
MEDICAL LAWS AND ETHICS IN INDIA: COMMERCIALIZATION OF THE NOBLE PROFESSION

Deepali Sinha, Research Scholar, Chanakya National Law University

ABSTRACT

The medical profession is one of the noblest professions on earth. Since time immemorial, medical professionals have been taking care of the ill and helping to brighten-up the world. For a doctor, every patient is equal and with utmost honesty, he does his job without any difference of religion, race, caste, creed, gender or colour. Probably, this is the reason why doctors have been considered God at every level of perception and by every segment of the society. Also, according to the Indian Medical Council (Professional conduct, etiquette and Ethics Regulation), 2002 the prime object of the medical professionals is to render service to humanity; reward or financial gain is a subordinate consideration.

With this in view, considering the nobleness of profession, doctors are considered as God among human beings' form present on earth. They support healthy life by treating diseases and by taking care of sick. Thus, patients approach doctors with trust that they will be taken care of in right hands and this increases the duty and responsibility of doctors.

Now, the question arises, are doctors professionals? Is medicine a profession? Do ethics become subordinate to monetary gains? This article aims to answer there questions

MEDICAL LAWS AND ETHICS

The concept of Medical Law and Ethics explores patients' inherent rights with regard to the protection of their medical data, professionals' understanding of confidentiality, the right to get emergency care in emergency situations, etc. Medical Negligence employs peculiar strategies. Sometimes it toys with life; sometimes it bestows an undesired kid, as in the current instance where the respondent was, a poor labouring lady who had previously had numerous children and chose for sterilisation, became pregnant and gave birth to a female child notwithstanding the failure of the sterilisation procedure.

Medical ethics is a discipline that distinguishes between legal and moral obligations, and interactions involve medical fiduciary duty towards the patient. Complementary factors justify the requirement for secrecy. First, if patients do not believe that their medical information would be kept private, they will not seek care. This is especially crucial in the event of an infectious condition, such as HIV infection (HIV). The doctor must also think that the patient has a thorough medical history; otherwise, there is a danger of misdiagnosis and prescribing improper medication. [1]

The ethical principles of professionals frequently surpass legal requirements. A physician accused of misconduct may be exonerated or acquitted in court procedures, but disciplinary actions may be filed against him for the same conduct on the basis that it was unethical. It is difficult to precisely describe what medical ethics entail. Generally, the phrase refers to the moral, as opposed to legal, responsibilities of a medical practitioner in the practise of his profession. However, this difference is not precise, as many medical ethical principles have legal force.

CURRENT ISSUES RELATING TO MEDICAL ETHICS

The ethical standards upheld by practitioners usually exceed the limitations set forth by the law. A physician who is accused of misconduct may be vindicated or found not guilty in the course of legal proceedings; yet, disciplinary sanctions may still be taken against him for the same conduct on the grounds that it violated professional standards of conduct. It is difficult to give a clear definition of what is meant by the term "medical ethics." In general, this expression refers to the moral obligations of a medical practitioner in the practise of his profession, as opposed to the legal responsibilities of a medical practitioner. On the other hand, this distinction is not entirely accurate because many medical ethical concepts carry legal weight.

There are no issues when such a code of norms of ethics and the country's statute legislation may complement one another. Disputes may emerge, however, when medical ethics and the law are not in complete harmony, particularly when such norms of ethics are internationally established and recognised. In such situations, the question is which should take precedence: ethical standards or domestic law. This study will examine four such instances and attempt to make conclusions. [2]

These four are: -

Professional secrecy: the connection between a physician and his patient is one of exceptional trust. This confidentiality is vital for the physician to gather from his patient or for him all the information necessary for appropriate treatment. This responsibility of confidentiality is also legal. If a medical practitioner violates this regulation by disclosing information to a third party without the patient's agreement, he or she may be held accountable for damages for breach of contract, defamation, or negligence if the disclosed information is likely to trigger the harm to patients. Governmental and public entities, such as the police, as well as commercial entities, exert pressure on medical professionals to disclose patient confidentiality. In such circumstances, the rule should be crystal clear. A medical professional must keep the information confidential and must not divulge such information to a 3rd party without taking the consent of patient, unless the law clearly compels or authorises him to do so.

Medical experiments on human beings: Some clinical studies may be undertaken to assess a person's readiness for military duty. These investigations are not therapeutic in nature. Such clinical study cannot be undertaken without the human subject's agreement. In certain countries, the subject's consent is required by law, and rejection of consent may be deemed a criminal offence. The majority of ethical rules forbid such diagnostic procedures when they are potentially harmful and do not result in a successful treatment. Will the physician's professional obligation require him to do these diagnostic procedures? If he refuses, he may be found in violation of his country's laws. If he engages in them, he may be found in violation of the world's generally accepted regulations, which are founded on the laws of humanity and public conscience. Therefore, it is a challenge for medical practitioners.

