

Medical negligence in Bangladesh: A quest for feasible reform

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Abstract

The term "Medical Negligence" is an issue of grave human rights apprehension that directly affects the "right to life and right to health care" which also the concern for all parties involved in medical care facilities. Most State-sponsored have passed Acts and established courts to fortify health care laws. Though there are no precise and inclusive laws to stop "medical negligence" in Bangladesh, various legal mechanisms are still in place under different laws that are not specifically codified. As a result, the possibility of medical-based legal consequences remains out of the orbits of courts, and leads to violence, which invites many complications. However, hospital malpractices cause sufferings and unnecessary deaths for numerous people. There is no denying fact that people suffer and occasionally die due to reckless medical treatment in our country. This article will describe the legal sphere of medical negligence, evaluate the present laws on "medical negligence" in Bangladesh, and emphasize the quest for feasible reform to elevate this unaddressed legal pitch for the benefit of the people.

Keywords Medical negligence, Quest, Feasibility and malpractice

Paper type Research paper

1. Introduction

The "Medical profession" is one of the honorable occupations in the world. Occasionally masses think that doctors should be respected after God because they save the people's lives. They are to have precise knowledge, acquaintance, skill, and ability and uphold a possible and optimum degree of "care and caution" while carrying out their activities. Patients are practically valuable kinds of customers. In Bangladesh, in many cases, "patients" rights are ignored as vulnerable customers. The part of "health care professionals" is perceived as a profitable business, and patients are considered tools in health services givers. The conception of the "health care" business or health-providing apparatus has appeared to the "physicians as entrepreneurs or as workers in an entrepreneurial enterprise were enmeshed in mutual competition" (Loewy & Loewy, 2004).

In Bangladesh, medical personnel feel a sense of



immunity in many cases due to the absence of appropriate and adequate laws. They do not even think they are also subject to any legal regime. This circumstance worsens gradually as they take a long period in their private "clinics and chambers" for more proceeds and show negligence to the patients. Most incidences regarding "medical negligence" can be seen by "newspaper reports' social media and TV channels" almost all the time. Occasionally, contentions are made by the families of the deceased in contrast to such negligence that becomes considerable attention of the media. But tactlessly, nothing occurs later (Akter, 2013). It also stated that medicinal mistakes are perceived in Bangladesh generally as active faults by "doctors, nurses, or other staff," such as giving the erroneous quantity of medicine during the time of an emergency process; and respite as inactive faults, such as meager apparatus care or design, or poorly systematized health care delivery, such as deteriorating to effectively follow up on a "patient's diabetes or high blood pressure. Whereas active faults are generally noticed rapidly, general and dormant faults are tough to identify, for they are outside the control of distinct care patrons.

This research firstly explores the regimes of "medical negligence" in Bangladesh to find out the obstacles in the way of Medical Care for all. Secondly, to define medical negligence such as offhand medical staff and practitioners, denial or delays in admission of a patient, substandard and wrong medical treatment, and false medical certificates and present laws concerning medical negligence in Bangladesh to ensure influential, inclusive justice. Thirdly, it suggests necessary schemes and policies for introducing comprehensive statutes and challenges to prevent and ensure care in case of "medical negligence" in Bangladesh and focuses on establishing a separate Tribunal and Court to avoid medical negligence and provide a duty of care.

2. Objectives of the research

This research's foremost aim is medical negligence and suggests a quest for feasible reform in Bangladesh. However, the study aims to attain the following specific objectives:

- a. To determine the legal status of medical negligence and fraudulent malpractice by medical personnel, hospitals, and clinics on reviewing existing laws and policies of Bangladesh.
- b. To find the definite legal safety that the laws of Bangladesh make available to the victim of "medical negligence."
- c. To suggest quest and feasible theory and policy for introducing comprehensive statutes and challenges to prevent and ensure care in case of 'medical negligence in Bangladesh.'

