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A Legal Analysis of the Contemporary Scenario of Medical Negligence and Malpractice in the Healthcare Centers of Bangladesh: A Way Forward

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ABSTRACT

The medical profession is considered noble because it plays a crucial role in preserving and improving human life. Undoubtedly, Bangladesh boasts many skilled, well-trained, and professional doctors. However, it is also true that a few doctors' inefficiency and reluctance to provide standard treatment have contributed to a significant number of incidents involving medical negligence, medical errors, and medical malpractice in the country. In our country, a significant portion of the population holds misconceptions about medical negligence and malpractice. Additionally, while Bangladesh does have some scattered legal provisions within different statutes to address medical negligence and malpractice, it is accurate to state that there is no specific codified law dedicated to the prevention of such incidents. The author used a qualitative approach to enrich the manuscript in an explorative way. It is expected that this article clarifies the concept of medical negligence and malpractice and further seeks to explore the relevant laws prevailing in Bangladesh with their major loopholes to provide legal redress to the victims of medical negligence and malpractice. It also aims to investigate the current scenario of medical negligence and malpractice in the healthcare centers of Bangladesh as well as show the diverse nature of the indescribable sufferings of the aggrieved patients from medical negligence and malpractice committed by physicians, health professionals such as nurses, ward boys, and other health assistants. Finally, at the end of the investigation, this article has made an effort to make some suggestions to the concerned authorities to prevent medical negligence and malpractice in Bangladesh and suggests potential reforms to enhance patient safety, accountability, and access to justice.

Keywords: Medical Negligence, Medical Malpractice, Medical Practitioner, Healthcare Center, Patient.

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I. INTRODUCTION

In recent times, several incidents of medical negligence and malpractice can easily be noticed through television channels and newspaper headlines. Often it catches much media attention when any allegation regarding medical negligence and malpractice is made by the families of the dead patient against any medical practitioner. Nowadays, such incidents are on the rise due to the intentions of physicians, particularly government doctors, who allocate substantial time to their private clinics or chambers even during their service at government hospitals. This practice aims to generate additional income through higher visiting fees. Another contributing factor is the limited time devoted to patient care; another reason is to spend little time while treating a patient. In our country, most medical practitioners are trying to take full advantage of their professional indemnity. An important obstacle in confronting medical negligence is that the individuals affected often remain unaware that their rights are being infringed upon; instead, they merely endure the consequences.² Some medical professionals do not even care about the law of the land. The strong reason behind this nature of medical practitioners is the absence of proper and effective medical laws to fight against medical negligence and malpractice happening in the healthcare centers of Bangladesh.

(A) Methodology

As this article is a legal analysis regarding the current scenario of medical negligence and malpractice at the healthcare centers in Bangladesh, the author used qualitative approach to enrich the manuscript in an explorative way. The study utilizes both primary and secondary data sources. The primary data was gathered from various legislations. Furthermore, collecting data from newspapers, related write-ups, blogs, and of course, electronic media and the internet are the secondary sources of data collection to enrich this article. It reflects a blending of information encompassing the secondary sources so that the findings can get a multi-dimensional spectrum.

II. CONCEPT OF MEDICAL NEGLIGENCE AND MALPRACTICE

When a medical practitioner, healthcare professional, or healthcare provider deviates from the established and recognized medical practice through a negligent act or omission, which ultimately causes physical or mental damage or injury to a patient, that will amount to medical negligence. Medical negligence may occur for the negligence of a physician or for the negligence of healthcare-related support systems of a healthcare center, such as nurses, hospital

² Bukhari, A.A. (2021). "Medical negligence and tortious remedies", available at: <https://www.thedailystar.net/la-w-our-rights/news/medical-negligence-and-tortious-remedies-2148961> (accessed on Jan 10, 2023).

authorities, diagnostic centers, or even for the negligence of the manufacturers and suppliers of medicine and medical equipment. In other words, every single person who is involved in the medical treatment of the aggrieved patient may be liable severally or jointly for that medical negligence.

To accuse someone of being guilty of medical negligence, first it must be proven that a medical contract existed between the patient and the healthcare provider under which the doctor or healthcare provider was legally bound to provide the patient with due attention and care. Apart from this, it also has to be proved that the concerned doctor or healthcare provider was negligent or failed to perform his duty. Lastly, it is mandatory to prove that the aggrieved patient has been injured or died due to the negligence or breach of duty committed by the respective medical practitioner or health care provider.

The terms "medical negligence" and "medical malpractice" are often used interchangeably. However, the meanings are slightly different. But medical malpractice involves intent. In situations involving medical malpractice, the healthcare provider is fully cognizant of the possible outcomes resulting from their actions or lack thereof, yet they choose to proceed regardless. These respective physicians likely make such types of medical errors or mistakes because they do not follow proper guidelines or protocols at the time of the treatment of the patients. In fact, both terms are very fact-dependent. In fact, medical malpractice encompasses various instances of unconventional medical practices, which also involve unethical medical practices that are unjust or incorrect.³

III. THE CURRENT SCENARIO OF MEDICAL NEGLIGENCE AND MALPRACTICE IN THE HEALTHCARE CENTERS OF BANGLADESH

If it is investigated and observed carefully, then almost in every healthcare center in Bangladesh, the existence of medical negligence and malpractice will be found, which indicates a serious threat to the patient's safety. The incidents of medical negligence and malpractice that have occurred in the last 3 years give a clear message that the nature and modes of medical negligence and malpractice in every healthcare center in Bangladesh are not the same at all. It is different from one healthcare center to another. However, here it has been tried to investigate the common nature and modes of medical negligence and malpractice occurring at present in most of the healthcare centers in Bangladesh, which will reflect the overall contemporary scenario of medical negligence and malpractice in the healthcare centers of Bangladesh.

³ R. Bardale, *Principles of Forensic Medicine & Toxicology* (2011).

(A) Nature and Modes of Medical Negligence and Malpractice Prevailing in Bangladesh**Figure-1:** Nature and Modes of Medical Negligence and Malpractice**1. Surgical Errors and Wrong Surgery**

Surgical errors and wrong surgeries are very common modes of medical negligence and malpractice committed by surgeons, health professionals, or medical practitioners.

Surgical errors may be of different types, including the following:

- (i) Objects being left in the body of the patient during surgery
- (ii) Not properly sterilizing instruments before and during surgery
- (iii) Damage to organs, tissue, or nerves during surgery
- (iv) Wrong-organ surgery
- (v) Wrong-patient surgery
- (vi) Wrong surgical procedure

If any of the above surgical errors occur with any patient due to the negligence of the physician or surgeon, then that kind of incident will amount to medical negligence or malpractice. And the respective aggrieved patient will be able to take legal action against that physician or surgeon. Some recent incidents relating to surgical errors and wrong surgeries have been marked.

On March 18, 2023, a college student passed away, reportedly due to wrong treatment received at a hospital located in Brahmanbaria. The deceased, Istiak Ahmed Iqram, 20, was admitted to Al-Khalil Hospital and Diagnostic Centre, situated in the Old Jail Road area of the town, due to nasal polyps. Subsequent to his unfortunate demise, three individuals employed at the hospital, including the manager, were apprehended in relation to the incident.⁴

On December 14, 2022, Gulf Air pilot Mohammad Yousef Hassan Al Hindi collapsed at Dhaka airport before a flight and was admitted to United Hospital. He passed away, leading his family to sue the hospital for alleged wrongful treatment.

