A Specific Healthcare Legislation to Ensure the Right to Healthcare in Bangladesh

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Abstract

Access to healthcare is a fundamental human right of any human being. The citizens of a country are entitled to get access to the healthcare service of their country at times of their need. It is the supreme duty of any state to secure this right to its citizens without any sort of discrimination. These lofty expressions lose their grace when it comes to the healthcare service of our country. It is rather a harrowing tale of sufferings, harassment, and irreverence. Every patient in a civilized society is entitled to wholesome and empathetic treatment. In our country, patients are stricken with denial of quality health care, unequal provisions, maltreatment, negligence, corruption, etc. Lack of good governance, accountability and a decent approach towards the patients make our healthcare system miserable. Each year a considerable number of patients resort to the healthcare service of neighboring countries despite higher costs. The existing situation forces us to think of a particular legislative instrument that would properly address our right to healthcare and define the responsibilities of those engaged in providing health care service. The ultimate aim of such legislation would be to positively recognize our right to healthcare and provide adequate remedies if such is violated.

1. Introduction

Access to healthcare is established as a right through various international instruments. The right has been ensured in The Universal Declaration of Human Rights[1] International Covenant on Economic, Social and Cultural Rights (ICESCR) [2] The Constitution of World Health Organisation[3] Alma Ata Declaration of 1978, Declaration of Health Rights 1992[4] UN General Comment 14[5] etc.

[1] Universal Declaration of Human Rights (adopted on 10 December 1948, UNGA Res 217A(III) (UDHR), Art. 25
[2] International Covenant on Economic Social and Cultural Rights (adopted on 16 December 1966, entered into force on 23 March, 1976) 999 UNTS 171 (ICCPR), Article, 12
[3] Constitution of The World Health Organisation (adopted on 19 June to 22 July, 1946 International Health Conference), Preamble
[4] Johns Hopkins University: The declaration of health rights was created in 1992 on the occasion of the 75th anniversary of the founding of the School of Hygiene and Public Health, Johns Hopkins University. USA.
[5] United Nations: General comment 14, E/C 12/2000/4

According to The International Covenant on Economic, Social, and Cultural Rights, everyone has the right to have the highest attainable physical and mental health standards.[6] It obliges the state parties to take the necessary steps to achieve the full realization of this right.[7] The Alma-Ata Declaration strongly reaffirms health as a fundamental human right.[8] This declaration also indicates the responsibility of the government for the health of its people.[9] It also states that national policies, strategies, and action plans should be adopted to launch and sustain primary health care that will be part of a comprehensive national health system.[10] The Constitution of the World Health Organisation emphasizes adequate health and social measures for the protection of the health of the people.[11]

Undeniably, every country is under an obligation to provide easily accessible and efficient healthcare to its people. But Bangladesh is lagging far behind to meet this objective. The research paper highlights how Bangladesh is failing to render healthcare rights to its citizen. As there is no specific legislation on healthcare right in Bangladesh, healthcare-related issues remain unchecked. This research paper is dedicated to assessing the significance of a specific healthcare legislation to secure the citizen's right to healthcare.

2. Health-care and Access to Healthcare

According to Merriam-Webster Dictionary, health care means efforts made to maintain or restore one's physical, mental, or emotional well-being by specially trained and licensed professionals.[12] The concept of health-care is very wide and connected with all the spheres of people and organization which deal with medical care. As no people are hundred percent immune, they need health-care services for a living. Access to healthcare is a concept that means to have healthcare service mandatorily and indiscriminately in times of need. The notion of 'Access' is connected to the aspects of availability, supply, and utilization of healthcare services.[13] Besides this, the Office of Disease Prevention and Health Promotion research shows that access to health care is embodied with three components. These are getting entry into the healthcare system by insurance coverage, having a usual source of care, and finding a healthcare provider who will render his services to the patient.[14]

3. Recognition of Access to Healthcare in Bangladesh

The preamble of the Constitution of the People's Republic of Bangladesh makes it a fundamental aim of the state to secure fundamental human rights and freedom and social justice for all its

