⁵.

In another case, Professor Dr. Mridul Kanti Chakrabarty, a faculty member at the University of Dhaka, died at LabAid Cardiac Hospital. Advocate Monzil Morshed filed a Public Interest Litigation (PIL), prompting the High Court Division to summon the doctor involved. The court directed LabAid hospital to compensate fifty lakh taka to the deceased's family, which was promptly executed⁸.

Governmental and NGO's Functions to Monitoring Health Care Services

Bangladeshi medical negligence and malpractice sufferers have had the support of Ain O Shalish Kendro (ASK). Public Interest Litigation (PIL), legal assistance, investigations, and cases involving medical malpractice or fraud were ASK's primary areas of expertise (PIL). The efforts of organizations like ASK, which provide legal aid to victims of medical negligence, shed light on the shortcomings of current laws and the underlying difficulties in the judicial system, and encourage otherwise powerless and/or economically disadvantaged victims to assert their legal right to receive adequate care. In addition, ASK investigates claims of medical malpractice. Medical malpractice remedies may be sought via Public Interest Litigation (PIL) or other writ actions. Besides funding public hospitals, the government has also passed laws and regulations and provided financial assistance for the

health services industry as part of its efforts to guarantee access to quality medical treatment¹².

Recommendation to Overcome Health Service Problems

Not only legal action can solve the negligence or malpractice but also others effective initiative must be taken like —

- The infrastructure of the Primary Health Centers is sufficient.
- Hospitals and private clinic must ensure upgraded treatment and facilities and also specialist treatment must be increased in the hospitals at District level and Upazila health complex.
- Adequate bed, ambulance, equipment and medical personnel must be increase in the hospitals and clinic.
- Access of the justice and filing procedure must be easy and simple so that victims may encourage litigation.
- The legal ramifications of incompetence, malpractice, and misbehavior, as well as the anguish that patients endure, are something doctors must be cognizant of.
- Bangladesh's public and private health care sectors need the government's help establishing a culture of accountability.
- Different stake- holder like doctor, staff, government, NGO, civil society etc. collaboration is needed to overcome negligence and fraudulent practice.
- Above all Special Health Tribunal must be developed to meet the health service care issues and cases.

Conclusion

The establishment and maintenance of trust between doctors and patients are paramount in ensuring effective healthcare outcomes. The potential consequences of medical mistakes cannot be understated, as they have the potential to lead to death or permanent injury. For victims of medical malpractice, seeking legal remedies becomes a necessary course of action. To prevent instances of doctor negligence or malpractice, the principles of medical ethics, including autonomy, beneficence, non-maleficence, justice, dignity, candor, and honesty, must be firmly adopted and upheld within the medical profession.

The implementation of robust medical laws and legal recourse mechanisms is crucial in reducing medical errors and safeguarding patients from irresponsible physicians. Despite efforts made in Bangladesh to enhance responsibility within the healthcare industry, the clarity of judicial orders and laws regarding negligence, compensation, and punishment remains inadequate. Consequently, patients seeking redress for medical negligence or fraud often find themselves relying on the writ jurisdiction, and the determination of compensation amounts ultimately rests at the discretion of the courts.

In order to ensure justice in medical healthcare for both patients and practitioners, it is imperative to codify comprehensive medical laws specifically addressing negligence and malpractice. Additionally, the establishment of a dedicated medical court with specific authority and jurisdiction would greatly contribute to the fair resolution of medical disputes. These specialized courts, accompanied by stringent medical ethics guidelines and mechanisms for patient recompense, have the potential to significantly reduce, and potentially eliminate, instances of medical carelessness and misconduct.

By enacting clear and enforceable medical laws that delineate the responsibilities and obligations of healthcare providers, as well as outlining the rights and protections afforded to patients, the healthcare system in Bangladesh can make significant strides towards ensuring accountability and preventing medical negligence and malpractice. Such measures would serve to instill confidence and trust in the healthcare system, both for patients seeking care and for medical professionals delivering it.

Furthermore, the establishment of specialized medical courts would provide a dedicated forum for adjudicating medical disputes, ensuring that cases are handled with the expertise and attention they require. These courts would have the authority to consider medical evidence, assess the adherence to medical ethics, and determine appropriate compensation in cases of proven negligence or malpractice. By providing a transparent and accountable system for addressing medical grievances, these courts would contribute to the overall improvement of the healthcare system and its ability to deliver safe and reliable care.

Lastly, the trust between doctors and patients forms the foundation of effective healthcare. To mitigate the potential risks associated with medical mistakes, it

is imperative to strengthen the implementation of medical ethics and adopt principles such as autonomy, beneficence, non-maleficence, justice, dignity, candor, and honesty. The formulation of comprehensive medical laws and the establishment of specialized medical courts with specific authority and jurisdiction are vital steps towards ensuring justice and accountability in cases of medical negligence and malpractice. These measures will help safeguard patients, deter irresponsible behavior within the medical profession, and foster a healthcare system that prioritizes patient well-being and quality care.

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