3. Significance of the research

This research work would be useful to those involved in the civil and criminal court judges' process for handling matters or cases relating to medical negligence; Lawyers, teachers, researchers, mass people, and students of law who desire to pursue a career in any related fields. That has something to do with hospital management, health care, treatment of patients at large, and doctors are in their professional works with commission and omission on a regular basis.

4. Methodology

The methodology applied in this research is doctrinal legal research. Recourse was given to interviews, legal documents and materials, i.e., textbooks, journals, articles, conference and seminar papers, statutes, case laws, and internet materials. These were acknowledged as primary and secondary materials that can be used without much doubt or objection.

5. Concept of negligence

Wherever an obligation of care is violated, liability for negligence might arise at any time in professional duties. Medical negligence is part of a branch of law called tort derived from the Latin verb "torture" to hurt. The concept of hurt is vital in establishing negligence. The common tortious claims for medical negligence that do not succeed fail for they cannot establish that harm has occurred as a direct result of an act or a failure to act. (Bryden & Storey, 2011) To identify the negligence, three steps tests must be satisfied.

- a. An individual is due an obligation of care.
- b. A violation if that obligation of care is recognized.
- c. As a straight consequence of that violation, legally specified injury has been instigated.

6. Medical negligence

The word "medical negligence" is frequently used synonymously by "medical malpractice." However, medical negligence is a vital legal area of medical malpractice claim. Medical negligence is an act or omission (failure to act) by a medical professional deviating from the accepted medical standard of care. According to "Rattan Lal and Dhiraj Lal" as the "breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do (Ratanlal & Dhirajlal, 2002)."

In other words, 'Medical negligence or malpractice' is a legal cause of action that happens when a medical or health care professional turns from standards in their job, by this means causing hurt to a patient and their rights involved. "Medical negligence is the professional malpractice by act or omission of a medical person in which the mode of care and treatment does not meet the reasonable standard of practice in the medical community and injures the patients (Karim, Goni, & Murad, 2013)." Experts providing psychological overhaul can be equally liable for medical negligence in the corresponding field. As of the very olden time, the penalty for medical negligence and wrong treatment was comm in the Indian sub-continent (Modi, 2011).

7. Medical negligence in Bangladesh

In Bangladesh, "medical negligence has commonly been originated by the act or omission (doing any illegal act or not doing any lawful compulsion) by a medical professional such as a physician, doctor, medical intern, surgeon, dentist, nurse, medical assistant, pharmacist or any other medical service providers (Das, 2013)."

There is no specific definition of medical negligence in any Acts or Laws existing in Bangladesh. 'Medical negligence' is conferred very diminutive in tort law; however, general negligence is conferred pointedly in tort law. In Bangladesh, different kinds of medical negligence occur regularly. But most of the victims cannot get justice because of lacking appropriate laws. The common medical negligence is explained below;

7.1. Unnecessary medical examinations and misdiagnosis

Unnecessary pathological examination and misdiagnosis is a common practice and scenario in Bangladesh in the field of medical negligence. In most cases, medical tests and diagnoses are not at all times conducted duly and appropriate method; for this reason, "the patient suffers incurable diseases like diabetes, heart attack, trauma injury, or Cancer, and prevention becomes unwieldy." (Chowdhury & Fahim, 2018).

7.2. Delayed in diagnosis

An overdue diagnosis is a 'medical negligence' method if one more doctor sensibly diagnosed a similar form on time. 'Delay in diagnosis' can cause an excessive injury to the patient if the disease or injury is tolerable to progress instead of being preserved. Usually, the 'diagnosis' will not be completed promptly due to a doctor taking a load that reduces their capability to control medical treatment accurately. By the way, the 'hospital or clinic' might be

apprehended responsible for any reimbursements consequential from the 'delay in diagnosis and treatment.'