[6] International Covenant on Economic, Social and Cultural Rights (adopted on 16 December, 1966, entered into force on 23 March, 1976) 999 UNTS 171 (ICESCR), Article, 12
[7] *ibid*
[8] Declaration of Alma-Ata (adopted on 6 to 12 September, 1978 International Conference on Primary Healthcare, Alma-Ata, USSR) Declaration 1
[9] *ibid*, Declaration 5
[10] *ibid*, Declaration 8
[11] *Supra Note*, 3
[12] Available at: https://www.merriam-webster.com/dictionary/health%20care, last accessed on 15.04.2021
[13] Martin Gulliford, Jose Figueroa-Munoz, Myfanwy Morgan, "*What does 'access to healthcare' mean*", (2002), 7(3), Journal of Health Services Research & Policy; available at: https://doi.org/10.1258%2F135581902760082517, last accessed on 16.04.2021.
[14] Access to Health Services, Healthy People 2030 co-ordinated by the Department of Health and Human Services-USA; available at: https://www.healthypeople.gov/2020/topics-objectives/topic/Access-to-Health-Services#1 last accessed on 16.04.2021

citizens. Getting Access to healthcare and fairness thereto have been significant aspects within the social justice framework.

Provisions relating to the right to health care have got their place in Part II of the Constitution of Bangladesh as fundamental principles of state policy. As per article 15 of the Constitution of Bangladesh, the right to medical care has been stated as a basic necessity and food, clothing, shelter, education, etc., and securing provisions for such is regarded as a fundamental responsibility of the state.[15] Article 16 of the constitution specifically mentions the improvement of public health in rural areas.[16] As per article 18 of the constitution, the improvement of public health is one of the state's primary duties.[17] As per article 8 of the Constitution, these directive principles are not judicially enforceable, but they shall be fundamental to the governance of Bangladesh. They shall form the basis of the work of the State and its citizens.[18]

4. Judicial Activism Regarding Access to Healthcare

As stated earlier, access to healthcare is a non-justiciable human right within the purview directive principles of state policy. But, the Judiciary of India and Bangladesh have taken progressive footsteps while amplifying the status of fundamental principles of state policy. In the remarkable case of *Kesavananda Varti* v. *the State of Kerala*,[19] the Supreme Court of India emphasized the significance of fundamental principles of state policy alongside fundamental rights. The court was of the opinion that the fundamental rights and fundamental principles supplement each other. Similarly, in the case of *Anwar Hossain v. Bangladesh* [20] the Supreme Court of Bangladesh stated that though the fundamental principles are not enforceable by any court, it should be the endeavor of the government to materialize these principles and not to whittle them down.

The judiciary tried to bring the right to health and medical care within the ambit of the right to life, guaranteed as a fundamental right in the Constitution. In several cases, the right to life got extended meaning. Such as the remarkable case of *Dr. Mohiuddin Farooque* v. *Bangladesh* [21] A.B.M Khairul Haque observed that the right to life as guaranteed in article 32 of the Constitution of Bangladesh includes everything necessary to make one's life meaningful. Besides this, he also observed that a life worth living and maintaining health is of utmost importance. He further observed that the right to life does not mean an elementary or subhuman life and thus included the right to a decent and healthy way of life.

In Adv Julhas Uddin Ahmed & Manzil Morshed v. Bangladesh, it was held that right to life in article 32 and states responsibility to promote public health in article 18 could not be taken as mere empty words. The Government can neither ignore a fundamental right nor a fundamental policy. Rather these should be taken as Constitutional directions. In *Chairman, NBR* v. *Adv Zulhas Uddin Ahmed* [22] right to healthcare came under Article 32. While upholding the High

[15] The Constitution of the People's Republic of Bangladesh, Article, 15
[16] *ibid*, Article, 16
[17] *ibid*, Article, 18
[18] *ibid*, Article, 8
[19] AIR 1973 SC 1461
[20] 1989 BLD (Spl)
[21] 55 DLR (2003) 69
[22] 15 MLR (AD) 457

Court observations, Justice Mohammad Fazlul Karim conveyed –" A citizen must be allowed to maintain a smooth healthcare and peaceful life, and to that effect, all the amenities including health and medical services must be made available."

Pertinent to mention here is *Paschim Banga Khet Mazdoor Samity and others* v. *State of West Bengal and another* [23] where the Supreme Court of India recognized access to medical care as a right to life and affirmed the state's obligation to provide emergency medical services to the citizens. In this case, SC Agarwal J held – "The Government hospitals run by the State and medical officers employed therein are duty-bound to extend medical assistance for the preservation of human life. Failure on the part of the government to provide timely medical treatment to a person in need of such treatment results in violation of the right to life".