On 30 January, 2023 Pilot's sister Tala Elhendy Josephano, a US citizen working for the British government, at a press conference accused the hospital of negligence and improper treatment.⁵ She also mentioned a previous incident involving five patient deaths due to negligence. She filed a case against the hospital and Gulf Air, and she sent letters to the Directorate General of Health Services (DGHS) requesting an investigation. DGHS did not respond. Tala later filed a writ petition with the High Court, and a hearing was held on **July 16, 2023**.⁶

On August 09, 2022, an incident of medical negligence took place at the Bangladesh Specialized Hospital located in Shyamoli, Dhaka. Mehbish Jahan, a resident of Indira Road in the capital, had been suffering from stomach pain for a long time. After various tests, a doctor from the Gastroenterology and Hepatology Department of Bangladesh Specialized Hospital saw the report and said that there was a cyst in the pancreas. At the time of the operation, the doctor cut the artery instead of removing the cyst. Then the bleeding started. In that situation, he decided to take Mehbish to the ICU after seeing the condition. Later, another doctor sewed the artery at risk despite the possibility. At this time, Mehbish had to give 9 bags of blood.

⁴ The Dailly Star (2023). "College student dies from wrong treatment", Available at: <https://www.thedailystar.net/news/bangladesh/crime-justice/news/college-student-dies-wrong-treatment-3274806> (accessed on Aug. 18, 2023).

⁵ NewAge Bangladesh (2023). "United Hospital blamed for Gulf Air pilot's death", Available at: <https://www.newagebd.net/article/193164/united-hospital-blamed-for-gulf-air-pilots-death> (accessed on Aug. 18, 2023).

⁶ The Financial Express (2023). "HC orders probe into United Hospital's negligence over death of Gulf Air pilot", Available at: <https://thefinancialexpress.com.bd/national/hc-orders-probe-into-united-hospitals-negligence-over-death-of-gulf-air-pilot> (accessed on Aug. 18, 2023).

Somehow, she survived. 70 thousand taka was supposed to be paid for the operation. But the hospital authorities collected four hundred fifty-seven thousand takas from the patient's family for their wrong treatment bill.⁷

On June 7, 2022, an eight-year-old child named Rafiza Khatun died due to a wrong surgery at MRA clinic in Shyamnagar, Satkhira.

On May 29, 2022, the managing director of MRA Clinic, Dr. Md. Anishur Rahman, gave a test to Rafiza. After the test from the diagnostic center, he asked for surgery at his own clinic. Rafiza's surgery was done at the clinic at 4 pm on June 6, 2022. But after the surgery that night, her physical condition began to deteriorate. On the morning of June 7, following the guidance of the attending doctor, she was taken to Satkhira Medical College Hospital. However, the doctors on duty at the hospital pronounced her deceased., and they also informed the relatives of the patient that the surgery was wrong.⁸

On May 18, 2022, a 6-year-old child named Atika Akter Ayesha, suffering from thigh gangrene, passed away due to an erroneous surgery at Makkah-Madina General Hospital located in Mohammadpur, Dhaka. After Ayesha's father, Md Azim, lodged a complaint with Mohammadpur Police Station against eight individuals, including the hospital owner, following his daughter's demise, three doctors and a nurse were arrested.⁹

On May 30, 2021, Dr. Toufiq Enam, a medical officer at Evercare Hospital, passed away while receiving treatment at BRB Hospital in Dhaka. Initially, he was diagnosed with gallbladder stones at Islami Bank Hospital, where Dr. Khan performed a surgery and subsequently discharged him.

On May 9, 2021, as his condition worsened, Dr. Khan advised him to consult Dr. Mahtab at Labaid Hospital. Dr. Mahtab, suspecting a misplaced clip from the previous surgery, conducted an Endoscopic Retrograde Cholangiopancreatography (ERCP) with stenting. However, due to the patient's rapid deteriorating health, he was referred to Dr. Ali at BRB Hospital.

Dr. Ali admitted the patient on May 12, 2021, for an urgent operation. The hospital initially requested three bags of blood for the surgery, but later asked for an additional four bags. Despite these efforts, Dr. Enam passed away during the treatment process.

⁷ Ekushey TV (2022). "Bhul cikitsay jibon shongkotaponno, jorimana dite holo rogikei", available at: <https://www.ekushey-tv.com/capital/news/136087311111112406> (accessed on Jan 10, 2023).

⁸ Wellnews24 (2022). "Alleged death of 8-year-old child in wrong operation in Satkhira", available at: <https://en.wellnews24.com/alleged-death-of-8-year-old-child-in-wrong-operation-in-satkhira/> (accessed on Jan 10, 2023).

⁹ The Daily Star (2022). "6-yr-old dies from 'wrong treatment'", available at: <https://www.thedailystar.net/news/bangladesh/crime-justice/news/6-yr-old-dies-wrong-treatment-3026896> (accessed on Jan 10, 2023).

Following these events, Dr. Toufiq Enam's father filed a case against the three doctors, accusing them of medical negligence, on June 20, 2021, in the Chief Metropolitan Magistrate's Court.¹⁰

On March 3, 2020, an 18-year-old named Monira Khatun underwent surgery at Bangabandhu Sheikh Mujib Medical College Hospital in Faridpur. She sought treatment for a blood-clot issue in her abdomen. Unfortunately, during the surgery, a pair of six-inch surgical scissors were unintentionally left inside her abdomen. These scissors remained inside her body for a period of 21 months.

In December 2021, Monira Khatun returned to the hospital due to consistent pain. An abdominal X-ray revealed that the surgical scissors had been inadvertently left inside her during the previous surgery. Consequently, on December 11, 2021, she underwent another surgery at the same hospital to have the scissors removed.¹¹

2. Maternity and Delivery Errors

During delivery, healthcare providers can make many mistakes, which cause high risk for the life of the mother, baby or both. Delivery errors include any kind of harm from which the mother or baby suffers either during or after the pregnancy. In time of delivery, even a little negligence of the labor and delivery staff may cause serious birth injuries. In many cases, birth injuries can cause the mother's or baby's death. Delivery errors or birth injuries can be any of the following forms, which will lead to medical negligence and malpractice:

- Lack of monitoring the baby and mother during labor
- Administering too much or too less anesthesia during delivery
- Lack of adequate prenatal care
- Failing to diagnose serious complications
- Using assistive devices in a mistaken way and causing cerebral palsy or brachial plexus injuries
- Failing to perform a Cesarean delivery (C-section) in an emergency

Some recent incidents relating to Maternity and Delivery Errors have been placed.

On June 15, 2023, two doctors from Dhaka's Central Hospital were arrested following the

¹⁰ Bdnews24 (2021). "Three doctors charged with negligence in the death of another physician", available at: <https://bdnews24.com/bangladesh/three-doctors-charged-with-negligence-in-the-death-of-another-physician> (accessed on Jan 10, 2023).

¹¹ The Financial Express (2021). "Leaving scissors in body after surgery not a new mistake, probe body says", available at: <https://thefinancialexpress.com.bd/health/leaving-scissors-in-body-after-surgery-not-a-new-mistake-probe-body-says-1640083526?amp=true> (accessed on Jan 10, 2023).

demise of a newborn baby. This unfortunate incident arose due to allegations of deceit by the hospital administration made by the family. Consequently, the mother required life support. The preceding day, June 14, family members of a caesarean patient named Mahabuba Akhi accused Dhaka's Central Hospital of misleading them by falsely claiming the presence of gynecologist Sangjukta Saha during the delivery. This misinformation resulted in the infant's death and inflicted significant injuries upon the mother.¹²

On June 25, 2022, a tragic incident occurred where a woman named Aklima Begum (32) lost her life due to a medical error during an operation in Manda, Naogaon. She had given birth to a baby girl through a caesarean section at Faisal Clinic and Diagnostic Center located in Prasadpur Bazar. However, following the surgery, her condition deteriorated significantly due to severe bleeding. Unfortunately, Aklima Begum passed away around 8:30 pm on the same day.

