

**DISSERTATION
ON**

**Medical Dilemma in Police Cases and Right to Health of the
Citizens: A Constitutional Analysis**

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DEDICATION

This study is dedicated to almighty Allah. This research is also dedicated to my dear parents who have always provided me with moral, spiritual, emotional, and financial support. They have served as my inspiration and my source of strength when I felt like giving up.

DECLARATION

I, Md Moshiur Rahman, ID; 2017-66-036, hereby declare that the dissertation on “Medical Dilemma in Police Cases and Right to Health of the Citizens: A Constitutional Analysis” submitted in order to satisfy the requirement of the course LAW 406 (Supervised Dissertation) for the degree of LL.B (Hons.) at the Department of Law, East West University. I conducted the research, and neither the complete research paper nor a small portion of it has ever been submitted to or published by a journal, newspaper, or other article. I wrote this dissertation paper from scratch. A list of references and footnotes are also included together with the proper acknowledgment of the sources used for this research.

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LIST OF ABBREVIATIONS

Short Forms	Expansion
CCPR	Covenant on Civil and Political Rights.
DGH	Directorate General of Health
HRTD	Human Rights Treaties Division
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MHFW	Ministry of Health and Family Welfare
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNICEF	United Nations International Children's Emergency Fund
WHO	World Health Organization

ABSTRACT

Bangladesh is a densely populated country. Ensuring health care to every citizen is a challenging issue here. The people of Bangladesh face problems at various stages of health care. Citizens are facing difficulties in accessing emergency medical services in police cases. Public and private hospitals in Bangladesh have emergency departments. Non-government or private hospitals do not provide emergency service in police cases. The procedure under section 154 of the Code of Criminal Procedure, 1898 is FIR, first information report which is also called police case. Victims who are involved in police cases often face difficulties in receiving emergency services from non-government hospitals or clinics. They face obstacles in getting services from the nearest hospitals or clinics. Emergency health services should be ensured in emergency departments of non-government hospitals in police cases. If it is not done, constitutional and human rights are violated. This paper will review the emergency health care practices in non-government hospitals or clinics in accordance with constitutional aspects.

Key words: Emergency, Healthcare, police cases, constitution, rights, Bangladesh.

Chapter 1

INTRODUCTION

The constitution is the supreme law of the republic.¹ Wickersham stated that, the constitution is the supreme law of a state.² The rights of citizens are also enshrined in the constitution of Bangladesh.³ Bangladesh has acknowledged the right to public health and referred to it as a citizen's right in the article 18(1) of the constitution.⁴ In this instance the state has placed a high priority on enhancing citizen's health and promote public health. The provision of public health is stated in part two of the constitution of Bangladesh.⁵ It is stated that, the state must prioritize raising the standard of nutrition and enhancing public health, and it must take specific action to stop people from consuming alcohol, other intoxicating beverages, and drugs that are harmful to their health unless they are doing so for medical reasons or other specified legal purposes. The constitution of Bangladesh mentions the term "public health" but does not mention the term "emergency health services" or "emergency health care" directly in the constitution. At the point of death or whenever one's condition deteriorates or worsens, emergency medical attention is necessary. The preamble of a constitution expresses a constitutional concern for providing facilities and opportunities to the people to reach at least minimum standard of health by the term socialism.⁶ In the Montana Administrative Code⁷, it is stated that, "Emergency Care" refers to hospital *in-patient*⁸ and *outpatient*⁹ care required to stop a recipient's death or substantial health damage.¹⁰ "The constitution of the World Health Organization places emphasis on the connection between health and human rights. The enjoyment of the best achievable quality of health is one of the fundamental

¹ Article 7(2) of the Constitution of Republic of Bangladesh

² George W. Wickersham, 'The Supreme Law of the Land' (Nov, 1928) vol. 15, p 23

³ Ryhanul Islam, 'Fundamental in the Constitution of Bangladesh' (26th July, 2019) < <https://lawhelpbd.com/constitution/fundamental-rights-constitution-bangladesh/> > accessed 7th Sept. 2022.

⁴ The Constitution of the People's Republic of Bangladesh

⁵ Article 18.1 and Article 32 of the Constitution of Republic of Bangladesh

⁶ Consumer Education & Research Center v. India, AIR 1995 SC 922

⁷ Montana Administrative Code, Department 37- Public Health and Human Services, Rule no 37.10.102

⁸ A person who stays at hospital to receive treatment is referred to as in-patient; Collins English Dictionary.

⁹ An outpatient is a person who receives treatment at hospital but does not spend the night there.

¹⁰ Montana Administrative Code, Department 37- Public Health and Human Services, Rule no 37.10.103

rights of every human being, without distinction of race, religion, political belief, social and economic position,” according to the WHO constitution.¹¹ The right to health care is curtailed in non-government hospitals or clinics. Such harassment happens especially when the victims are involved in a police case. Such events related to health care are done by non-government hospitals or clinics. They are reluctant to offer victims emergency medical service, especially if they are connected to criminal investigations. They advocate receiving services from district hospital or from upazila health center rather than offering their own. So it can be said that the state will respect citizen’s right to exercise any stage-granted rights and it will do all possible to uphold, protect and advance such rights in the public good. State agencies should be responsible for protecting this rights.