From the abovementioned discussion, it is evident that the right to healthcare can be positively affirmed. Getting access to healthcare is crucial to every citizen of the People's Republic of Bangladesh. Denial of this right vitiates the very spirit of the Constitution of Bangladesh. It also results in debasing the right to life.

5. How Right to Health-care is Being Denied In Bangladesh

There are certain factors in existence that impede citizens' right to healthcare. The research paper highlights the following causes that work as major impediments towards efficient healthcare service.

5.1. Deficient Number of the Healthcare Professionals

Bangladesh is far behind in providing quality health care to its people as the healthcare system is wrecked and not impoverished. According to a report by WHO, the doctor-patient ratio in our country is only 5.26 to 10,000 people, and the nurse-patient ratio is 3.06 to 10,000 people.[24] This ratio is very far from the ideal doctor-patient and nurse-patient ratio. Besides this, the country lacks in the number of doctors in special fields. Such as, Bangladesh has only 25 Oncologists where the number of patients seeking the services is too high.[25] For the scarcity of the number of doctors and nurses, people do not get timely treatment. Everyone has to line up for a long time to see the doctors, and doctors also can not manage to attend to everyone equally due to the pressure of patients. A report shows that one person has to spend an average of 1.5hours on seeing a doctor in Dhaka Medical College and other public hospitals outdoors.[26]

[23] 1996 SC C (4) 37

[24] Ahmed Alam, "*Patient, Doctors, Nurses Ratio: Bangladesh Lags far behind its Neighbours*", Dhaka Tribune, July 21, 2019; available at: https://www.dhakatribune.com/health/2019/07/21/patient-doctors-nurses-ratio-bangladesh-lags-far-behind-its-neighbours last accessed on 16.04.2021

[25] Md Shahnawaz Khan Chandan, "*Cancer care in Bangladesh: A tale of scarcity and negligence*", The Daily Star, February 4, 2021; available at: https://www.thedailystar.net/supplements/world-cancer-day-2021/news/cancer-care-bangladesh-tale-scarcity-and-negligence-2038889 last accessed on 17.04.2021

[26] Mohammad Ali & others, "*Problem evaluation of service recipient and service provider at out patient departments of a tertiary level hospital*", (2015), 9(2), Journal of Armed Forces Medical College, Bangladesh, p.26-31; available at: https://doi.org/10.3329/jafmc.v9i2.21822, last accessed on 24.04.2021.

Moreover, sometimes there are no doctors in specified areas due to post-vacancy. In Bangladesh, 34% of total posts are vacant in the health sector due to a scarcity of funds.[27] Besides this, the procedure of appointing doctors by the Government is very lengthy. During Covid-19, the country appointed 5,500 doctors immediately.[28] So, it is evident that if Government becomes more attentive to this sector, there will be more healthcare professionals. That will be helpful to provide access to healthcare.

5.2. Scarcity of Equipment to Diagnose Diseases

To get proper treatment, one must know about his actual health condition by diagnosing the diseases. With the blessing of science, there are many types of equipment and impoverished machinery to diagnose diseases correctly. But, in Bangladesh, the healthcare sector lags because of the scarcity of proper machinery and human resources to operate those. In many health sectors, there is no basic equipment that the professionals mandatorily need. Bangladesh Health Facility Survey reported in 2017 that only 28% of health facilities have all six basic equipment items like thermometers, stethoscopes, blood pressure gauges, weighing scales for infants and adults, and torchlights.[29] The Survey report also showed that four out of every five Upazila health complexes do not have functioning X-ray machines. Even if some health complexes have it, there are no skilled persons to operate those machines.[30]

Moreover, the most important thing to help the people to reach out of the heath-care services is to have Ambulance on time. Many hospitals can not provide enough ambulance services. Those who provide almost 65 percent of the ambulance are non-functional at any point in time because of a lack of maintenance or fuel money.[31] These basic types of equipment are not very costly. Due to the indifference of the hospital authorities, the pieces of equipment are not well-managed. Most hospitals and diagnosing centers fall short in the specialized pieces of machinery needed to diagnose acute and sophisticated diseases along with these basic services. In terms of diagnosing cancer patients, Bangladesh has only 37 radiotherapy machines where there should be 250 radiotherapy machines proportionate to the country's cancer patients.[32] Besides these, no private hospital and very few private clinics have a biosafety cabinet for Chemotherapy which is a treatment process for cancer patients.[33] There are also shorts of beds for the patients in the hospitals. People do not have any other option to go to other countries to have treatment or die in their homes suffering from the diseases badly.