7.3. Error in 'surgery and dispensation of anesthesia

However, "surgery and anesthesia" are the dual standard treatments in health amenity; nevertheless, they are essential proficient acquaintance besides skill to execute. Like 'heart, skull, spine, eyes, etc.,' surgeries must execute with close attention. Slight fault in such surgeries might cause lifetime harm to the vigorous tissues or even death. Skilled surgeons must conduct most essential portions of the surgical procedure, but occasionally these are leftward in 'medical assistants' hands without practical experience and expertise in the appropriate arena. It is frequently initiated that common mistake was made in small operations like leave-taking. Some surgical utensils inside the patient's body besides occasionally reckless stitch after the operation.

7.4. Redundant surgery

In Bangladesh, the utmost of doctors and medical practitioners are consecutively for the money. They took misplaced the service mindset and elapsed the aims of medicinal education. So, they do the excessive operations for their advantage, not the patient's advantage. Also, redundant surgical treatment is habitually connected to a 'misdiagnosis' of patient indications or a medicinal decision without considering supplementary possibilities or risks. Some of the most communal redundant medical procedures include in Bangladesh are:

- a) "Pacemaker Implant";
- b) "Coronary Bypass Surgery";
- c) "Cesarean Section" and;
- d) "Hysterectomy."

7.5. Childbirth trauma and labor negligence

Childbirth in Bangladesh is particularly hard for the newborn child and even of more inferior quality if not held suitably through "doctors and nurses." Examples of "medical negligence" throughout giving birth can take place in numerous traditions, including "failure to perform a c-section, mishandling of a difficult birth, complications with induced labor, misdiagnosis of the newborn medical disorder, or failure to monitor fetal vital signs." (Karim, Goni, & Murad, 2013).

8. Perception of the patients regarding 'medical negligence'

In Bangladesh, patients have met various medical negligence incidence in public and private hospitals and clinics, even in diagnostic or pathology centers. Patients suffer and occasionally die because of medical negligence, not afford advanced medical facilities, and the inadequacy of medical services. In utmost cases, persons turn out to be doomed and also displeased by the existing 'medical treatment services' that are insufficient and unsatisfactory due to many patients in Bangladesh. As part of my study, I interviewed 100 patients about their adequacy of medical treatment. 75% of the patients are disappointed with the current 'medical services, while only 25% have appealed that they are pleased.

8.1. Perception of patients on adequacy of medical treatment

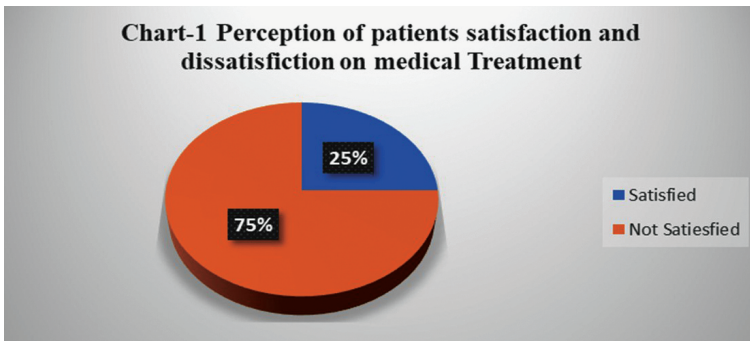


Chart-1 Here, among 100 patients, 75% of patients are dissatisfied with the present medical services, while only 25% have claimed that they are satisfied.

8.2. Perception of patients in adequacy of medical treatment in Bangladesh

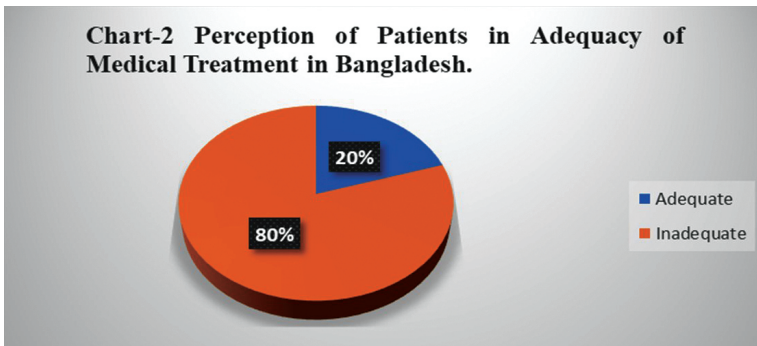


Chart-2: Here, only 20% of patients surveyed alleged that Bangladesh has adequate medicinal treatment facilities, and 80% observed no proper medical facilities. However, 80% of people believe that the existing 'medical service' is insufficient.