Literature Review: This research paper has been prepared in the basis of the constitution of Bangladesh, various laws, judgements of the court and ordinances by the court, books of reputed authors and other journals and articles.

The paper discusses the article 8(2), 18(1), 31 and 32 of the constitution of Bangladesh. These articles are discussed because a large part of the discourse of this research paper covers these constitutional provisions. These articles of the constitution discuss about the fundamental principles of state policy, public health and right to life of the citizens. The writings and opinion of famous and reputed writers on the improvement of public health and the right to life have been discussed. Md. Abdul Halim stated that, rising of the level of nutrition and the improvement of public health is the fundamental relating to social ideal.¹² According to Professor Dr. Ekramul Haque, the preamble of the constitution of Bangladesh adopts the principle of the international human rights law. According to him, if any of these principles are violated in our country, then it can be enforced before the court.¹³ He mentioned case laws as reference. According to the writings of Mahmudul Islam, article 18(2) is not enforceable before the court as it is the fundamental principle of state policy.¹⁴ According to him the violation of right to life is enforceable before the

¹¹ WHO Constitution 1986, Geneva,WHO

¹² MD. Abdul Halim, “CONSTITUTION, CONSTITUTIONAL LAW AND POLITICS: BANGLADESH PERSPECTIVE”, P 84

¹³ Professor Dr. Ekramul Haque, ‘Lecture on constitutional frame work of human rights in Bangladesh’ (5th Feb 2021) < <https://www.youtube.com/watch?v=qhscnyMmCbl&t=1344s> > accessed 6th Aug,2022

¹⁴ Mahmudul Islam, ‘ Constitutional Law of Bangladesh’ (2nd Edition)

court.¹⁵ The case laws are discussed in this paper. The case laws are discussed to provide clear interpretation of constitutional clauses. It has been established through the case laws that if a citizen of the state dies due to lack of emergency treatment, it is a violation of fundamental principle of state policy and a violation of fundamental rights.¹⁶ This paper also referred international conventions. The reason is that the similarities and contrasts between public health and the right to health at the national and international levels can be properly discussed and reviewed. According to general commentary of the article 25 of UDHR, good health status includes a person's mental and physical health condition.¹⁷ It includes the right to live consistently with dignity and decency.¹⁸ Bangladesh has accepted covenants and signed the majority of international treaties that guarantee the right to health as a way of advancing human rights. Additionally, the ICCPR and ICESCR were ratified.¹⁹

Research Methodology: The nature of this study is qualitative oriented. The approach is designed to be centered on the connection of exploration. Resources like laws, books, international conventions are regarded as primary sources when performing research. National and international periodicals, websites with newspaper stories, online journals and academic blogs are taken into consideration as secondary resources. It is discussed in the research paper about the right to health of the citizens in emergency situation for police cases. In the research paper, there is a brief discussion on right to health in Bangladesh, emergency health care, police cases and responsibility of hospitals and the findings on the denial of emergency medical service at hospital in particular for police cases which violates the right to health of the citizens.

Research Question:

Does the denial of emergency medical service at hospital in particular for police cases violate the right to health of citizens of Bangladesh?

¹⁵ Ibid

¹⁶ Hussain Muhammad Ershad Vs. Bangladesh, 2001 BLD AD

¹⁷ General comment no 25; 12/07/96. CCPRC/21/Rev. 1/ Add. 7, general comment no. 25

¹⁸ Vikram v. Bihar, AIR 1988 SC 1782 (Minimum human condition in care homes for females)

¹⁹ United Nations: Bangladesh ratified the ICCPR and ICESCR ON 5TH Oct. 1998 & 7th Sept. 2000 respectively. 1997.

Objective of the Study: In the research paper, it is tried to find out the unconstitutional practice of emergency medical service in particular police cases by non-government hospitals or clinics. The other objectives of the research paper are to study and discuss relevant laws and to review the current practice of emergency health care is violating any constitutional or statutory provisions or not.

Limitations: The short time frame is one of the most important and major shortcomings of this study. There is lack of resources. Obstacles are faced by medical institutions to collect information. Another drawback of this study was the dearth of literature.

Chapter 2

Right to Health in Bangladesh

It is the duty of the state to ensure the good health of the people.²⁰ Right to health has been given importance in the constitution of Bangladesh. This chapter discusses the public health mentioned in the constitution of Bangladesh. This chapter discusses what the constitution of Bangladesh says about the right to health.

Right to Health in Bangladesh:

People are born with certain rights. Ensuring the rights of citizens are the fundamental of a state. At present there is a growing awareness and right to public health around the world. In Oxford dictionary, the definition of health is, the state of being in good physical and mental health.²¹ Additionally, it alludes to how someone's body or mind is feeling.²² Countries that are democracies have given importance to improving the health of their citizens in their constitution and they recognized it as a state right.²³ Also other non-democratic countries in the world have guaranteed the right to health of the citizens as per their constitutions and have laid emphasis on the right to health.²⁴ Providing health service by state is the right of citizens. Good health status includes a person's mental and physical health condition.²⁵

Part two of the constitution of Bangladesh mentions a provision on public health. According to article 18(1) of the constitution of Bangladesh, the state shall regard the rising of the level of nutrition and improvement of public health as among its primary duties and in particular shall adopt effective measures to prevent the consumption except for medical purposes or for such other purposes as may be prescribed by law of alcohol and other intoxicating drinks and of drugs which