The family members of the deceased raised serious concerns, asserting that the clinic owner, Ziaur Rahman Zia, had performed the operation without proper medical credentials. They alleged that he did not possess the qualifications of a doctor or a surgery specialist, and that he had even conducted the procedure while unconscious. This negligent and unauthorized action led to the tragic loss of the mother's life due to incorrect medical treatment.¹³

On May 27, 2022, a woman named Saleha Begum died while giving birth to a baby due to alleged wrong treatment by doctors at Marie Stopes Maternity Clinic in Narsingdi. She was admitted to the clinic for ultrasonogram. But duty doctor recommended an emergency cesarean section as the condition of child was not good. After the delivery she passed away.¹⁴

On April 27, 2020, A woman named Sonia Akhter died due to wrong treatment at the Royal City Hospital in Barisal city. She was taken to the Royal City Hospital for Caesarean section. But her family alleged that Sonia got the infection due to the wrong C-section, so she was died after a few hours.¹⁵

¹² TBS News (2023). "2 Central Hospital doctors arrested over newborn's death", Available at: <https://www.tbsnews.net/bangladesh/crime/2-central-hospital-doctors-arrested-over-newborns-death-650322> (accessed on Aug. 18, 2023).

¹³ The Bangladesh Post (2022). "Death of patient due to surgical error alleged in Naogaon", available at: <https://bangladeshpost.net/posts/death-of-patient-due-to-surgical-error-alleged-in-naogaon-88795> (accessed on Jan 10, 2023).

¹⁴ UNB News (2022). "Woman dies due to 'wrong treatment' in Narsingdi", available at: <https://unb.com.bd/m/category/Bangladesh/woman-dies-due-to-wrong-treatment-in-narsingdi/93808> (accessed on Jan 10, 2023).

¹⁵ The Daily Bangladesh (2020). "Patient died for wrong treatment in Barishal", available at: <https://www.daily-bangladesh.com/english/country/41517> (accessed on Jan 10, 2023).

3. Prescription and Medication Errors

It is the desire and trust of every patient that their physician or doctor will always provide them with proper and adequate prescriptions and medications that will work properly to recover from the disease of the patient. If any physician makes any mistake in this regard, then it can be the cause of harm or injury to that patient's physical or mental health. In this case, the respective physician will be liable for medical negligence or malpractice.

Errors related to prescriptions and medications can manifest in the following manners:

- Prescribing an incorrect medication
- Prescribing an inaccurate dosage
- Administering an excessive dosage
- Recommending less potent medications
- Suggesting additional medicines for financial gain

4. Failure in Diagnosis or Wrong Diagnosis

Diagnosis involves recognizing a disease, condition, or injury based on its observable indicators and symptoms. This diagnostic process can be carried out by diverse healthcare experts, including physicians, physiotherapists, dentists, podiatrists, optometrists, nurse practitioners, healthcare scientists, or physician assistants. Instances of medical negligence or malpractice can arise if these professionals fail to accurately diagnose a patient's condition or if they make an incorrect diagnosis. An incorrect diagnosis is considered negligent when it demonstrates a lack of reasonable care or expertise.¹⁶

5. Negligence in Attending to the Patient or Refrain from Serving the Patient

Almost every hospital, whether run privately or by the government, has a special unit called an emergency unit. Due to a scarcity of specialized doctors for emergency cases in Bangladesh, many hospitals operate their emergency units with a medical officer and several interns.

However, failing to attend to the patients on time is another mode of medical negligence and malpractice. If any patient needs urgent treatment, the doctor and the respective medical practitioner, healthcare provider, or nurse overlook the condition of the patient and negligently fail to attend to the patient in time. For this negligence if the patient suffers or dies, then that medical practitioner, nurse, or hospital authority will be liable for medical negligence and malpractice under the doctrines of vicarious liability or direct liability. Some current incidents

¹⁶ Vij, K. (2011). *Textbook of Forensic Medicine Forensic Medicine and Toxicology*. Elsevier, India.

relating to this issue have been mentioned below:

On April 9, 2022, a 55-year-old woman named Piarunnesa passed away under circumstances that raised concerns about the alleged negligence of certain doctors at Khulna Medical College and Hospital (KMCH). The patient had been admitted to the hospital's 11-12 no. ward on April 8, 2022, due to chest pain. Unfortunately, her condition worsened on April 9, 2022. Her son, Mostakim, attempted to appeal a doctor to attend to her, but their assistance was not forthcoming. Tragically, Piarunnesa breathed her last at the hospital at 3 am.

Following her demise, a confrontation ensued between the interns and the two sons of the patient. The confrontation arose from the sons' desire to inquire why the doctors had not responded to their repeated pleas to examine their mother prior to her passing at 3 am.¹⁷

On August 21, 2021, a pregnant woman named Joynab Begum, accompanied by her family members and policemen, reportedly faced physical assaults from more than 50 intern doctors associated with Bogura's Shaheed Ziaur Rahman Medical College Hospital (SZMCH). Joynab had been admitted to the hospital's gynecology department. During the incident, she experienced distressing symptoms, including shaking and vomiting, shortly after receiving a saline solution around 3 pm.

Concerned for his wife's well-being, Joynab's husband, Aslam, approached the intern doctors on two occasions, urging them to assess her condition. However, the doctors did not attend to her and treated him disrespectfully. In response, Aslam warned them that he would record their apparent negligence in performing their duties if they continued to ignore his wife's condition. This warning angered the intern doctors, who refused to provide further treatment to Joynab. Subsequently, an unfortunate incident unfolded later that night.¹⁸

On March 17, 2021, a tragic incident occurred at Dhaka Medical College Hospital, where a fire erupted in the intensive care unit (ICU) ward designated for COVID-19 patients. Unfortunately, three patients who had been evacuated lost their lives in the fire. The relatives of these individuals have alleged that the authorities of Dhaka Medical College Hospital are responsible for their loved ones' untimely deaths, and they are asserting that the hospital's

¹⁷ UNB News (2022). "Patient's death for doctors negligence sparks protest at KMCH", available at: <https://unb.com.bd/m/category/Bangladesh/patients-death-for-doctors-negligence-sparks-protest-at-kmch/90879> (accessed on Jan 10, 2023).

¹⁸ The Daily Star (2021). "Pregnant woman allegedly kicked by intern doctors at Bogura hospital during altercation with her family", available at: <https://www.thedailystar.net/health/healthcare/negligence/news/pregnant-woman-allegedly-kicked-intern-doctors-bogura-hospital-during-altercation-her-family-2157796> (accessed on September 18, 2022).

actions resulted in wrongful fatalities within the COVID ward's ICU.¹⁹

On June 14, 2020, a distressing incident unfolded at Ibn Sina Hospital in Dhaka, involving the unfortunate demise of Habiba Sultana (22), a nurse employed at the hospital. Tragically, she passed away in front of the hospital's emergency unit, supposedly after being denied admission. According to Habiba's family, they alleged that the hospital administration declined to admit her due to her inability to provide her coronavirus test report. Regrettably, the report had been misplaced or lost, leading to this unfortunate situation.²⁰

On June 01, 2020, a tragic incident unfolded as a 63-year-old woman grappling with breathing complications passed away while inside an ambulance. This unfortunate event occurred because she faced rejection for admission or treatment from six different hospitals in Sylhet. The deceased woman had a 35-year history of asthma. She fell ill around midnight on May 31 and was initially taken to Al-Haramain Hospital situated in the Sobhanighat area.