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[27] Shah Mohammad Fahim & others, "*Financing health care in Bangladesh: Policy responses and challenges towards achieving universal health coverage*", 34(1), Int J Health Plann Manage; available at: < https://doi.org/10.1002/hpm.2666>, last accessed on 25.04.2021

[28] "*Govt. To appoint 5,500 doctors: Health Minister*", The Daily Star, 25 November, 2019; available at: https://www.thedailystar.net/health/govt-appoint-5500-doctors-different-public-hospitals-in-bangladesh-1831810 last accessed on 25.04.2021.

[29] Mohammad Al-Masum Molla, "*Govt Hospital: Most lacking even basic equipment*", The Daily Star, June 30,2019; available at: https://www.thedailystar.net/frontpage/news/govt-hospital-most-lacking-even-basic-equipment-1764328 last accessed on 18.04.2021

[30] *ibid*

[31] Anwar Islam, Tuhin Biswas, "*Health System in Bangladesh: Challenges and Opportunities*", 2019, 2(6):366, American Journal of Health Research; available at: http://dx.doi.org/10.11648/j.ajhr.20140206.18, last accessed on 26.04.2021.

[32] *Supra Note*, 26

[33] *ibid*

5.3. Denial of Right to Healthcare During Emergency: Covid-19 situation

By the time of April 17, 2021, the Covid-19 virus took 10,304 lives in Bangladesh.[34] Everyday the number is increasing. The Covid-19 situation put a light on the worn-out healthcare system of Bangladesh. People are constantly deprived of the right to medical care and health in the present situation. There are some incidents where patients died due to denial of treatment. Patients with kidney and heart diseases suffered badly in some renowned hospitals of the country.[35] There are inadequate resources to fight against the virus, but corruption in different spheres is also visible vividly. When Covid-19 was haunting the other countries, Bangladesh took a weak preparation to fight the virus with insufficient resources like masks, test kits, Personal Protective Equipment (PPE), oxygen, proper isolation centers, etc. The Government failed to ensure the safety of the people and the healthcare professionals who were on the frontline.

Consequently, many professionals refused to treat patients as they were not given protection kits. Bangladesh ranked top as the number of deaths of healthcare professionals was the highest among other countries.[36] As public hospitals do not have enough hospital beds, intensive care units, ventilators, and other required resources, people need to go to private hospitals for treatment. According to a survey of Transparency International Bangladesh, 77.3 percent of people receive healthcare services from private clinics at the time of the first lockdown.[37] The more the private clinics and medical centers got patients, the more they demanded money for treatment. People suffered not only physically but also mentally by this uprising demand. Many people did not even get a hospital bed to get admitted because of either shortage of bed or the reason they could not meet the authorities' demand. The sufferings of the patients know no bounds when they need to go to several hospital centers just to get admitted. Even the people who do not have any symptoms of the virus are denied receiving any treatment as they could not show the covid-19 test reports.[38] There are many such instances where people are dying even without being admitted to any hospital.[39]

5.4. Malpractice and Corruption

A densely populated country where almost 20.5 percent of people live under the poverty line[40] with inadequate access to healthcare service, they have to war against malpractices and bribing. There were many cases where the family of patients claimed that they had to suffer loss for the negligence of the health professionals. Many cases, such as leaving surgical instruments on the

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[34] Covid Situation in Bangladesh; available at: https://covid19.who.int/region/searo/country/bd

[35] Wasi Ahmed, "*Treatment denied at hospital*", The Financial Express 19May, 2020; available at: https://thefinancialexpress.com.bd/views/opinions/treatment-denied-at-hospitals-1589902122, last accessed on 19.04.2021