²⁰ The expansion of term "Right to Life"; Bangladesh Law Digest, ISSN 2708-6313

²¹ Oxford Advanced Learner's Dictionary with Worksheets (5th Edition) 551

²² Ibid

²³ BMC International Health and Human Rights 2006, 6:4, 12th April 2006

<https://scholar.google.com/scholar?q=BMC+International+Health+and+Human+Rights+2006,+6:4&hl=en&as_sdt=0&as_vis=1&oi=scholart_> Accessed on 23rd Aug 2022

²⁴ Ibid

²⁵ University of Minnesota, The Right to Means for Adequate Health (Jan, 2003) <

<http://hrlibrary.umn.edu/edumat/studyguides/righttohealth.html#:~:text=Article%201%20%2D%20%E2%80%9CEvery%20person%20has,by%20public%20and%20community%20resources.%E2%80%9D> > accessed 20th Aug, 2022

are injurious to health. In the article 18(1) of the constitution of Bangladesh, the state has recognized the right to public health and termed it as a right of the citizens. According to the constitution, the state considers the improvement of public health as its primary duty.²⁶ In this case the state has given priority to the right to health of the citizens. So the state has to provide minimum care as obligations to the citizens.²⁷ According to Article 8(2) of the constitution, the principles outlined in this part shall essential to the governance of Bangladesh, shall be used by the state in the enactment of laws, shall be guide for the interpretation of the constitution and of the other provisions of laws of Bangladesh, shall serve as the foundation for the work of the state and of its citizens, but shall not be enforceable in court.²⁸ The part two of the constitution mentioned the fundamental principles of state policy, which are not enforceable before the court of law.²⁹ In *Kudrat-e-Elahi Panir V. Bangladesh*,³⁰ article 8(2) of the constitution has been interpreted in an original way by Justice Naimuddin Ahmed. He believes that the phrase “shall not be judicially enforceable” does not prevent a court from invalidating a statute because it was drafted in flagrant disregard of fundamental principles of public policy.³¹ He also added that, the constitutional makers were conscious the implementation of the noble principle laid down in part two may not be possible in the prevailing socio-economic condition of the country and as such, they very wisely enacted article 8(2) making this principle unenforceable through courts, but that by no means, implies that the constitution makers intended to circumvent the mandate of article 7(2)³² and permit the legislature to enact laws in violation of these principles.³³ A sharp study of all clauses of the constitution and how they appear to be designed to work together as a unit gave rise to the definition of judicial enforceability that is mentioned in the judgement.³⁴

²⁶ M Rahman (n 19)

²⁷ Ibid

²⁸ Article 8(2) of the Constitution of Republic of Bangladesh.

²⁹ Ibid

³⁰ *Kudrat-e-Elahi Panir V. Bangladesh*, 44 DLR

³¹ Ibid

³² The constitution is as the solemn expression of the will of people, the supreme law of the republic, and if any other law is inconsistent with the constitution that other law shall, to the extent of the inconsistency be void.

³³ *Kudrat-e-Elahi Panir* (n 30)

³⁴ Naeem Hassan, ‘Constitutional interpretation and our Supreme Court: a critical appreciation’ (18th Aug, 2015) < <https://bdlawdigest.org/constitutional-interpretation-and-our-supreme-court-a-critical-appreciation.html> > accessed 3rd Sept, 2022

Article 32 of the constitution deals with the right to life and personal liberty. “Life” within the meaning of article 31 of the constitution means something more than mere animal existence.³⁵ It is stated in Article 32 of the constitution that, no person shall be deprived of life or personal liberty save in accordance with law.³⁶ The fundamental rights are enshrined in part three of the constitution of Bangladesh. Right to life is a fundamental right. If the right to health is violated then the right to life can also be violated.³⁷ Since these two issues are interrelated, it can be said that if the right to health is not protected, it undermines the fundamental rights. A very important judgement came from the case *Dr. Mohiuddin Farooque v. Bangladesh*.³⁸ It is mentioned in the judgement that, according to the article 31 and 32 of the constitution, the right to life includes among other things, the protection of health and typical longevity of an average human being from man-made threats unless such threat is legally justified.³⁹ If there is a possibility that life of the citizen is danger in protecting the right of public health or if the citizen’s life is lost due to that reason, the fundamental right will be undermined constitutionally.⁴⁰ A contemporary issue that all are still dealing with is the coronavirus pandemic. The public vaccination program for every unprotected person undertaken by the state according to the section 11 of the Vaccination Act, 1880 in the wake of this pandemic.⁴¹ It supports the demand of article 18(1) of the constitution of Bangladesh.

The preamble of the constitution of Bangladesh is an operative part of the constitution and is the enforceable part.⁴² According to the preamble of the constitution of Bangladesh international human rights can be compared with the preamble of the constitution of Bangladesh.⁴³ We can take the help of international law to know which rights are meant by human rights in the preamble of the constitution of Bangladesh.⁴⁴ According to the Universal Declaration of Human Rights (UDHR), the fundamental human rights means all human rights.⁴⁵ In Hussain ‘Muhammad Ershad

³⁵ *Munn v. People of Illinois*, 94 US 113 (per Field J)

³⁶ Article 32 of the Constitution of Republic of Bangladesh.