Upon arrival at Al-Haramain Hospital, the emergency unit staff advised her family to seek treatment at a different medical facility due to the absence of an Intensive Care Unit (ICU) on their premises. This marked the beginning of a series of refusals, as the woman's family attempted to secure medical attention at various hospitals. In total, six hospitals declined her treatment due to their lack of ICU and oxygen facilities. Unfortunately, the woman's life couldn't be saved in this distressing situation.²¹

On March 14, 2020, Nazma Amin (24), a young woman who had returned to Bangladesh from Canada, tragically lost her life due to gastrointestinal complications, surrounded by alleged negligence on the part of Dhaka Medical College Hospital (DMCH) doctors. The circumstances leading to her demise were marked by what her family claims to be a series of neglectful actions by medical professionals. The suspicion that Nazma might have had COVID-19 seemed to cloud their approach.

When it was initially discovered that Nazma had recently returned from Canada and was running a fever, a sense of panic seemed to pervade the ward. Doctors and nurses reportedly refrained from approaching her due to the suspected coronavirus infection. Despite her subsequent negative COVID-19 test result, over an hour had passed without proper monitoring,

¹⁹ Bdnews24 (2021). "Patients died due to medical negligence during DMCH fire, relatives say", available at: <https://bdnews24.com/bangladesh/patients-died-due-to-medical-negligence-during-dmch-fire-relatives-say> (accessed on Jan 10, 2023).

²⁰ The Daily Star (2020). "Denied treatment by her hospital, young nurse dies". *The Daily Star*, 15 June, p.1.

²¹ The Daily Prothom Alo (2020). "Rejected from six hospitals, asthma patient dies in ambulance", available at: <https://en.prothomalo.com/bangladesh/local-news/rejected-from-six-hospitals-asthma-patient-dies-in-ambulance> (accessed on September 18, 2022).

during which time her condition deteriorated significantly. Regrettably, Nazma Amin's health worsened to the point of her passing away, without receiving any medical treatment during her final moments.²²

6. Sub-standard Quality of Treatment or Improper Treatment

Substandard treatment basically means when a doctor provides a patient with medical treatment that is below the average level in comparison to other medical practitioners. If any patient receives sub-standard quality of treatment, the respective patient can have a tough time recovering from his or her injury or illness. Again, when a physician provides improper treatment of a critical illness or injury, a patient may suffer deadly consequences. So, whenever a medical examination or treatment exceeds a doctor's capabilities, it is essential for them to call upon another doctor who possesses the required expertise.²³

7. Failure to Warn of Surgery Risks

A medical practitioner should always disclose the associated risks with every procedure of surgery. It is a part of a medical practitioner's duty of care that even in the case of minor surgery, he will inform patients of these possible dangers that are related to that surgery.

If any physicians or surgeons failed to warn about the possible surgery risk and for this negligence, if the respective patient suffered anyhow, then it will ultimately lead to medical negligence.

8. Anesthesia Errors

Anesthesia errors are rather uncommon, but they can be more deadly than surgical blunders. If an anesthesiologist makes a single mistake, it might result in long-term disability, brain damage, or death. It is a great mistake of an anesthesiologist to not investigate a patient's medical history for possible problems and to not tell the patient about necessary pre-surgical procedures or requirements. Administering too much or too little anesthesia to the patient is another common example of an anesthetic mistake.

9. Use of Faulty and Defective Medical Equipment

A patient may suffer from serious injuries or death if he receives faulty or defective medical equipment or if this type of equipment is used at the time of his surgery. As defective equipment

²² The Daily Star (2020). "Panic over coronavirus led to negligence, death: family of patient alleges", available at: <https://www.thedailystar.net/top-news/news/panic-over-coronavirus-led-negligence-death-family-patient-alleges-1881289> (accessed on September 18, 2022).

²³ Sharma, R.K. (2011). *Concise Textbook of Forensic Medicine & Toxicology*. Global Education Consultants, Uttar Pradesh.

does not provide the desirable benefits, the condition of the patient might deteriorate. In most cases, patients might be injured by defective medical equipment before the defects are discovered. However, if the manufacturers intentionally manufacture that defected equipment, the manufacturer will also be liable for medical negligence or malpractice.

10. Post-Operative Care Errors

Post-operative care refers to the ongoing medical attention a patient receives after undergoing a surgical procedure. This care encompasses various aspects, including medical supervision, nursing, and consultations. In cases where a doctor or surgeon fails to adhere to the established standard of care, instances of post-operative medical negligence can arise, particularly when complications or issues arise after the surgery. Such negligence during the post-operative phase can lead to serious consequences, including extended recovery periods, heightened infection risks, and even fatal outcomes. Several types of errors can occur during post-operative care, including:

- Neglecting to monitor vital signs such as respiration and pulse.
- Inappropriately administering medications, including painkillers.
- Failing to provide clear instructions for post-operative care.
- Neglecting routine bandage changes.
- Failing to maintain regular cleanliness of the surgical site.
- Neglecting to identify signs of infection, such as discoloration or inflammation.

Recent incidents highlighting errors in post-operative care have been documented.

On August 22, 2021, a tragic incident occurred involving the untimely death of an 11-month-old infant named Azan at Care Medical College Hospital in Dhaka. The child's demise was attributed to what was described as severe neglect on the part of both doctors and hospital staff. Following surgery for cleft palate reconstruction, the baby boy encountered breathing difficulties.

Unfortunately, neither the post-operative ward nor the general ward where the child was placed had any attending doctors. As the baby's breathing struggles intensified, his parents made multiple attempts to seek medical assistance by taking him to the operation theatre, yet they were met with rude treatment from the doctors there.

Subsequently, on August 29, 2021, the parents, in their pursuit of justice, filed separate complaints with both the Director General of Health Services and the Bangladesh Medical and

Dental Council. The family firmly asserted that their child's passing was a result of the doctors' lack of engagement, negligence, and the hospital's apparent failures in providing adequate care and attention.²⁴

On March 13, 2021, a distressing incident unfolded involving the tragic demise of a nine-year-old boy named Sajid Hasan at Dewan Hospital and Diagnostic Centre located in Mirzapur upazila of Tangail district. The circumstances leading to his passing were alleged to be linked to "wrong treatment."

Sajid had been admitted to Dewan Hospital after suffering a broken arm. Following several days of treatment, he underwent a surgical procedure on March 12. However, on the morning of March 13, an unsettling turn of events occurred. A nurse administered an injection to Sajid, and just five minutes later, another nurse provided him with a subsequent injection. Tragically, the young boy's condition deteriorated rapidly, and he passed away shortly after receiving the second injection.

This unfortunate incident raises concerns about the medical care and treatments provided at Dewan Hospital and Diagnostic Centre, as well as the circumstances leading to the unexpected and tragic loss of Sajid Hasan's life.²⁵

On March 30, 2020, a tragic incident occurred involving the death of a 32-year-old pregnant woman named Ripa Das at Faridpur Medical College Hospital. Despite her repeated requests, Ripa was not provided with necessary oxygen support, leading to her untimely passing. Ripa, who was at two and a half months of pregnancy, had been admitted to the hospital on March 29, 2020, due to internal bleeding.

Under the care of Dr. Kaniz Fatema, a gynecologist at the hospital, Ripa was advised to undergo an abortion. She subsequently underwent the abortion procedure after surgery performed by the physician that same night. Following this, she was moved to a hospital ward the next morning. Unfortunately, she began experiencing respiratory difficulties, and despite her repeated appeals for oxygen support, the hospital authorities failed to provide the necessary assistance. This lack of oxygen support ultimately resulted in Ripa's demise, which her family attributes to medical negligence.

The incident highlights the serious consequences of medical negligence and the importance of

²⁴ The Daily Star (2021). "Child Death From 'Negligence': Family under pressure to compromise", available at: <https://www.thedailystar.net/news/bangladesh/crime-justice/news/child-death-negligence-family-under-pressure-compromise-2181996> (accessed on September 18, 2022).