In Bangladesh also falls behind in keeping the minimum threshold of doctors and nurses for every 10,000 population as set by World Health Organization (Hossain, 2019). According to the latest health bulletin published yearly by the Health Ministry, the country has only six doctors, nurses, and midwives for every 10,000 population. The current doctor-patient ratio in Bangladesh is only 5.26 to 10,000, which places the country at the second position from the bottom, among the South Asian countries, according to the WHO (Hossain, 2019).

8.3. Perception of people facing negligence from whom and places

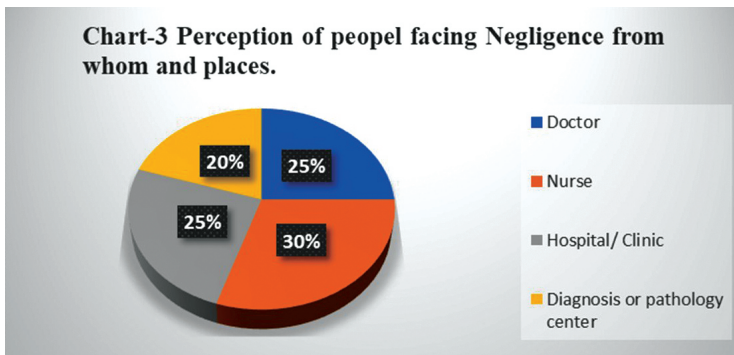


Chart-3 Herein, 25% of the people have noticed that they have faced negligence from the doctors or medical practitioners. 30% of the people believe harassment from the nurse, 25% from Hospital and clinics, and 20% from diagnosis or pathology centre.

9. Legal remedies to redress medical negligence

At present, medical negligence has to be a common issue of attention and argument in various developed countries. Also, several of them have endorsed and established distinct Acts and courts to provide legal remedies for this. Nevertheless, there is no definite and inclusive legislation yet to stop medical negligence in Bangladesh. Consequently, the possibility of occurrences of medical negligence frequently goes without any legal action and repeatedly leads to violence, which subsequently paves to an aggravating circumstance.

9.1. Legal remedies under the constitution

"The constitution of the people's Republic of Bangladesh" provides indirect remedies for the victim of medical negligence. Article 32 of the constitution states that "the right to life" is a fundamental right for its citizens. Moreover, article 44 provides the "enforcement of fundamental rights." Also, the

"Fundamental Principles of State Policy" states that the State has been obligated to ensure the "basic necessities of life, including food, clothing, shelter, education and medical care" under article 15 of the constitution of Bangladesh, then article 18 provides improvement of public health as among its primary duties. Those rights guaranteed under the constitution can do exercises through article 102 of the constitution by filing the writ petition. Hence, a citizen can claim reparation for his right under the constitution.

9.2. Remedies under judicial activism:

In the famous Doctor's Strike Case "Dr. Mohiuddin Farooque v. Bangladesh & others, Writ Petition No. 1783 of 1999", "the continuous strike by government doctors were challenged wherein the court treated the strike as a 'failure to perform their statutory and Constitutional duties to ensure health services and medical care to the general public. "

"The Court held that the willful absence of the government doctors from their statutory and public duties caused the threat to life and body of the public is of no legal effect. In August 2011, Prof. Dr. Mridul Kanti Chakrabarty, a teacher at the University of Dhaka, died at the LabAid Cardiac Hospital. On a PIL of negligence filed by Advocate Manzil Morshed, High Court Division summoned the accused doctor. It awarded compensation of BDT 50 Lacs to the patient's family (Dr. Mohiuddin Farooque v. Bangladesh & others, 1997)."