³⁷ Sunita Kashyap, ‘Right to Health as a Right to Life’ (2011), 337

³⁸ *Dr. Mohiuddin Farooque v. Bangladesh*, 48 DLR 438

³⁹ *Ibid*

⁴⁰ *Ibid*

⁴¹ section 11 of the Vaccination Act, 1880

⁴² Professor Dr. Ekramul Haque, ‘Lecture on constitutional frame work of human rights in Bangladesh’ (5th Feb 2021) < <https://www.youtube.com/watch?v=qhscnyMmCbI&t=1344s> > accessed 6th Aug, 2022

⁴³ *Ibid*

⁴⁴ *Ibid*

⁴⁵ *Ibid*

Vs. Bangladesh⁴⁶ case Bimalendu Bikash Roy Choudhury J. said that, in interpretation of the constitution, if there is no conflict between the constitution of Bangladesh and the international law, the international law shall be applicable.⁴⁷ There is no conflict between the constitution of Bangladesh and the international human rights law.⁴⁸

Article 25(1) of the Universal Declaration of Human Rights said that, every human being has the right to food, clothing, medical care, shelter and services necessary for life for himself and his family.⁴⁹ State parties recognize that it is the right of everyone to enjoy the highest standard of mental and physical health.⁵⁰ The right to health includes certain elements which are legally enforceable.⁵¹ So, if there is any violation of the right to health in Bangladesh, it is legally enforceable. From the above discussion and review, it is evident that if a person dies due to lack of emergency medical care, it will violate the fundamental right.

⁴⁶ Hussain Muhammad Ershad Vs. Bangladesh, 2001 BLD AD

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Art. 25(1) Universal Declaration of Human Rights, 1948

⁵⁰ Art. 12(1), International Covenant on Economic Social and Cultural Rights

⁵¹ International Covenant on Economic Social and Cultural Rights, General Comment No. 14(2000)

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&SymbolNo=E/C.12/2000/4 >
Accessed on 28th Aug, 2022

Chapter 3

Emergency Health Care

Emergency health care is required at the brink of death or when health deteriorates or worsens.⁵² This chapter discusses the issues related to emergency health care and its importance.

Emergency Health Care: “Emergency Care” means inpatient and outpatient hospital services necessary to prevent the death or serious impairment of the health of the recipient.⁵³ On the other hand “Emergency Medical Services” are provided after the sudden onset of a medical condition manifested by symptoms of sufficient severity, including severe pain, so that the absence of immediate medical attention could reasonably be expected to result in placing the patient’s health in serious jeopardy, in serious impairment to bodily functions or in serious dysfunction of any bodily organ or any body part.⁵⁴ In the general comment of ICESCR, it is mentioned that, “health is a fundamental human right and every human being is entitled to enjoy the highest standard of health for living life with dignity.”⁵⁵ Emergency medical care is required when the health condition deteriorates to the point where life is in danger. Emergency health care is urgently needed to save life or emergency health care means that a person’s life would be more difficult to save if the necessary measures are not taken. Emergency health care is a system where life-saving efforts are given the highest priority. It is a system where an expert service provider team with necessary equipment is engaged round the clock. The important aim of this service is to make every effort to save life. In Article 12 of the International Covenant on Economic, Social and Cultural Rights described specific goals of attaining the better health services and it also includes the right of attaining highest standard of physical and mental health.⁵⁶ The article 12 also states that, the States Parties to the current Covenant acknowledge that everyone has a right to the best possible level of

⁵² Taylor W. Burkholder, ‘A Global Review of Provisions on Emergency Care in National Constitutions’ (23rd Dec, 2021) < <https://www.hhrjournal.org/2021/10/a-global-review-of-provisions-on-emergency-care-in-national-constitutions/> > Accessed on 28th Aug, 2022

⁵³ Montana Administrative Code (n 6)

⁵⁴ W. Burkholder, (n 51)

⁵⁵ International Covenant on Economic Social and Cultural Rights, General Comment No. 14(2000) <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&SymbolNo=E/C.12/2000/4 > Accessed on 28th Aug, 2022

⁵⁶ Art 12, International Covenant on Economic Social and Cultural Rights

physical and mental health and the prevention, diagnosis, and treatment of endemic, occupational, and other diseases and the establishment of circumstances that would guarantee access to all medical care and services in the event of illness. Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 says, every person's right to life must be guaranteed by the law.⁵⁷ No one's life shall be willfully taken except in carrying out judgement by a court when a person is found guilty of a crime for which such a penalty is imposed by law.⁵⁸ Chapter 17 of Training Manual on Human Rights Monitoring offers useful advice for keeping track of citizen's rights with regard to a range of economic, social and cultural including the right to adequate health.⁵⁹

The World Health Organization (WHO)'s constitution has given importance to the relationship between human rights and health. It stated in the constitution of WHO that, "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, social and economic condition."⁶⁰ "It is expressed that, the health and health services have been given importance nationally and internationally in the international conference on primary health care, Alma-Ata, September 1978. The urgent need to promote and protect health is emphasized both nationally and internationally and it is believed that the right to health is a fundamental right. Therefore, health services have been given the highest level of importance in order to achieve the social goal of development."⁶¹ Everyone has the right to access the highest standard of health care with dignity.⁶²

It is the duty of a state to promote behavioral health examination done in the emergency department of a hospital in the medical system.⁶³ It is mentioned in the principle sets out in the preamble to the constitution of WHO that, not just the absence of illness or disability, but also total physical mental and social well-being, is referred to as being in good health.⁶⁴ The government of a state