²⁵ Dhaka Tribune (2021). "9-year-old boy dies from wrong treatment in Tangail", available at: <https://archive.dhakatribune.com/bangladesh/nation/2021/03/13/nine-year-old-boy-dies-from-wrong-treatment-in-tangail> (accessed on September 18, 2022).

providing proper medical care, particularly in critical situations involving pregnant patients.²⁶

11. Unfair and Unethical Medical Practices

Medical practice, whether it is fair or unfair, ethical or unethical, if it causes damage or injury to the patient, then it will amount to medical negligence and malpractice. Furthermore, engaging in unfair and unethical medical practices goes against the established code of medical ethics for medical practitioners and physicians, and is considered a criminal act in itself. Medical ethics serves as a set of guidelines for the individuals within the medical profession, aimed at providing the highest quality of service to humanity while upholding the honor and integrity of the profession.

So, in some cases, an ethics violation may be grounds for medical malpractice. Followings are the patterns of Unfair and Unethical Medical Practices:

i. Issuing fake Medical Test Reports for Business Interest

In Bangladesh, it is a common phenomenon of unfair and unethical medical practice to issue fake medical test reports, fake autopsy reports, and fake medical certificates for business interests. Some medical businessmen enter the medical field with ill motives, and they form a medical syndicate with influential members of society. Those types of activities fall under medical malpractice.

Some incidents and cases regarding issuing fake COVID-19 test reports have been found in the investigation.

On July 12, 2020, Dr. Sabrina Arif Chowdhury, Chairperson of JKG Health Care, was arrested for her alleged role in distributing counterfeit COVID-19 certificates. On June 24, 2020, her husband, Ariful Chowdhury, CEO of JKG Health Care, and four others were also arrested in Dhaka for providing fake coronavirus test reports without conducting actual tests. They collected samples at homes despite lacking a lab and created fabricated certificates on laptops, labeling them "negative" or "positive" based on symptoms. Around 27,000 false positive COVID-19 reports were issued without testing. JKG Healthcare was raided on June 23, 2020, and a case was filed against six people, including Ariful Chowdhury, for distributing fake test reports. Dr. Sabrina was suspended from the National Heart Institute and Hospital as her actions are punishable under the Government Employee Act of 2018. On August 20, 2020, the Dhaka Metropolitan Magistrate, Sarafuzzaman Anshari, framed charges against them. On July 19,

²⁶ Dhaka Tribune (2020). "Pregnant woman dies due to medical negligence", available at: <https://archive.dhakatribune.com/bangladesh/nation/2020/03/31/pregnant-woman-dies-due-to-medical-negligence> (accessed on Jan 10, 2023).

2022, Dhaka's Additional Metropolitan Magistrate, Tofazzal Hossain, sentenced Dr. Sabrina Arif Chowdhury and seven others to 11 years in prison each for issuing fake COVID-19 test reports.²⁷

On July 6, 2020, a Rapid Action Battalion (RAB) mobile court conducted an operation at Regent Hospital's Uttara and Mirpur branches. During this operation, the RAB Magistrate uncovered multiple complaints and evidence of wrongdoing against the hospital authorities. Firstly, they were found to be generating fake COVID-19 test reports without conducting actual tests. Fourteen such complaints had been submitted to RAB, prompting this action. Additionally, the hospital had a government contract for free treatment of admitted patients, with the government covering the expenses. However, Regent Hospital billed patients substantial amounts, contrary to the agreement. Furthermore, they submitted a bill of over 1 crore 96 lakh takas to the government, falsely claiming patients were treated for free. Despite treating around 200 COVID-19 patients, RAB sealed the hospital's headquarters and branches in Dhaka. A case was filed against 17 individuals, including Shahed, the next day, involving charges of issuing fake COVID-19 test reports and other irregularities. On July 15, 2020, RAB-6 arrested Mohammad Shahed, Chairman of Regent Group and Regent Hospital, near the Satkhira border.

Shahed faced arrest in various other criminal cases. In 2021, he received a life imprisonment sentence in an arms case. Subsequently, on July 28, 2022, the High Court granted permanent bail to Mohammad Shahed, Chairman of Regent Hospital, in a corruption case related to embezzling Tk 2 crore from Padma Bank (formerly Farmers Bank) for the purchase of an MRI machine.²⁸

ii. Adding Fake Medical Degrees or Being Fake Doctors

The nation's newspapers and television networks frequently uncover instances of fraudulent doctors throughout the country. It has become almost commonplace to hear about cases where fake doctors have caused the death of patients. Notably, the prevalence of fake doctors and quacks has been increasing in urban areas recently, driven by the opportunities for their illicit practices to thrive under new identities. Some even obtain counterfeit medical certificates from unauthorized institutions. Their intent is solely to unlawfully profit by deceiving patients. A

²⁷ TBS News (2022). "Fake Covid reports: Dr Sabrina, 7 JKG Healthcare staff jailed for 11 years each", Available at: <https://www.tbsnews.net/bangladesh/court/fake-covid-reports-dr-sabrina-7-others-jkg-jailed-11-years-each-460850> (accessed on Jan 10, 2023).

²⁸ The daily Star (2022). "Embezzling Tk 2 crore: Regent Hospital Chairman Shahed gets permanent bail", Available at: <https://www.thedailystar.net/news/bangladesh/crime-justice/news/embezzling-tk-2-crore-regent-hospital-chairman-shahed-gets-permanent-bail-3081926> (accessed on Jan 10, 2023).

new trend has emerged in which individuals claiming to be Kabirajs or Tantrics assert themselves as healers for all ailments and challenges. They exploit patients' vulnerability with false assurances of swift recovery from various illnesses. Actually, all of these are not only unfair and unethical but also illegal.

Apart from this, some physicians add fake foreign degrees to their signboard to get the attention of the patient in their private chamber. Seeing foreign degrees, the patients take appointments with high consulting fees for better treatment. But they do not get the desired and expected service from these cheated doctors.

An incident regarding the unethical practices of fake doctors has been mentioned.

On June 24, 2020, Tushar Sheikh, a 14-year-old student in Class IX at Pirojpur Town High School, died due to suspected improper treatment. Following a road accident, Tushar's right leg was fractured, and he was taken to Pirojpur District Hospital by relatives on the same day. Despite receiving initial care, the on-duty doctor referred him to Khulna Medical College Hospital (KMCH). However, the ambulance driver, Kabir Hossain, deviated from the route to KMCH and took Tushar to a house in Pirojpur town. There, a group of fake doctors, led by Sachin Roy, a pharmacist from Pirojpur District Hospital, provided treatment. Tragically, Tushar passed away at the location. The following day, Shohag Sheikh, the deceased's father, filed a murder case with the police, naming five individuals and implicating two to three unnamed individuals. The principal suspect in the case is ambulance driver Kabir from Pirojpur District Hospital.²⁹

iii. Excess Billing for Service by Healthcare Provider

In the healthcare centers of Bangladesh, which are run privately across the country, the common tendency is to prepare excess bills after providing healthcare services, especially when a patient goes into an emergency condition. Most of the time, the healthcare provider admits the patient to the Intensive Care Unit (ICU) even though it is not necessary. Sometimes they ask for sudden emergency operations, and after the treatment they hand over a big ICU bill, operation theater bill, surgery cost, etc. Most of the time, it costs millions of takas. Some authorities of healthcare centers show a bill of a large amount for a more expensive service than the patient actually received. Sometimes they demand more money than the contractually prescribed cost, which amounts to fraud. It is undoubtedly an unfair and unethical medical practice. The patient and

²⁹ The Daily Star (2020). "Locals receiving 'wrong treatment' amid pandemic", available at: <https://www.thedailystar.net/country/news/locals-receiving-wrong-treatment-amid-pandemic-1926165> (accessed on September 18, 2022).

his or her family suffer a lot. It is one kind of medical malpractice.