[36] Abdur Rahman Jahangir, "*Coronavirus: doctors' mortality rate in Bangladesh 'highest in the world'*", United News of Bangladesh (UNB), 21 June, 2020; available at: https://unb.com.bd/category/Special/coronavirus-doctors-mortality-rate-in-bangladesh-highest-in-the-world/53378, last accessed on 21.04.2021

[37] Julqarnine M., Akter M., Akter T. and Khoda M., "*The Challanges of Good Governance to Combat COVID-19*"; available at: <https://www.ti-bangladesh.org/beta3/images/2020/report/covid-19/Covid-Resp-Track-Full-BN-15062020.pdf.> p. 21, last accessed on 19.04.2021

[38] *Supra Note*, 36

[39] *ibid*

[40] Manzoor Ahmed, "*Poverty and Exclusion*", The Daily Star, 18 February, 2020; available at: <https://www.thedailystar.net/supplements/29th-anniversary-supplements/digitisation-and-inclusivity-taking-everyone-along/news/poverty-and-exclusion-1869652> last accessed on 21.04.2021

patients' body while doing surgery, incautious stitches, etc., were reported frequently.[41] The most important matter is that victims do not get redressed most of the time and have any remedy. There is no specified legislation on medical negligence and its remedy. Besides the events of malpractices, taking speed money from the patients' families is a common incident in most medical centers. In the time of pandemic also, people got greedy rather scared and took utmost advantage of the situation and suffering of the people. There was a shocking report on false and imaginary Covid test certificates from some private clinics.[42] This type of malpractice is not an uncommon phenomenon in Bangladesh, where corruption dominates all sectors, including health care.

According to Corruption in Service Sectors, National Household Survey 2012, which Transparency International Bangladesh conducted, 40.2 percent of people (among whom was surveyed) fall victim to various irregularities and corruption in receiving services in public hospitals.[43] As many people of the country have to take treatment from public hospitals, for this kind of corruption and irregularities, the right to have quality health care is being violated frequently. Some patients whom IRIN interviewed said that they were denied healthcare service without a bribe.[44] Though most of the time, the health professionals were not liable directly for the corruption, the irregularities and management of hospital authorities were acting as the catalyst on taking speed money from patients. There is no proper check upon the staff, and they take advantage of the helpless people. In some cases, the ward boys take advantage of emergencies and demand bribes.[45]

The abovementioned discussion clearly shows that there have been countless incidents where citizens' right to healthcare got undermined in Bangladesh. Appropriate to say that without any specific legislative framework emphasizing the right to healthcare and enforcement mechanism of such right, people of Bangladesh remain at the mercy of these factors; thus, it results in the denial of healthcare service.

6. How Existing Legislative Framework Falls Short in Protecting Patients' Right to Health-care

While discussing healthcare-related legislation, the Pharmacy Ordinance 1976, Bangladesh Nursing Council Ordinance 1983, Drugs Act 1940, Drugs (Control) Ordinance 1982, Safe Blood Transfusion Act 2002, Eye Surgery (Restriction) Ordinance 1960, Bangladesh Unani and Ayurvedic Practitioners Ordinance 1983, Bangladesh Homeopathic Practitioners' Ordinance 1983, Bangladesh Standards and Testing Institution Act 2018, Vaccination Act, 1880 can be

[41] "*Doctors Leave Surgical Gauze inside Wwoman's Stomach after C-section*", bdnews24.com, 13 Spetember, 2019; available at: <https://bdnews24.com/bangladesh/2019/09/13/doctors-leave-bandages-inside-woman-s-abdomen> last accessed on 21.04.2021

[42] "*Fake Covid-19 certificates: DGHS directs Regent Group to Shut down Its Hospital Branches in Mirpur, Uttara*", The Daily Star, 7 July, 2020; available at https://www.thedailystar.net/coronavirus-deadly-new-threat/news/fake-covid-19-certificate-regent-group-head-office-two-hospitals-sealed-1926529, last accessed on 21.04.2021.

[43] "*Bangladeshi Health Sector Corruption Hits Poor Hardest*", reliefweb, The New Humanitarian, 12 February, 2013; available at: <https://reliefweb.int/report/bangladesh/bangladeshi-health-sector-corruption-hits-poor-hardest> last accessed on 21.04.2021

[44] *ibid*

[45] *ibid*

mentioned. Most of these legislations are regulatory.[46] They have very little to do with detailing patients' rights and responsibilities of the healthcare providers in a holistic manner.