⁵⁷ Convention for the Protection of Human Rights and Fundamental Freedoms. 1950

⁵⁸ Article 2 (n 56)

⁵⁹ Training Manual on Human Rights Monitoring – Chapter XVII: Monitoring Economic, Social and Cultural Rights. Available at: < <http://hrlibrary.umn.edu/monitoring/chapter17.html> > last accessed 4th Sept, 2022

⁶⁰ WHO Constitution 1986, Geneva, WHO

⁶¹ WHO: Declaration of Alma Ata 'Health for All' Series no 1, 1978 Geneva, WHO

⁶² UN: General Comment 14, E/C 12/2000/4 4th JULY

⁶³ Hassan, (n 34)

⁶⁴ Preamble, Constitution of WHO, 1986

takes such steps to ensure public health services or to develop emergency health services.⁶⁵ In line with the slogan, “health for all: no one left behind”,⁶⁶ Bangladesh provides primary health care services all over the country including remote places like haor-baor and hilly areas.

It is the responsibility of the state to protect the lives of citizens. Provision of emergency health care is a constitutional right in a democratic country and failure to provide health care is a violation of international human rights.⁶⁷ Provision of emergency health care is one of the most important aspects of health care provision to be organized by the state. The state must ensure that no law interferes with the provision of this essential health care.⁶⁸ If a citizen’s essential health services are disrupted due to any law or system, his fundamental rights will not be protected and the state will be held responsible. It is the duty of the state to provide the emergency health services in an easy way for the people.

⁶⁵ Ibid

⁶⁶ Ministry of Health and Family Welfare, ‘ Framework for Tribal Peoples Plan’ (Sept. 2015) < http://www.mohfw.gov.bd/index.php?option=com_docman&task=doc_download&gid=8368&lang=en > accessed 5th Sept, 2022

⁶⁷ Dr. Ekramul Haque, (n 41)

⁶⁸ Kudrat-e-Elahi Panir, (n 30)

Chapter 4

Factual Analysis

This chapter discusses and analyzes some of the happenings. An unexpected incident known as a police case occurs in certain situation where emergency medical services are urgently needed.

Factual Analysis: This part will highlight some cases where emergency medical services are essential but referred to public hospitals from privately owned health facilities in what are termed police cases. Sanjana, a student of Brac University committed suicide on August 27, 2022. Sanjana committed suicide by jumping from the roof of a ten-storied building. Around 12.30 PM, Sanjana was being treated for injuries after reportedly jumping off a building. “Sanjana’s friends said that Sanjana was alive after being rescued. She was first taken to a local hospital. Hospital authorities said that this is a police case you take to Suhrawardy Medical College Hospital.”⁶⁹ According to Assistant Commissioner of Police Mr. Gowsami, she was promptly sent to the Pangu Hospital (National Institution of Traumatology and Orthopedic Rehabilitation- NITRO) after being treated at a nearby local hospital. Around 4 o’clock, doctors pronounced her dead.⁷⁰

From the said incident, our issue is whether the emergency treatment that was required in the case of the victim Sanjana was properly provided or not. The girl tried to commit suicide but she was rescued when she was alive. When she was taken to the nearest local hospital, they refused to provide services as it was a police case. Sanjana has been denied her right to health as a citizen of the country. Nowhere in the constitution and human rights does it say to deny essential medical services. When Sanjana was taken to the government hospital, the doctors declared her dead. She was rescued after 12PM but she was taken to a government hospital when the local hospital refused to provide her services on the pretext of a police case. Sanjana was taken to the government hospital around 4 PM. Doctors then declared her dead. Sanjana’s health risk has not decreased but increased due to the time gap here. According to section 309 of the Penal Code, 1860, anyone who attempts suicide or engages in conduct that contributes to the commission of such offence is subject to a sentence of simple imprisonment which may last up to one year or fine or both. So the matter

⁶⁹ Jamuna Television. Available At: < <https://fb.watch/figxUrvFKn> > Accessed on 4th Sept, 2022

⁷⁰ THE BUSINESS STANDARD, tbsnews.net. Available at: < <https://www.tbsnews.net/bangladesh/brac-university-student-sanjanas-father-arrested-abetting-suicide-487406> > Accessed on 4th Sept, 2022

is a police case but it is not mentioned in anywhere that the victim will not get any emergency medical services from nearest local hospitals.

A local newspaper published a news of suicide. In 2013, a schoolboy named Mosaddek Ahmed Moon committed suicide. He was a student of the government high school of Joypurhat. He was studying in class nine. He committed suicide by hanging himself in his house.⁷¹ He was still alive when he was lowered from the hanging position. He was not treated when taken to a clinic. After that, when he was taken to the government hospital, doctors declared him dead. Here too there is a time gap. This did not reduce the health risk but increased it. In many situations, not just suicide, a person is denied emergency medical services as a police case.

It should not be said that documents from government hospitals are admissible as evidence before the court, in the matter of private hospitals it is not. Because in such a situation there is a matter of saving a person's life. When a victim of a police case arrives at a government hospital, his physical condition is records in a record book with serial numbers and a seal is given. Then treatment is provided and the matter is reported to the police. But this not done in private hospitals or clinics. One thing is clear from the above facts that the state's practice of providing emergency medical services in police cases violates the constitutional rights of an individual.