In 2016, a child passed away at Dhaka's "Japan Bangladesh Friendship Hospital." Though, "staff of the Hospital kept the death secret and demanded money from the family to treat the child. RAB arrested six persons in assembly with the incident, and a mobile court fined Tk 11 lakh to the Hospital. Moreover, the Division Bench of the High Court Division issued a sou-motu rule against the hospital authorities and summoned the Management to the Court (Mahdi, 2017)."

9.3. 'Under the Medical and Dental Council Act, 2010'

This Act described rules regarding professional action against the medical personnel. Accordingly, suppose any medical practitioner or dentist is found guilty of negligence or misconduct in the practice of his profession. In that case, the Council may refuse to allow that person's registration in the additional register, "says the section for professional misconduct, the following Council may order the name of any registered doctor or dentist to be removed from such registration, either permanently or for a certain length of time (Section 23)." According to Section 5(a) of the "Code of Medical Ethics," any significant negligence on the part of doctors and dental

consultants in their responsibility to their patients may be considered delinquent, and it would be appropriate to explain the deferral or remove their names from the Registrar."

The Appellate Division stated that "if law lawful and competent authority to pledge a criminal proceeding against them for violation of law, a court of law cannot debar the authority to initiate proceedings for violation of such law. Thus, the High Court Division has acted illegally in making the impugned direction (Ministry of Health & Family Welfare v. Bar an Nath, 2015)."

9.4. As per provision of the Penal Code, 1860

Complaints about medical negligence can be filed before a criminal court in Bangladesh against doctors charging "commission of offenses under Section 304A which states causing death by negligence" or Sections 336 or 338 of the Penal Code, 1860 "alleging recklessness or negligence or act threatening life or safety or causing grievous hurt by the doctors which result in loss of life or injury of varying degree to the patient or cause hurt." Moreover, "sections 80 and 88 of the Penal Code cover defenses for doctors as an accident in doing a lawful act or act done with good faith for accused of criminal liability." (Section 80-88)

9.5. The Consumer Rights Protection Act, 2009

If a consumer under the Consumer Protection Act 2009 wishes to file a complaint under Section 60, first, the complainant has to file a complaint before the "Director-General" or authorized person of the department within 30 days of accumulation of the cause of action. And conferring to Section 61, the magistrate will not take cognizance of any offense if the charge sheet is not submitted within 90 days of filing the complaint.

It means even if a consumer suffers from any loss, the consumer cannot file a complaint directly to the magistrate, and the magistrate would not take cognizance until the magistrate gets the charge sheet from the authorized person within 90 days. So, the consumers occasionally get unsatisfied or do not show concentration as this process is complicated and seems difficult. In private areas, the "Director-General" has the authority to find out shortcomings and deficiencies by inspecting the health-nursing care but cannot take any protective measures.

9.6. Civil obligation or breach of contract

The service of treatment can be considered as a contract, so if there is any negligence on portion of the doctor that may be regarded as a breach of contract, consequently, aggrieved parties are enabled to claim one or more remedies against the opposite party or doctor as per the Contract Act 1872. Moreover, the dissatisfied patient may also seek a temporary and permanent injunction under the Specific Relief Act, 1877, against health professionals' breach of contractual and service terms.

Lastly, the doctor and patient relationships are made based on unconditional faith. And one mistake in this profession can be the reason for the end of one life or cause uncoverable damage.