Participation in torture: The engagement of medical professionals in torture is another example. There is evidence that physicians in many regions of the world have participated in torture. In addition to assessing prisoners before, during, and after torture to determine their fitness to

endure it, they are also required to revive victims who have collapsed so that the torture may continue. Medical professionals have occasionally cooperated in the development of interrogation techniques. The foremost obligation of the medical professionals is to heal people and avoid harming them. Doctors engaged in the military, prisons, or internment camps are most likely to encounter this ethical dilemma. They engage in these acts because they are required to by law and because they do not wish to disgrace their nations or the authorities who require them to do so. If they refuse to torture captives while serving as troops or police officials, they may be punished harshly. [3]

Abortion: Abortion is an example of ambiguity. Numerous national laws presently authorise abortion upon the mother's desire. In accordance with the legislation, medical professionals perform these procedures, yet in certain nations, they are illegal. The question is how a medical practitioner may breach the oath he has taken despite legal authorization. It should not be forgotten that while codes of ethics, which are widely recognised, are occasionally enforced on individual physicians, the Hippocratic Every doctor must personally administer and accept an oath. Trust can be broken when it is allowed for medical professionals to defy the vows they have taken to uphold the medical profession. This is something that should be taken into consideration not just by the physicians themselves, but also by anybody else who is in charge of writing the oaths that they take.

POSITION IN INDIA

The Medical Council Act of 1956, as amended by Act, is the piece of legislation in India that governs how medical practitioners should behave in their professional capacity. The General Medical Council, which operates at the state level, is the most senior authority for dealing with cases of improper behaviour by experts. The State Medical Council now has increased jurisdiction, giving them the ability to fire or suspend medical practitioners working under their administration. Additionally, it is allowed for them to hire professionals who are currently involved in disciplinary actions. The medical ethics of experts are something that should be protected, which is why there is a Code of Medical Ethics. It is important that the professionals comply to the standards that have been set. The requirements that are placed on physicians are outlined in the Code. The administration of care to members of the human race is the major focus of the medical profession. It is important for physicians to make themselves accessible to their patients and partners, in addition to reaping the rewards of their professional successes. There is no guarantee that the right to die takes precedence over the right to live. Both the act

of suicide and the advocacy of suicide are illegal in India. This was stated in the 42nd report that the Law Commission compiled. It is a challenging endeavour to inflict more misery on a person who has reached the point in his life when he finds life so intolerable that he is prepared to suffer and die in order to put end to his existence. [4]

General Medical Council (working at the state level) is the highest organisation for managing medical practitioners' misbehaviour. The State Medical Council has been granted increased authority to remove and suspend medical professionals (if necessary). They are also authorised to recruit medical professionals who have been disciplined. Indian law enables the removal of a foetus if the continuation of pregnancy would endanger the pregnant woman's life or cause substantial injury to her physical or mental health. The Medical Termination of Pregnancy Act authorised the termination of pregnancies for medical reasons for the benefit of the nation's expanding population. In Vedic, Upanishad, Puranic, and Smriti texts, abortion is severely condemned. In addition, it is a violation of the Medical Council of India's Code of Medical Ethics. [5]

MEDICAL ETHICS UNDER MEDICAL COUNCIL ACT

In 1993, the Indian Legislative Assembly repealed the Indian Medical Council Legislation of 1933 and enacted a new act, the Indian Medical Council Act of 1956, which applies to the whole country. Aside from this, criminal prosecution by a criminal court is possible for offences comprising moral turpitude. The Medical Council Act regards profession promotion to be unethical. It is unethical for a physician, a group of physicians, an establishment, or an organisation to solicit patients directly or indirectly.

Due to the commercialization of the medical industry, self-administrative methods in this field have deteriorated in recent years. There are reports of exploitative medical practises, misuse of symptomatic systems, and the sale of human organs at discounted prices, etc. There is a need for both external guidance and enhanced self-control. The relationship between administration and business is unsettlingly favourable to business.