Imran Hossain, a student of University of Asia Pacific committed suicide on 1th May, 2022. Imran Hossain, a 23 years old student of computer science and engineering department, was named as deceased.⁷² Fayseluzzaman, a university administrative officer claimed that while he was entering the building, he heard a loud bang and later discovered that a student had fallen from the structure. He also added that, they took Imran to a nearest local hospital but he referred to Dhaka Medical college Hospital. After taking him to hospital on duty doctors declared him dead.⁷³ The victim needed the emergency care immediately but he did not get it. He referred to the Dhaka Medical College Hospital from a private local hospital. There is the problem of getting emergency health care for saving lives. It is the violation of constitutional right of a citizen. It is also the violation of human rights.

⁷¹ JoypurBarta, 9th February, 2013

⁷² The Daily Star, Student dies after falling from university building on Dhaka's Green Road (19th May, 2022) < <https://www.thedailystar.net/news/bangladesh/news/student-dies-after-falling-university-building-dhakas-green-road-3026996> > Accessed on 4th September, 2022

⁷³ Ibid

So, the practical function is not functioning in accordance with the constitutional requirement. There is no law where it is mentioned that the emergency health care shall not be provided by non-government hospitals or clinics to the victims of police cases. There is open violation of our constitution. When a person dies because of not providing emergency services by the non-government hospitals or clinics, it is the pure violation of constitutional law. There is the violation of public health and there is the violation of right to life.

Chapter 5

Police Cases and Responsibility of Hospitals

Different types of police cases can be observed in our country. In some such cases, victims often require emergency treatment. In such a situation, the nearby health care institutions are often unwilling to provide services. Such reluctance to provide emergency services is unconstitutional and a violation of human rights. This chapter deals with police cases and liability of hospitals.

Police Case: A police case is a circumstance that calls for police inquiry or intervention. “The emergence of democratic institutions has transformed the people into the source of power. Police have a fundamental responsibility to uphold the rule of law which is the foundation of democratic state.”⁷⁴

Police case in Bangladesh refers to filing a case through FIR (first information report). This procedure mentioned in section 154 of the Code of Criminal Procedure, 1898. This procedure is mentioned in the Code of Criminal Procedure, 1898. Part five of this Act deals with the provisions of information to the police and police investigation. According to this section, it is said that, the police officer or duty officer will write down any information of any cognizable offense that is given to the police station whether orally or in written and then read it to the informant before having them sign the written document.⁷⁵ The cognizable offenses are relatively severe offenses and as a result harsh penalties are authorized by law for them.⁷⁶ After receiving the FIR for those offenses, police can act immediately, making arrest and conducting investigations and they do not need orders from the court to do so.⁷⁷ It is mentioned in the Police Regulations of Bengal, 1943 that, the police officer will fill up a form which is B. P. form no. 27 as it is mentioned in the law.⁷⁸ In a situation that is a police case, a victim can often be at serious health risk. In these cases the provision of emergency health services becomes very important. But in such emergencies, some

⁷⁴ DALBIR BHARTI, “POLICE AND PEOPLE, ROLE AND RESPONSIBILITIES”, 68,(APH publishing House New Delhi, 2006)

⁷⁵ Rayhanul Islam, ‘All about First Information Report (FIR)’ (23RD July, 2019) < <https://lawhelpbd.com/crpc/first-information-report/> > accessed 18th Aug, 2022

⁷⁶ Ibid

⁷⁷ Ibid

⁷⁸ Section 243, The Police Regulations of Bengal, 1943

health care institutions are reluctant to provide medical services on the pretext of police cases. Good coordination with the law enforcement agencies is required to provide emergency health care. Various health care providers cited legal complications in providing emergency health care to a victim and did not provide emergency care. The police, military, judiciary or civil affairs departments are accountable for upholding the human rights of all institutions, preventing human rights abuses and actively promoting human rights.⁷⁹ According to the section 79 and 80 of the Evidence Act, 1872 define the term “presumption as to genuineness of certified copies” and “presumption as to documents produces as record of evidence.”⁸⁰ According to section 79 of the Evidence Act, 1872 every document claiming to be certified, certified copy, or other document that is legally required to be admitted as evidence of a specific fact and that purports to be officially certified by any officer must be presumed by the court to be genuine.⁸¹ According to the elements of section 80 of the Evidence Act, the court shall imply that, the document is authentic; that any statement about the circumstances of its alleged signing and that such proof, statement or confession was properly collected.⁸²

The criminal justice system enforces the standards of conduct necessary to provide safeguard to citizens in the society. Knowing the police is a sign of knowing the criminal justice system. “The way of functioning the criminal justice system is by catching, prosecuting, convicting and punishing those members of society who disobey the laws of the society. The agencies of the criminal justice system take action against lawbreakers for a variety of reasons, including to remove dangerous individuals from the society who pose a threat to its survival, to deter others from criminal behavior and create an environment that is conducive to social living, and to give the society a chance to turn lawbreakers or anti-social people into law-abiding citizen.”⁸³ According to a 1927 editorial in the journal of the American medical association the first US rule mandating doctors to disclose gunshot wounds to police was likely to “cause patients so injured to postpone or even to shun medical treatment in America”⁸⁴ “Fast forward almost a century and today doctors not only report injuries but also increasingly interact with law enforcement, as