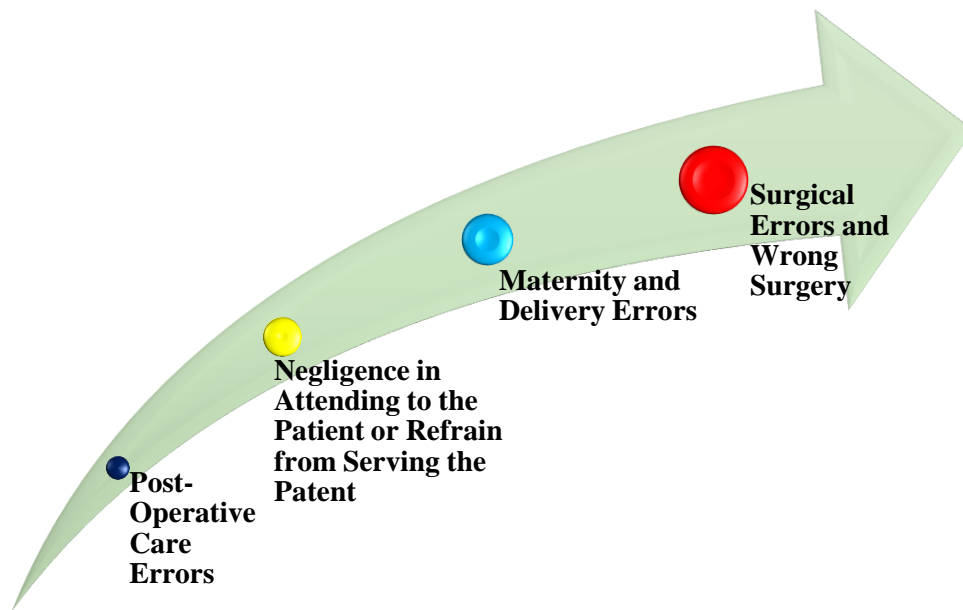


Figure-2: Most occurring incidents regarding medical negligence and malpractice

IV. EXISTING LAWS RELATING TO REMEDIES AGAINST MEDICAL NEGLIGENCE AND MALPRACTICE IN BANGLADESH

No specific and unique laws to fight against medical negligence and malpractice are available in the national legal framework in the Bangladesh. Some scattered provisions will be found on several Acts, statutes, ordinances and even in the constitution of Bangladesh to provide the aggrieved patients remedies against the medical negligence and malpractice committed by the medical practitioner or healthcare provider.

SL. N.	Title of the legislation	Enactment Year	Articles/Sections dealing with medical negligence or malpractice (Directly or indirectly)	Maximum Remedies for medical negligence or malpractice
1.	The Constitution of the People’s Republic of Bangladesh	1972	Articles 15(a), 18(1) & 32	Necessary legal initiatives will be taken by the state

2.	The Bangladesh Medical and Dental Council Act	2010	Sections 22(1), 22(2), 23, 28(3), 29(1), 29(2), 30(1) & 30(2)	Imprisonment for a maximum of 3 years or a fine of 1 lakh taka or both
3.	The Consumers' Right Protection Act	2009	Sections 2(22), 45, 52, 53 & 55	Imprisonment for maximum 3 years or with a fine maximum Taka 2 lacs or with both. But if the same offense is committed again, the offender shall be punished with twice the maximum punishment provided for that specific offense.
4.	The Medical Practice and Private Clinics and Laboratories (Regulation) (Amendment) Ordinance	1984	Sections 4, 7, 11(1), 11(3), 13(1) & 13(2)	Imprisonment for a maximum of 6 months, or a fine of maximum 5 thousand takas, or with both. The government may also, by order, debar a registered medical practitioner from carrying on private medical practice for such period as it may specify.
5.	The Penal Code	1860	Sections 269, 304(A), 312, 313, 314, 336, 337 & 338	Imprisonment for life, or with imprisonment for a maximum of 10 years, and shall also be liable to a fine.
6.	The Code of Criminal	1898	schedule II of the Code of Criminal	

	Procedure		Procedure	
7.	The Contract Act	1872	Section 73	The victim will be entitled to receive compensation for any loss or damage

Table-1: Summary of the existing laws dealing with medical negligence and malpractice

(A) The Constitution of the People’s Republic of Bangladesh

The Constitution of the People’s Republic of Bangladesh does not contain a specific article addressing remedies for medical negligence and malpractice. However, it indirectly addresses patients' right to health and medical care. This right can be considered a constitutional right under Article 32, as it is a subset of the broader right to life. The Constitution safeguards the right to life and personal liberty for all citizens, making it clear that failure to fulfill medical duties constitutes a significant violation of this constitutional protection.

Furthermore, Part-II of the Constitution outlines the Fundamental Principles of State Policy. Articles 15(a) and 18(1) emphasize the state's commitment to ensuring essential aspects of life, including medical care and the enhancement of public health. If this constitutional commitment is disregarded, the state is obligated to undertake appropriate legal measures.

(B) The Bangladesh Medical and Dental Council (BM&DC) Act, 2010

The Bangladesh Medical and Dental Council (BM&DC) Act of 2010 addresses remedies against medical negligence, malpractice, and unethical medical practices carried out by medical practitioners or physicians. This Act enables the filing of formal complaints related to medical negligence and malpractice at the Bangladesh Medical & Dental Council (BM&DC). Established under this Act, the BM&DC is a statutory body responsible for regulating and upholding high standards in medical education, doctor quality, and medical services. The BM&DC possesses the authority, as outlined in section 23 of the Act, to revoke the registration of a doctor if proven guilty. However, awareness about this organization is limited.

Section 22(1) of the Act prohibits the practice of allopathic medicine without registration, carrying a maximum punishment of 3 years of imprisonment, a fine of 1 lakh taka, or both, as specified in section 22(2).

Under section 30(1), medical and dental practitioners are prohibited from prescribing government-prohibited medicines. Violation of this provision, as outlined in section 30(2), results in a maximum punishment of 3 years of imprisonment, a fine of 1 lakh taka, or both.