10. Causes of medical negligence in Bangladesh

Cases of Medical negligence are widespread in Bangladesh. As mentioned earlier, though there are some legal protections, none of them is directly operative compared to medical negligence. All existing laws and rules remain unable to eliminate or decrease this problem. The leading causes of Medical Negligence are explained below;

10.1. Absence of precise law

Though many laws exist in Bangladesh, they are not proper and codified (Rahman, Khan, Mohammad, & Rahman, 2009). Hence, the victims of medical negligence get confused in deciding which court they should go to or under which Act can institute a suit against medical wrongdoers. For example, suppose criminal cases are lodged under the Penal Code, which is not palpable because contentions do not callous that the doctors are guilty, so it would be a distress for the doctors if criminal cases are filed against them. In contrast, civil courts can not punish the defendants; they only have the authority to ascertain the number of damages. Under the Consumer Protection Act, 2009, the victim can file a suit for medical negligence. So, it can cause an assortment of cases.

10.2. Higher court fees

Usually, filing a case in a court requires a massive scale of money accompanied by higher court fees which are not possible for the indigent litigant in Bangladesh. For this reason, the victim habitually does not seek assistance from the legal process. However, in our adjoining country India, no court fees are required to file a case/suit of medical negligence under the Consumer Protection Act, which inspires people to go to court for immediate and active redressal.

10.3. Judicious attitude of the medical professionals

In most cases, poor people face discrimination by medical practitioners. An extreme change occurs between cheap treatment services at government hospitals and expensive private clinics. Most of the doctors will refer patients to their private clinics for their monetary gain. In Bangladesh, the same doctors will provide diverse services at the public Hospital, and then they will join in their private practice; even their behaviour is better.

10.4. Lack of expertise of the judges

In Bangladesh, judges are only competent to deal with legal matters, and medical negligence cases are different from usual issues; for this reason, special skills are required to deal expertly. As a consequence of medical issues' critical nature, the judges occasionally may not be considered competent persons and resolve what is reasonable and what is not in a particular case (Nishat, 2004). A possible explanation for this delinquency could be to assign this function to medical experts and governing bodies who are more prepared to deal with the case.

10.5. Lack of expertise

Due to the lack of experienced judges, lawyers, or investigating officers to handle medical and health care negligence cases, the victim is not getting proper justice on important issues like medical negligence.

10.6. Ineffectual medical regulatory bodies observing private and public hospitals

The Bangladesh Medical and Dental Council (BMDC) is authorized to take punitive action and suspend or withdraw recognition of any institution and the qualifications conferred by it if its functioning is found to be substandard. On the way, it is the only authority to control and resist the doctor's professional behaviour and take proper actions in negligence. But the actions taken by the Council are minimal.

10.7. Lack of awareness

Lack of awareness is another vital cause of medical negligence in Bangladesh. People and medical personnel are not aware of their duties. For this reason, many issues of medical negligence are ineffective due to a lack of awareness.

10.8. Complications concerning Proof of negligence

The "burden of proof" about the negligence issue lies on o the complainant. If he cannot produce substantial evidence before the court, no lawful remedy will be accessible for him. And it is difficult for the complainant to prove medical negligence against any medical personnel due to adequate medical science knowledge. In contrast, a doctor is not eager to deliver information against another doctor as they belong to the same profession. Even the medical institutions also refuse to provide essential documents to the patients. Therefore, in the lack of vital papers and evidence, it becomes very tough to prove a case of negligence. In utmost cases in Bangladesh, the concerned medical institutions refute to deliver them without an order of the court.

11. In quest for feasible reforms

However, medical negligence is directly connected with the violation of the right to health; utmost repeatedly, the wrongdoer, such as medical professionals intricate in such cases, practically always getaway in Bangladesh of present laws dealing with negligence, lack of expertise, etc. In this regard, the researcher proposes the following quest for feasible reforms.

11.1. Enactment of specific laws

The government should pass a specific law, for example, the Prevention of Medical Negligence and Patient Rights Act, to ensure the patients' rights and prevent medical negligence. All "medical practitioners" are obliged to follow the provisions of that inclusive Act with responsibilities. This Act should pass legal compulsions upon "medical practitioners, dentists, private clinics, private hospitals, pathological laboratories and government hospitals for their medical malpractice" This Act also importance medical ethics so that the "Medicare" can be efficient 'judicially' examine.