CASE LAWS

The first case that comes to mind when we think of a landmark judgement in medical cases of negligence is the one that's one of the most-profile and perhaps most-discussed cases at the time, as well as the one that resulted in the highest amount of compensation being granted up

to that point. Profoundly known as the Anuradha Saha Case, ***Kunal Saha v. AMRI (Advanced Medical Research institute)*** [6] was launched in 1998 with allegations of medical malpractice against Kolkata-based AMRI Hospital and three physicians, namely Sukumar Mukherjee, Baidyanath Halder and Balram Prasad. In layman's terms, the wife suffered from a drug allergy, and the physicians' negligence in providing medication worsened her condition, which ultimately led to her death. This is a brief summary of the case's facts and circumstances; in this instance, the Supreme Court issued a final decision and awarded compensation of more than 6 crore for his wife's death.

In ***A.S. Mittal & Another v. State of U.P. & Others***, [7] the Court had reached the conclusion that there is a possibility of criminal convictions by the judicial process for crimes including those involving moral turpitude, because it was very explicitly declared by the Honourable Supreme Court in ***Poonam Varma v. Ashwin Patel***, [8] that the medical profession is one of the oldest and most altruistic professions in the world.

In the matter of ***Krishan Singhal Rao v. Nikhil Super Speciality Hospital***, [9] Krishna Rao, a malaria dept. official, lodged an F.I.R. against the hospital for the treatment of his wife with negligence. Due to the incorrect medicine and treatment administered by the hospital, his wife's health deteriorated and ultimately led to her passing. Finally, the judgement was rendered and Rao was granted Rs 2 lakhs in compensation. In this instance, the concept of *res ipsa loquitur* (things speak for themselves) was used, and the plaintiff was awarded compensation.

In the matter of ***Aparna Dutt v. Apollo Hospital Enterprises Ltd.***, [10] a woman had uterine cyst excision surgery. The procedure was deemed successful, but the patient died a few days later owing to acute discomfort in her lower abdomen. After the body was burned, scissors were discovered among her ashes. The court determined that while the hospital performed surgery to remove cysts, one of the surgeons carelessly slipped a pair of scissors into the belly of the patient. The notion of vicarious responsibility is founded on the Latin proverb *qui facit per alium facit per se*, which states that a person who acts through another does so in his or her own interest. The current case proved this premise.

In the particular case of ***Pravat Kumar Mukherjee v. Ruby General Hospital & Others***, [11] the National Commission of India issued a landmark decision regarding the treatment of victims of accident. In this case, Samanate Mukherjee, a 2nd year B. Tech student at Netaji Subhas Chandra Bose Engineering College, was involved in an accident. The youngster was

struck by a Calcutta transit bus and transported to the hospital, which was one kilometre away. When he was transferred to the hospital, he was conscious and presented his medical insurance card, which indicated that he would get Rs. 65,000 from the insurance company in the event of an accident. Based on this, the Hospital began his therapy. However, after the initial treatment, the hospital sought Rs 15,000, and when the patient did not pay, the hospital ended his care. Afterwards, he was taken to a different hospital, but he died before arriving. In this instance, the National Commission deemed Ruby hospital accountable and awarded the parents Rs. 10 lakhs in compensation. In light of this, the court awarded the complaint compensation based on humane considerations.

COMMERCIALIZATION OF NOBLE MEDICAL PROFESSION

The expanding commercialization of India's health care system is a key contributor to the deterioration of medical professional values. In the modern world, the original definition of doctor has been drastically altered. Despite the fact that the aura of godliness surrounding doctors is an illusion, the profession has been described as noble before the period of 'commercialisation' emerged.

Outside of each clinic, there are separate drugstores that offer prescription medications. The particular medication is not readily available in the city. The patients must purchase them from the doctor's store. In addition, the cost of the drug has changed. The original price at which it is shipped from the manufacturer is replaced with a much higher price. It is carried out with the approval of the manufacturer and its medical representatives (MRs).

Commercial surrogacy, or the renting of wombs, is a booming industry in India. Critics have referred to the prevalence of surrogacy arrangements in India as a baby-booming industry, a womb-for-hire, a baby-firm, and a substitute parental arrangement. A fundamental biological function of a woman's body has been transformed into a commercial contract via surrogacy. Surrogate services are marketed, surrogates are recruited, and surrogate agencies generate substantial revenues. The commercialization of surrogacy raises concerns about a black market, breeding farms, as well as the potential for selective breeding for a fee. [12]

Notwithstanding the Transplantation of Human Organs Act, 1994 which forbids the sale, leasing, and commercialization of organ transplants, India allows the employment of surrogate wombs. Even though same-sex marriages are prohibited in India, single parents, gays, and unmarried partners have no better access to surrogates than they have in India. In the modern

world, abortion is a business. In a more extreme and horrifying instance, the lifeless remains of aborted fetuses are sold to scientific facilities for testing. I do not say this casually, nor do I say it for shock effect. My argument is that the business of abortion extends well beyond the amount a terrified young girl is prepared to pay for her abortion; it also includes the sale of our children's bodies for experimentation. A body that could not even see the world should not be sold for profit or business. [13]

The moment has come for India to evaluate the current state of the medical field and make plans for its further development. The medical community has a responsibility to assist and provide support to the government in its efforts to pass new legislation that will ensure the drafting of a new surrogacy law. This law should include suitable checks, protections, safety protocols, and appropriate precautions to ward off the ill effects of the commercial overtones that are present in the profession.