⁷⁹ GLS Law Journals, Vol. 03, Issue 01; January- June 2021

<<https://glslawjournal.in/index.php/glslawjournal/issue/view/6> > Accessed on 12th Aug, 2022

⁸⁰ Section 79 & 80, The Evidence Act, 1872

⁸¹ The Evidence Act, 1872, S 79

⁸² The Evidence Act, 1872, S 80

⁸³ P. D. SARMA, CRIMINAL JUSTICE SYSTEM, 50, Rawat Publications, Jaipur, 1998

⁸⁴ Compulsory reporting of gunshot wounds. JAMA 1927; 88: 404

demonstrated in the study “police patient: how the presence of law enforcement in the emergency department impacts medical care.”⁸⁵

The study by Harada et al, fills a significant gap in the literature by illuminating these inconsistencies as well as how emergency physicians, like those in the study, can give law enforcement the benefit of doubt with the assumed power to dominate interactions with patients.⁸⁶ “A qualitative study were conducted with 20 emergency physicians in Northern California between November, 2017 and September 2018. As a result the majority of individuals described their interactions with the law enforcement agencies in the emergency department as mixed or variable. The practitioner’s report of positive interactions with the law enforcement agencies, in which officers were characterized as helpful and friendly, contrasted with practitioners report of incidents in which police presence a) hampered medical evaluation and treatment particularly for trauma patients, b) jeopardized patient privacy and confidentiality, and c) discouraged the general public seeking treatment at the emergency department.”⁸⁷

To create significant barriers against law enforcement actors in patient care areas and to help medical practitioners navigate the intricacies of the overlap with law enforcement, a practical theoretical framework is nevertheless required.

Responsibility of Hospitals: According to Article 15.1 of the constitution of the People’s Republic of Bangladesh, the state is responsible for providing all of its inhabitants with the most basic medical care. The three particular goals of the National Health Policy for 2011 are to guarantee universal access to primary and emergency health care, improve equitable healthcare quality and accessibility, and promote preventative health care services. The three particular goals of the National Health Policy for 2011 are to guarantee universal access to primary and emergency health care, improve equitable health care quality and accessibility, and promote preventative health care services. As a result, the Hospital and Clinics Section’s main objective is to provide universal health coverage by offering top-notch medical care to all Bangladeshi citizens. The doctors are took oath during the start of their medical study. They have to agree to abide by the

⁸⁵ To protect and serve: the ethical dilemma of allowing police access to trauma patients. Ott K, Brown D, Kodner K, et al

⁸⁶ THE PRACTICE OF EMERGENCY MEDICINE, VOL 78, ISSUE 6, P749-751, DEC, 01, 2021

⁸⁷ THE PRACTICE OF EMERGENCY MEDICINE, VOL 78, ISSUE 6, P738-748, DEC, 01, 2021

codes of declaration. The codes of declaration is, “I pledge to consecrate my life to the service of humanity. I will not use my knowledge contrary to the laws of humanity. I will maintain the utmost respect of human life from the time of conception.” In addition to primary care, district hospitals are secondary level, play a significant role in the entire public health care system.⁸⁸

Government offers private sector registration services in accordance with the venerable 1982 clinic ordinance. The existing Acts are The Vaccination Act, 1880, The Bangladesh Nursing Council Ordinance, 1983, Drug Ordinance, 1982, Mental Health Law, 2018 and others Acts related with the medical sector.

These institutions express reluctance to provide emergency medical services to victims, especially those who are involved in police cases. They suggest receiving services from district hospitals or from upazila health complex without providing services themselves. They undermine a person’s right to access emergency health care by using the pretext of police harassment. As a result victims often do not receive services even though they have access to nearby institutions. At present various situations are observed in police cases where emergency medical care is required. Among them are various types of collisions, victims of serious injuries by robbers etc. In these cases, private clinics do not want to provide emergency services. There is no provision or no clause in any order in medical law of Bangladesh or any policy that excludes victims of police cases from receiving services. Even the Medical Practice and Private Clinics Laboratories Ordinance, 1982 the Code of Criminal Procedure, 1898 The Evidence Act 1872 or Police Act, 1861 does not mentioned anything like the above circumstances. It is against the constitution of Bangladesh and Human Rights to not provide services in case of emergency.

Violation of Human Rights: “The human person possesses rights because of the very fact that it is a person, a whole, a master of itself and its acts and which consequently is not merely a means to an end but an end which must be treated as such, these are things which are owned to man because of the very fact that he is man,” Jaques Martatin says. This matter is established by the precedent of court. In “BNWLA Vs. Government of Bangladesh”⁸⁹ case it is said that, International law can be applied in the interpretation of the constitution and even in the interpretation of

⁸⁸ Bangladesh Medical Journal, (2012) Vol 41 No. 1, p 7 para 5

⁸⁹ BNWLA Vs. Government of Bangladesh, Petition No. 5916 of 2008

fundamental rights.⁹⁰ If there is no conflict between Bangladesh's constitution and international law when interpreting the constitution, international law will take precedence.⁹¹ The preamble of the constitution of Bangladesh upholds the international human rights.⁹² The Bangladeshi constitution and international human rights law are not at odds with one another. The constitutional provisions in article 15, 16, 18(1) and 32 are intended to safeguard, advance, and uphold health care as a component of human rights in Bangladesh.⁹³

So, protecting the right to health is a fundamental right and if any explanation is required for reasons, the help of international law can be restored to which is constitutionally valid.