The Bangladesh Medical and Dental Council Act, 2010[47] is a significant Act regulating the profession of medical practitioners and medical assistants. But the Act does not have explicit provisions touching patients' rights and safeties in the healthcare service. Under this Act, the Bangladesh Medical and Dental Council is responsible for the registration, monitoring, and well-regulation of medical and dental practice.[48] Under section 23 of this Act, the BMDC can cancel the registration of any registered physician or dentist, or medical assistant if found guilty of violating any norm of professional conduct or any provision of the said Act.[49] But the Act fails to address the medical negligence issue properly. It also does not empower BMDC to offer any compensatory relief to the aggrieved patients. The Code of Medical Ethics[50] adopted by BMDC provides guidelines of professional conduct to be followed by registered physicians and dentists. However, this code is not exhaustive to deal with different aspects of the doctor-patient relationship in medical and dental practice. The code mentions disregarding professional responsibility towards patients and emphasizes the gross negligence issue.[51] But it remains silent upon setting any standard for the degree of care that the medical and dental practitioners owe to their patients.

The Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982[52] regulates private medical practitioners and clinics. The act mentions requirements that the private clinics need to fulfill to obtain a license and carry on their business,[53] the fees charged to patients,[54] the minimum hygiene standards to be maintained by private medical practitioners, etc.[55] It empowers the Director-General of health to monitor the activities of private clinics and laboratories.[56] Thus, the Director-General is made responsible for checking malpractice in the industry. But this act fails to set any mechanism to ensure accountability on the part of the Director-General. Also, the act does not offer the patients any scope to complain about malpractices and misconducts.

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46 Sheikh Mohammad Towhidul Karim and Shawkat Alam, "*The Health Care System in Bangladesh: An Insight into Health Policy, Law and Governance*", Vol. 20, No. 2; Australian Journal of Asian Law, 2020, p. 375; available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3553045 last accessed on 22.04.2021

47 Bangladesh Medical and Dental Council Act, 2010 (ACT NO 61 of 2010)

48 *ibid*, section 5

49 *ibid*, section 23

50 This Code has been adopted by the BMDC in its meeting held on 24.03.1983 under the provisions of the Medical and Dental Council Act, 1980 which, now has been replaced with the Medical and Dental Council Act, 2010. Nevertheless, the Code remains in force as per savings clause (Section 38(3)(a)) of the Act of 2010, since no change, modification or replacement has been made so far under the new Act of 2010.

51 *ibid*, section 5(a)

52 The Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982, (adopted on 27th May, 1982 Ordinance NO. IV of 1982)

53 *ibid*, section 9

54 *ibid*, section 3

55 *ibid*, section 5

56 *ibid*, section 11

While discussing criminal sanctions against medical negligence and medical malpractice, a certain Penal Code, 1860,[57] comes to play. However, the code does not specifically deal with medical malpractice and medical negligence of medical practitioners. Still, sections - 269-276, 304 A, 312-316, 336-338, 415, 416, 418, etc. can be mentioned addressing such malpractice and negligence. But the major hurdle is to prove the requisite men's rea in these cases. Also, under sections 88, 91, and 92 of the Penal Code, 1860, immunities may be granted to the alleged practitioner for acts done in good faith. Apart from these, we cannot ignore the practical difficulties while initiating criminal action against any practitioner. The claimant may not afford the required legal expenses to bring such criminal action against any practitioner. Legal practitioners lack technical knowledge while dealing with such issues.[58] The police do not have the expertise and available resources while investigating the cases.[59] Our judicial system is cumbersome, and it does not favor initiating such proceedings against medical practice and negligence issues.[60]

A civil suit for compensation in medical negligence and medical malpractice may be initiated under the Code of Civil Procedure, 1908.[61] Unfortunately, such is not an appreciated practice in this arena. The litigants get discouraged due to the ad-valorem court fees, litigation expenses, lengthy court proceedings, etc.[62] The lawyers and judges also lack sufficient knowledge regarding such issues.[63]

Any sufferer may claim a remedy under the Consumer Rights Protection Act, 2009.[64] A civil action for compensation is maintainable under this Act.[65] Also, sections 52 and 53 can be invoked to initiate criminal proceedings against healthcare service providers for doing any act detrimental to health and for negligent, irresponsible, and careless behaviors, etc. The people in general of Bangladesh are not well conversant with applying this law in healthcare-related issues. Barely we find examples of resorting to this act to get remedy against violation of the right to healthcare.