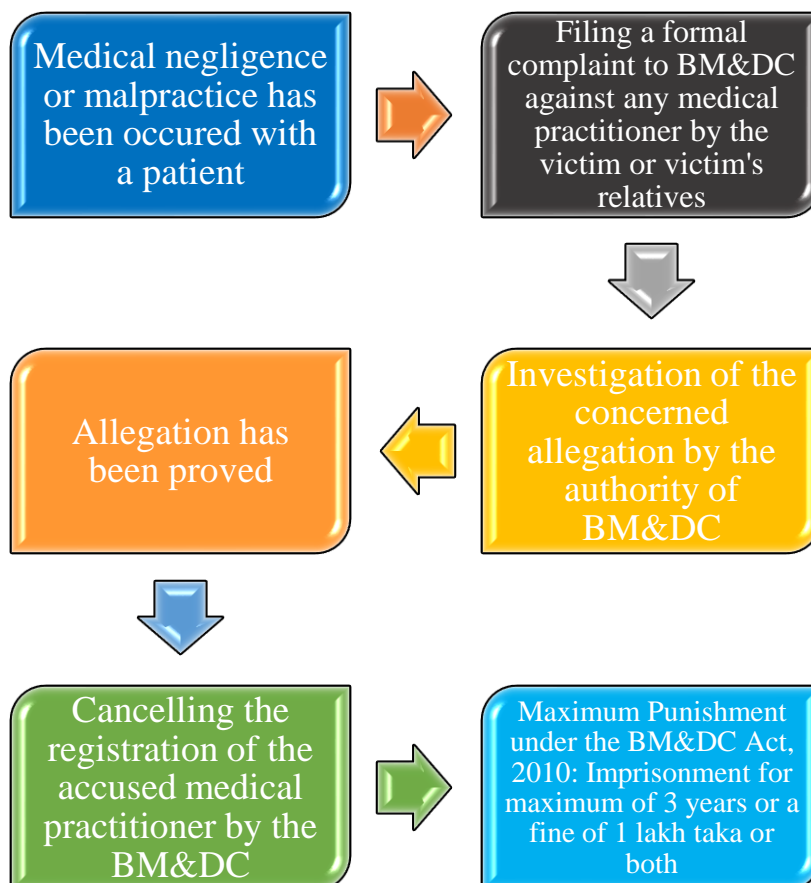


Figure-4: Process of filing complaints to BM&DC regarding medical negligence

Section 29(1) prevents individuals without a minimum MBBS or BDS degree from using the title "Doctor" before their name. Contravention, according to section 29(2), leads to a maximum penalty of 3 years' imprisonment, a fine of 1 lakh taka, or both, with additional penalties for repeat offenses.

Misrepresenting oneself as a medical or dental practitioner without registration, as per section 28(3), is an offense punishable by 3 years of imprisonment, a fine of 1 lakh taka, or both, even if no deception occurs.

(C) The Consumers' Right Protection Act, 2009

The Consumers' Rights Protection Act of 2009 serves as a boon for patients seeking recourse against medical negligence and seeking remedies. Section 2(22) of this Act provides a comprehensive definition of "service," encompassing health services exchanged for payment. Patients, being recipients of medical services from healthcare providers or centers, are regarded as ultimate consumers. If these entities fail to deliver the promised medical care in exchange for payment, the Act mandates penalties, including imprisonment for up to 1 year, a fine up to Taka 50 thousand, or both (under section 45).

According to section 52, medical practitioners or healthcare centers causing harm or endangering a patient's life or security can face imprisonment of up to 3 years, a fine of up to Taka 2 lacs, or both. Similarly, under section 53, practitioners or centers responsible for patient harm or fatality due to negligence can be imprisoned for a maximum of 3 years, fined up to Taka 2 lacs, or both.

Should a medical practitioner or healthcare center repeat an offense mentioned in the Act, section 55 stipulates that the subsequent punishment will be twice as severe as the original maximum penalty. To seek redress, aggrieved patients have the option to file complaints directly with the Directorate of National Consumer Rights Protection (DNCRP) against any medical service provider or healthcare center.

(D) The Medical Practice and Private Clinics and Laboratories (Regulation) (Amendment) Ordinance, 1984

The enactment of the Medical Practice and Private Clinics and Laboratories (Regulation) (Amendment) Ordinance of 1984 aims to oversee and regulate medical practice, along with the operations of private clinics and laboratories. This ordinance acts as a tool to combat unethical and unjust medical practices by medical practitioners, private healthcare facilities, and laboratories. Furthermore, it offers remedies for addressing cases of medical negligence and malpractice.

Under Section 4 of the Ordinance, registered medical practitioners serving the Republic are prohibited from engaging in private medical practice during their official hours. Section 7 mandates that registered medical practitioners conducting private practice, private clinics, and private laboratories must conspicuously display a list of charges and fees within their chambers, clinics, or laboratories.

Penalties are introduced for violations of the Ordinance's provisions. For a registered medical practitioner or private laboratory owner found guilty of an offense, a fine of up to 5 thousand takas can be imposed. The court, during conviction, is also authorized under section 13(1) to order the government's forfeiture of movable property within the laboratory.

In the case of a private clinic owner breaching the Ordinance's provisions, the penalty includes imprisonment for a maximum of six months, a fine up to 5 thousand takas, or both. Similarly, the court, upon conviction, can order the government's confiscation of movable property within the clinic under section 13(2).

Section 11(1) grants authority to the Director-General or designated officers to inspect the chambers of registered medical practitioners, as well as private clinics and laboratories. If any

contravention or non-compliance with the Ordinance is discovered during such inspections, the government, upon the Director-General's recommendation, can issue an order debarring a registered medical practitioner from private practice for a specified period. In the case of a laboratory, closure is possible under section 11(3) of the ordinance.

(E) The Penal Code, 1860

The scope of legal remedies for medical negligence in Bangladesh is relatively limited within the framework of the Penal Code, 1860, which serves as the primary criminal code of the country. However, certain provisions of the Penal Code are applicable to cases of medical negligence, endangerment of public health, fraudulent actions, and similar circumstances.

Section 304A of the Penal Code, 1860 pertains to prosecuting medical practitioners for negligence. It explicitly states that if a medical practitioner or healthcare provider causes the death of a patient due to a rash or negligent act, they can be penalized with imprisonment for up to five years, a fine, or both.

In the context of causing a miscarriage, the Penal Code has provisions under sections 312 and 313. If a medical practitioner or healthcare provider intentionally induces a miscarriage without the woman's consent, the penalty can be life imprisonment or a maximum of ten years' imprisonment along with a fine. If the miscarriage is not done in good faith to save the woman's life, imprisonment of up to three years, a fine, or both may be imposed.

Section 314 addresses cases where a medical practitioner or healthcare provider intentionally causes the death of a pregnant woman by acts intended to induce a miscarriage. The maximum penalty for this offense is ten years' imprisonment along with a fine.

Negligence endangering life or personal safety falls under section 336 of the Penal Code, with a maximum punishment of three months' imprisonment, a fine of up to 250 taka, or both. Similarly, causing hurt to a patient through negligent acts can lead to imprisonment for up to six months, a fine of up to 500 taka, or both under section 337. In cases where the hurt is severe, the punishment can extend to a maximum of two years' imprisonment, a fine of up to 5,000 taka, or both under section 338.

Section 269 of the Penal Code deals with the unlawful or negligent actions of medical practitioners, healthcare providers, or medical assistants that lead to the spread of dangerous diseases. The maximum punishment for this offense is imprisonment for up to six months, a fine, or both.

It's important to note that cases falling under the Penal Code are tried in criminal courts

according to the Code of Criminal Procedure, 1898.

(F) The Code of Criminal Procedure, 1898

The legal responsibilities of a medical practitioner or healthcare provider concerning cases of medical negligence and malpractice have previously been discussed within the framework of the Penal Code, 1860. In Bangladesh, the Code of Criminal Procedure, 1898 serves as the primary procedural law in criminal matters, outlining the trial procedures for offenses committed under the Penal Code. These trial procedures are explicitly outlined in Schedule II of the Code of Criminal Procedure, 1898.

According to Schedule II, offenses committed under sections 269, 336, 337, and 338 of the Penal Code, 1860 are triable by any judicial magistrate. Law enforcement has the authority to arrest the offender without requiring a warrant for these sections. Additionally, these offenses are categorized as bailable.

For offenses committed under section 313 of the Penal Code, 1860, Schedule II designates that they are triable by any session court. These offenses are non-bailable and non-compoundable, meaning that bail cannot be granted easily, and the possibility of reaching a compromise between the parties is restricted.

Similarly, offenses under section 304A of the Penal Code, 1860 are subject to trial in the Court of Session, as stated by Schedule II. Law enforcement is empowered to make an arrest without a warrant for such cases. These offenses are also non-bailable and non-compoundable.

In summary, the Code of Criminal Procedure, 1898 provides the procedural guidelines for the trial of medical negligence and malpractice offenses outlined in the Penal Code, 1860. The procedures are categorized based on the specific sections of the Penal Code, and the trial courts, as well as the bailability and compoundability status of the offenses, are clearly defined.