11.2. Establishment of a special tribunal or court

Besides enacting special laws, the government should establish a special court or tribunal, which would be named Health Tribunal or "Health Court." The concept of a health tribunal or court is relatively new, but many advanced states like Australia are now cherishing it. Health tribunals or courts are proposed special courts for dealing with "medical malpractice" claims. In this court or tribunal, specially trained judges consider them self-determining expert witnesses; lawyers will be assisted in resolving medical malpractice cases appropriately.

11.3. Amendment of 'the consumer rights protection laws'

Before enacting a special law for preventing medical malpractice, a few amendments need to be taken to the "Consumer Rights Protection Act." This Act is not adequate for the term "medical profession" has not been injected clearly in section 2. In India, the term has been inserted in section-2 (1) (o) of the "Consumer Rights Protection Act, 1986."

In 1995, the Supreme Court of India in a case decisively included the health profession as a subject matter of their consumer protection law [Indian Medical Association v. VP Shantha (1995) 412].

11.4. Launch awareness programs

To reform the "medical practitioners" concerning the legal effects of "negligence, malpractice, and misconduct, conduct various training programs, symposium and make aware them the effect of the patients' grief resulting" from that. Furthermore, to create awareness among the people to report proper authorities regarding medical negligence.

11.5. Establishment of medical malpractice control cell

To prevent medical malpractice government should establish medical malpractice control cells. And also, fixed fees of doctors, different treatment, pathological tests or diagnoses according to their qualifications, or on various diseases and different tests." The cost of treatment between "public and private hospitals, clinics, and diagnostic centers" should not be very much. The government should fix private clinics' numerals, and periods a doctor can consume for their private practice.

11.6. Open access data centre

The government should issue a statutory notice and direction to the concerned for establishing a data centre for appropriate documentation and protection of medical data in "every medical Centre, private clinics, and private or public hospitals" and monitor it regularly and ensure lawful access to the preserved medical data centre.

11.7. Involvement of other organizations

However, in Bangladesh, the National Human Rights Commission (NHRC) should involve in such matters. Still, it is essential to regularly grow its intensive care exertions in the "health services in public and private hospitals." Correspondingly, "the consumer forums, CAB, NGOs, patients' rights associations, or similar organizations" must report such abuses and performance the title role of a watchdog.

11.8. Confirming setting up an operative "complaint mechanism"

Inquiry is a process to expose the patient's complaints, such as "recommendation box, patient satisfaction surveys, etc.", must be supervised by the supervision of the "public and private medical organizations." Furthermore, the patient or guardian must be guided about the disease, treatment protocol, and conversations with the patient will be preserved in the patient's diagram. It may be far ahead to be evidence of the statute of barriers.

12. Conclusion

"Medical negligence" and want of accountability in the whole health care administration have directed to an insufferable condition both in "public and private healthcare sectors" of Bangladesh. Inadequate resources, lack of essential instruments and medications, and an uncharacteristically uneven ratio of doctors and nurses compared to patients - all these are true in the context of medical services in Bangladesh. It is noticeably true that "where there is a right, there is a remedy." Patients are the eventual sufferers of "medical negligence," and such negligence might consequence in losing their precious lives. To alleviate victims' suffering, the government must take fast and compulsory initiatives to make an inclusive and inimitable law to protect the patients' right to life as to the constitutional directive. It is appropriate to mention that only passing a new law is not the solution, but the proper and exact implementation of the statutes is required. If the execution of law becomes difficult, it will be nothing but a remote goose pursuit. Besides this, impartial inquiry and the prompt remedy must be confirmed in medical negligence cases to inspire the sufferers to pursue a remedy. Finally, the researcher hopes that the new proposed quest and feasible reforms relating to medical negligence would have vanished the "medical negligence in Bangladesh."

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