The existing legislative instruments lack provisions detailing citizens' rights and facilities in the healthcare system. The provisions fail to impose strict accountability on the part of the healthcare service providers. They also fail to check the denial of healthcare service, medical malpractice, medical negligence, and corruption properly. In the absence of the provisions for a separate healthcare forum, the aggrieved patients do not get their expected remedy.

7. In Search of a Specific Healthcare Legislation

[57] The Penal Code, 1860
58 "*Report : A Study on Medical Negligence and Fraudulent Practice in Private Clinics: Legal Status and Bangladesh Perspective*", March-April 2013, p. 42; available at: www.askbd.org/ask/wp-content/uploads/2014/02/Report-Medical-Neglignce.pdf last accessed on 28.04.2021
[59] *ibid*
[60] *ibid*
[61] The Code of Civil Procedure, 1908, Section 9
[62] *Supra Note* 60, p.43
[63] *ibid*
[64] The Consumer's Right Protection Act, 2009
[65] *ibid*, section 66

Specific and comprehensive healthcare legislation is important for formalizing the government's commitment to providing healthcare service to its people. The significance of this concept can be well derived from various international instruments, country practices, and national health policy.

The United Nations Committee on Economic, Social and Cultural Rights, Economic and Social Council presses upon adopting laws and regulations that would ensure affordable and accessible health services of acceptable standards to the people.[66] Moreover, under International Covenant on Economic, Social, and Cultural Rights, a state party creates conditions that would assure all medical service and medical attention in sickness.[67] The Human Rights approach towards patient care mandates policy and legislation ensuring the protection of legal and human rights of the patients as well as healthcare providers.[68] Also, The OHCHCR, while recognizing the right to health, emphasized legislative measures which would clearly define the rights and remedies of aggrieved patients.[69]

In 2011 the Government adopted the National Health Policy 2011[70] to establish health care as a right in all layers of society. The policy aimed for ensuring accessibility of primary and emergency health care for all, providing quality healthcare based on equity, increasing community demand for health care based on rights and dignity.[71] The policy recognizes the importance of specific laws to put accountability on those engaged in providing health care services.[72]

The United Kingdom adopted the Patient's Charter in 1991[73] which sets out patient's rights in their National Health Service. The Us Congress adopted the Emergency Medical Treatment and Active Labor Act in 1986, which works as one of the most comprehensive laws for guaranteeing non-discriminatory access to emergency medical care.[74] Through the interpretations suggested by the Centres for Medicare and Medicaid Services and various court decisions, this act now

[66] United Nations: United Nations Committee on Economic, Social and Cultural Rights, Economic and Social Council. General Comment No. 3. The Nature of States Parties' Obligations. E/1991/23. 1990.
United Nations: United Nations Committee on Economic, Social and Cultural Rights, Economic and Social Council. An evaluation of the Obligation to Take Steps to the Maximum available of resources under an Optional Protocol to the Covenant. E/C.12/2007/1. 2007.
[67] International Covenant on Economic Social and Cultural Rights (adopted 16 December 1966 UNGA Res 2200 A (XXI), Article 12
[68] Cohen J, Ezer T: Human rights in patient care: a theoretical and practical framework. Health Human Rights 2013, 15(2):7-19.
[69] UN Office of the high Commissioner for Human Rights (OHCHR), (20008), Fact Sheet no.31 on the Right to Health, Office of United Nations,
[70] National Health Policy 2011 (NHP), Ministry of Health and Family Welfare, Government of the People's Republic of Bangladesh0.
[71] Munzur-E-Murshid and Mainul Haque, "*Hits and misses of Bangladesh National Health Policy 2011*"; available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7373115/, last accessed on 24th April, 2021
[72] National Health Policy 2011 (NHP), Ministry of Health and Family Welfare, Government of the People's Republic of Bangladesh, strategy 14
[73] "*The Patient's charter and You-A Charter for England*", available at:
http://www.tgmeds.org.uk/patientscharter.html, last accessed : 24.04.2021
[74] Joseph Zibulewsky, "*The Emergency Medical Treatment and Active Labor Act (EMTLA) : What It Is and What It Means for Physicians*"; available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1305897/, last accessed on 24.04.2021

applies to all aspects of patient care in the hospital setting.[75] In the South Asian context, the 'Assam Public Health Act, 2010' of India and 'Public Health Service Act, 2075 (2018)' of Nepal can be mentioned. These Acts have a major focus on citizens' right to healthcare service and the monitoring and implementation mechanism for the good enforcement of such right.