(G) The Contract Act, 1872

The service of treatment can be treated as a contract between a physician and a patient under the Contract Act of 1872. Payment of service in favor of the physician and desired treatment in favor of the patient will be the consideration of this contract.

So, if any negligence in providing healthcare is found on the part of the doctor, it may be treated as a breach of contract. Therefore, aggrieved patients will be entitled to claim one or more remedies against the physician or healthcare provider as per the Contract Act 1872.

In such a situation, the patient who has suffered harm can initiate a civil lawsuit against the healthcare provider to seek compensation.

In accordance with Section 73 of the Contract Act, 1872, if a contract is breached, the party who experiences the breach is eligible to receive compensation for any loss or harm incurred from the party responsible for violating the contract.

V. LOOPHOLES OF THE EXISTING LEGAL SYSTEM OF BANGLADESH DEALING WITH MEDICAL NEGLIGENCE AND MALPRACTICE

1. Bangladesh lacks a specific, comprehensive law to effectively address medical negligence and malpractice. Consequently, both aggrieved patients and even lawyers often encounter confusion when selecting the appropriate legal framework to file a case against medical practitioners or healthcare providers who are accused of wrongdoing.
2. Besides, there is no special health tribunal or court in Bangladesh where the aggrieved patients can easily file a medical negligence or malpractice suit.
3. In Bangladesh, most of the aggrieved patients who are poor do not file a suit of medical negligence or malpractice, because several court fees and expenses are to be paid to run the case of medical negligence or malpractice.
4. Some lawyers and judges in our country may not be adequately trained to address cases of medical negligence due to the specialized nature of such cases that require additional expertise.
5. In a medical negligence or malpractice suit, the aggrieved patient bears the burden of proof. If he fails to produce material evidence to prove medical negligence or malpractice in court, then no legal remedy will be available. Most of the time, the complainant faces obstacles in proving the negligence because the concerned medical institutes deny providing necessary documents and papers to the patients relating to the accused physician.
6. A significant number of individuals residing in rural areas lack awareness regarding their entitlement to health and medical care rights. Additionally, they are often unaware of the possibility of seeking legal redress in cases of medical negligence or malpractice.
7. According to the Consumers' Right Protection Act, 2009, the Director General holds the authority to inspect and identify shortcomings solely in private health care services, excluding government healthcare services. Moreover, the Director General lacks the mandate to take proactive measures upon uncovering flaws within private health care services. Instead, only the health secretary and the director general of health services will be informed in such instances.

8. Under the Medical Practice and Private Clinics and Laboratories (Regulation) (Amendment) Ordinance, 1984, without a written complaint of the Director-General or his authorized officer, no court shall take cognizance of an offense. No aggrieved patient can directly make a complaint against any physician or healthcare provider.
9. Schedule 'A' of the Medical Practice and Private Clinics and Laboratories (Regulation) (Amendment) Ordinance, 1984, provides a compilation of the highest charges and fees that private clinics or laboratories can levy for various medical procedures such as surgical operations, labor procedures, electrocardiograms, pathological or radiological tests, and other medical services. However, due to the ordinance's age of 39 years, these charges and fees have not been revised, rendering them outdated and inadequate in reflecting current medical service costs.
10. The Medical Practice and Private Clinics and Laboratories (Regulation) (Amendment) Ordinance, 1984, being outdated, stipulates relatively light penalties for breaching its provisions by registered medical practitioners or private laboratory owners. The highest penalty set within this ordinance is 5 thousand takas, a notably trivial and impractical amount.
11. The penalty, especially the fine prescribed in the Penal Code, 1860 for the offenses regarding negligent acts of the healthcare provider under sections 269, 304A, 312, 313, 314, 336, 337 and 338 is more insufficient, inappropriate and nominal than the loss or injury of the aggrieved patient.
12. The medical facilities and standards of government healthcare centers are narrower than private healthcare centers in Bangladesh. So, the patients need to go for better medical treatment in private healthcare centers, and they become victims of medical negligence and malpractice.

VI. SUGGESTIONS TO PREVENT MEDICAL NEGLIGENCE AND MALPRACTICE EFFECTIVELY

It is quite impossible to reform the current situation in our health sector overnight. Some suggestions have been made here to prevent medical negligence fruitfully and to provide a legal remedy to the aggrieved patients:

1. A specific and comprehensive statutory law regarding medical negligence and malpractice should be enacted as soon as possible. The provisions of filing suit, trial, and investigation

procedure must be included in that Act for medical negligence and malpractice. The procedural complications and complexity must be removed.

2. To provide a speedy and effective remedy to the aggrieved patient, the establishment of a special health tribunal or court is a must to dispose of cases of medical negligence. The judges of that tribunal or court need to be well trained, especially with knowledge of medical science.
3. The government should revise the Medical Practice and Private Clinics and Laboratories (Regulation) (Amendment) Ordinance, 1984, along with its schedule. The government under this ordinance should from time to time fix the rate of surgical operations, conduction of labor, electrocardiograms, pathological or radiological examinations, and other medical examinations or services in a private clinic or private laboratory. Besides, the penalty should be increased for the violation of any provision of this ordinance against the registered medical practitioner or owner of a private laboratory so that they abstain from doing these negligent acts. It is also necessary to open a door to make a complaint against any physician or healthcare provider under this ordinance.
4. At least some sections, i.e., 269, 304A, 312, 313, 314, 336, 337, and 338 of the Penal Code, 1860, should be amended with reasonable higher penalties.
5. The government should create public awareness through media campaigns and awareness programs so that the common people, including patients, may easily know about their rights, i.e., the right to healthcare, the right to get redress against medical negligence or malpractice, the right to get all documents relating to treatment etc.
6. Some training programs should be provided to the nurses and ward boys of the healthcare centers, especially regarding the rights of the patients, the liabilities of every healthcare provider, as well as the punishments for negligence etc.
7. Higher court fees should be minimized so that poor litigants can easily institute a suit for medical negligence.
8. The government should ensure the enforcement of the Right to Information Act, 2009 in regard to medical issues, so that the aggrieved patient or their relatives may get easy access to get the necessary documents and papers relating to medical negligence suit from the concerned medical institutions.
9. Along with the private health care services, the Director General should be empowered to inspect and discover defects in the government healthcare services also. Besides, the

Director General should be given authority to undertake precautionary measures on the defects discovered in private and government health care services under the Consumers' Right Protection Act, 2009.

10. The medical facilities and standards of government healthcare centers in Bangladesh must be improved immediately. The government should also arrange sufficient appropriate medical equipment and sufficient wards and beds for the patients.
11. A license should be given only to those private healthcare centers and laboratories that have proper healthcare facilities, appropriate medical equipment, a hygienic environment, sufficient seating arrangements for patients' visitors, and above all, a legal authority.
12. An additional subsection needs to be incorporated within section 2 of the Consumers' Right Protection Act, 2009. The phrase "Medical Service" should be expressly addressed here with a comprehensive definition and other including matters thereto in the said subsection, to avoid the conflict of filing suit relating to medical negligence under this Act.

VII. CONCLUSION

From the above discussion, it is clear that an attempt has been made to address the contemporary heinous practice of medical negligence in the healthcare centers of Bangladesh. Besides exploring the existing legal mechanisms relating to medical negligence or malpractice, the author made efforts to identify the major loopholes and drawbacks of such legal provisions. However, it has been clearly established that the existing legislation regarding medical negligence is not competent and adequate to respond to this problematic issue. In connection to that, this article has been concluded with some effective suggestions that should be effectively considered by the government and concerned authorities to ensure the patient's safety against the practice of medical negligence or malpractice in the healthcare centers of Bangladesh.