CONCLUSION

Even after implementation of the Medical Council Act, there are still several unethical practises in the medical field. Therefore, it is of the utmost need to amend the Medical Council Act to eliminate all malformations. This medical field requires stringent discipline measures. MCI only engages in disciplinary actions in response to complaints. The majority of victims of medical malpractice may be unwilling to pursue legal action against the doctor or may be unaware of the appropriate course of action. In such circumstances, the council is powerless. Aside from this, the Medical Council Act of 1956 does not stipulate a procedure for conducting an investigation, nor has it specified a timeframe for its completion. Due to their lack of accountability, such examinations are typically conducted by ad hoc advisory committees, which set aside a considerable amount of time to produce their reports.

Even the characteristics of doctor-patient relationships are altering, and it is commonly believed that ethical behaviour demands more of doctors than legal conformity. Although there may be conflicts, contradictions, and parallels between a physician's legal and ethical responsibilities, it is his responsibility to adhere to both the law and professional ethical standards. Even if a physician finds it difficult to comply with the law, possibly because it conflicts with his ethical principles, compliance is mandatory.

In conclusion, there are seldom disciplinary actions taken against experts for medical carelessness, and professionals are rarely penalised for the same. Regarding the rise of medical

tourism and its impact on economic sectors, there must be some form of legal framework in place. Medical tourism is now as common in India as visiting the marketplaces. The advancement of pharmaceutical technology and innovation has created new difficulties in the medical industry. Among the contentious concerns are those pertaining to infertility therapy, artificial nutrition and hydration, and the management of coma patients. In the modern world of medical innovation, official and informal restrictions by professionals and institutions are crucial. Consequently, a good law can improve the environment for medical practises.

ENDNOTES

- 1) Jha AK, Larizgoitia I, Audera-Lopez C, PrasopaPlaizier N, Waters H, Bates DW. The global burden of unsafe medical care: analytic modelling of observational studies. *BMJ Qual Saf* <https://jhu.pure.elsevier.com/en/publications/the-global-burden-of-unsafe-medical-care-analytic-modelling-of-ob-3>.
- 2) Shaun D.Pattinson, *Medical Law and Ethics*, Sweet & Maxwell, London, 2006, Edition, p.37 <https://www.sweetandmaxwell.co.uk/Product/Academic-Law/Medical-Law-and-Ethics/Paperback/42702437>.
- 3) Nishta Jain, Conflict between medical laws and ethics, I Pleaders, <https://blog.ipleaders.in/medical-laws-conflict-ethics/>.
- 4) Charvi Arora, *Medical Laws and Ethics: Evolution and position in India*, Legal Desire, <https://legaldesire.com/medical-law-ethics-evolution-position-in-india/>.
- 5) E. D. Pellegrino, "The Internal Morality of Clinical Medicine: A Paradigm for the Ethics of the Helping and Healing Professions," *Journal of Medicine & Philosophy*, <https://pubmed.ncbi.nlm.nih.gov/11735050/>.
- 6) Kunal Saha v. AMRI, AIR 1969, SC 128
- 7) A.S. Mittal and Another v. State of U.P. and others, 1989 AIR 1570
- 8) Poonam Varma v. Ashwin Patel, AIR 1996 SC 2111.
- 9) Krishan Singhal Rao v. Nikhil Super Speciality Hospital, AIR 1989 SC 1570
- 10) Aparna Dutt v. Apollo Hospital Enterprises Ltd, 2002 ACJ 954 (Mad. HC)
- 11) Pravat Kumar Mukherjee v. Ruby General Hospital & Others, 2005 CPJ 35 (NC)
- 12) SS Das & Priyanka Maut, Commercialisation of Surrogacy in India, Research Gate, https://www.researchgate.net/publication/281710247_Commercialization_of_Surrogacy_in_India_A_Critical_Analysis.
- 13) Melissa Anderson, Business of Abortion, United Families, <https://www.unitedfamilies.org/life/abortion/the-business-of-abortion/>.