The Assam Public Health Act, 2010[76] provides a wide range of health care rights to the people. The act discusses in a comprehensive manner the individual and collective right of the people in healthcare service,[77] obligations of the Health and Family Welfare Department for providing access to healthcare, curbing denial to healthcare directly or indirectly, rational allocation and distribution of resources for health-related issues, prioritizing healthcare for vulnerable and marginalized people, etc.[78] In 2018 the parliament of Nepal adopted the Public Health Service Act,2075 (2018)[79] for implementing citizen's right to basic and emergency health care. To be mentioned here, the right to health service is a constitutionally recognized fundamental right in Nepal.

Through an analysis of the abovementioned health care legislation, it can be inferred that healthcare rights should be established by specific legislation in Bangladesh. The specific healthcare legislation should include the following provisions:

1. The legislation should detail in clear terms certain rights such as – a citizen's right to obtain quality health service easily and conveniently, right to emergency treatment, right to non-discrimination, right to be treated respectfully, right to confidentiality, right to complain against health workers and health institutions, etc.
2. It should incorporate provisions defining the responsibilities of health workers and health institutions. There should be mention of the health workers' professional responsibility towards the patient, duty to treat the patient decently and respectfully, the standard for care to be maintained while rendering healthcare service, heath institutions' responsibility to provide basic and emergency healthcare service, etc.
3. There is a monitoring system under The Bangladesh Medical and Dental Council Act, 2010. But, the monitoring system is not working efficiently. So, there should be provisions of the regulation, inspection, monitoring, investigation in the new legislation. And thorough evaluation should be there to check health institutions and health workers.
4. Denial to render basic and emergency health service by any health worker or health institution, negligent behavior towards any patient, medical malpractice, corruption, etc., should be termed an offense. The Act should offer penal measures for such. For ends of justice, it should also mention compensatory relief to the aggrieved party.
5. For easy disposal of healthcare-related disputes, the act should have provisions of an independent investigation authority to investigate through an offence and a separate legal forum to adjudicate upon such issues.
6. Apart from these a healthcare legislation may also have provisions of health insurance, emergency treatment fund for the poor, destitute, and marginalized community,

[75] *ibid*
[76] The Assam Public Health Act, 2010, (Act 12 of 2010)
[77] *ibid*, Chapter 3
[78] *ibid*, Chapter 2
[79] The Public Health Service Act, 2075 (2018), Act No. 11 of the Year 2075 (2018), Date of Authentication: 2075/6/2 (18 September 2018)

emergency health service management during emergency circumstances, etc. In developed countries, everyone has health insurance. As Bangladesh is moving forward with fulfilling MDG and SDG goals, health insurance should be introduced largely in the country.

7. Finally, the legislation should provide provisions defining responsibilities of the healthcare-related department of government, mechanisms of healthcare administration, budgetary measures and resource allocation based on demand, etc.

Healthcare legislation like this will hopefully create a positive force in favor of patients' rights. Moreover, it has the potential to curb the denial of health services as well as negligent practices. But such legislation may not be the sole solution to ensure healthcare service to the citizens. An adequate budget for the health sector to make the institutions well equipped with human resources and adequate resources is vital. Thus a holistic approach on the part of the concerned authorities is a demand of time now.

8. Conclusion

Getting access to healthcare is invaluable to our existence, and denial of such results in gross violation of our human rights. It is high time the government of Bangladesh showed concern over adopting healthcare legislation for safeguarding our right to healthcare. Adopting specific healthcare legislation can help create awareness regarding this right both in the service recipients and service providers. We are looking forward to health care legislation that will resolve the major issues that distress our healthcare system. To end with the famous quote of Thomas Frist, M.D. – "Take care of the patient and everything else will follow."