From the above discussion it is evident that coordination of emergency health department with the police department is necessary. It should be ensured that private hospitals or clinics provide emergency health care to citizens who are victims of police cases. The Ministry of Health and Family Welfare and the Ministry of Home Affairs should take initiatives to protect constitutional and protect human rights.

⁹⁰ BNWLA, (n 88)

⁹¹ Ibid

⁹² Dr. Ekramul Haque, (N 41)

⁹³ Redwanur M Rahman: Human rights, health and the state in Bangladesh. 12 April 2006.

<<https://bmcinthealthumrights.biomedcentral.com/articles/10.1186/1472-698X-6-4> > Accessed on 22nd Aug, 2022

Chapter 6

Recommendation: There are recommendations on providing emergency health care and protecting constitutional rights and human rights in police cases. According to Dr. Raghieb Mnzoor (MBBA DA), “no medical facility assistance or support is anticipated within an hour. Some emergency management expertise performance with emergency apps is rigorously adhered to.”⁹⁴ Ensuring that government hospitals provide emergency services to the victims as well as privately owned hospitals or clinics. Because it is the responsibility of the state to provide emergency health services to citizens and it is the constitutional right and human rights to receive health services. The current practice of providing emergency services to victims of police cases in private hospitals or clinics affects both the right to health and the right to life of the citizens. Constitutional rights are being violated due to this practice. As a component of a comprehensive national health system and in collaboration with other sectors, all government should develop national policies and plans of action to start and sustain health care system.⁹⁵

Introduction of registration book system in private hospitals or clinics like emergency department of government hospitals so that there is no hindrance in police cases. If the case is filed, the documents of the government hospital and the documents of private hospital will have the equal merit before the court. This will not affect the police investigation. A new digital system can be introduced to inform about the victim of police cases to the local police by the hospital authority so that the victim can receive emergency medical care. This system can be connected through the 999, the emergency call service center of police.

Regular surveillance of private hospitals should be maintained by the health department to prevent reluctance to provide emergency medical services on the pretext of police cases. Coordination between Ministry of Health and Public Welfare and Ministry of Home Affairs is necessary. The

⁹⁴ Dr. Raghieb Manzoor, MBBS DA, Emergency & Critical Care in Bangladesh, Available At:<https://www.google.com/url?sa=t&source=web&rct=j&url=https://praavahealth.com/others/emergency-critical-care-in-bangladesh/&ved=2ahUKEwiy8I_gp_f5AhUvR2wGHUa_ANM4ChAWegQIARAB&usq=AOvVaw1fa43Folkgr5wn6c8JeEK [Accessed On 1st April, 2022]

⁹⁵ Declaration of Alma Ata on Health care (1978) < <https://www.who.int/teams/social-determinants-of-health/declaration-of-alma-ata#:~:text=International%20conference%20on%20primary%20health,goal%20of%20Health%20for%20All> > Accessed on 3rd sept, 2022

connection between the Ministry of Health and Public Welfare and the law enforcement agencies of the state should be strengthened. The consensus between them should be increased.

It should be clearly promulgated by the government in the rules that the government hospitals as well as the private hospitals will play a role in providing emergency medical services to the victims of police cases. There is an ordinance governing the operation of private clinics, labs and the practice of medicine. Nowhere in the Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982, does it stated that emergency medical services cannot be provided to victim of police cases where there is a health risk.

Conclusion: Life is the most precious thing and nothing can be more fundamental than preservation of life.⁹⁶ Hence, deprivation of life can follow only when it is needed for the security of the state or the security of the ordered society where individuals can freely enjoy their life.⁹⁷ It includes the right to live consistently with dignity and decency.⁹⁸ The response of society to the social determinants of health is the health system. Health is widely acknowledged as a crucial component of human growth.⁹⁹ The constitution of WHO's founding document placed a strong emphasis on the connections between human rights and health.¹⁰⁰ The residents of a state place great importance on their health.¹⁰¹ Currently, there is a global increase in public health knowledge and rights.¹⁰² Democracy based nations have acknowledged that improvement of health of citizens as a state right and placed significance on it in their constitutions.¹⁰³ In our nation, there are different kinds of police cases. A police investigation is required in a police case to protect the values of the society every civilized country has a criminal justice system in existence. A practical theoretical framework is still needed to build effective barriers against law enforcement actors in patient care areas and to aid medical professionals in navigating the nuances of the overlap with the law enforcement. The state is tasked with safeguarding the lives of its citizens. In a democracy,

⁹⁶ Mahmudul Islam, Constitution Law of Bangladesh, P. 194

⁹⁷ Ibid

⁹⁸ Munn v. People of Illinois, 94 US 113 (per Field J)

⁹⁹ Ibid

¹⁰⁰ Montana Administrative Code, Department 37- Public Health and Human Services

¹⁰¹ United Nations: Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14-25 June (1993) U.N Doc A/CONF. 157/24 (Part-1) at 20 (1993)., United Nations; 1993.

¹⁰² Ibid

¹⁰³ Ibid

providing emergency medical service is a constitutional requirement and failing to do so is against international human rights law.

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