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ANALYSIS ON MEDICAL LAW AND ETHICS IN INDIA

INTRODUCTION

Medical Law and Ethics is a concept that looks at the inherent rights that patients have in terms of the protection of their medical records, the confidentiality of experts, and the privilege of receiving crisis care in emergency situations, among other things.

Medical education entails an individual exploring the many perspectives associated with the moral relationship between a patient and his or her expert. It also looks at the upkeep of emotional holding between the care provider and the patients themselves, with the purpose of ensuring that all of the patient's needs are met in a positive manner, both during and after any medical examination.

As a result, science and medicine are increasingly dragged and pushed into ethical debates, resulting in a collision between scientific method and philosophical, mental, physical, and ethical issues. Such rules are becoming more institutionalized, with legislation, regulations, directives, judicial rulings, administrative mandates, and institutional rituals enshrining them. The regulations advise patients and their families about counselling and educational processes when making decisions about terminal care, urging them to participate in treatment and conversations and to make prior comments about desired and undesirable treatments.

This 'embedded' nature has significant implications for the type of ethical issues and how they are communicated. Jennings agrees that the primary focus of ethical theory has shifted away from epistemological relations about the relationship between a rational, knowing subject and a rationally knowable, objective morality, and toward an approach that seeks to understand morality "as a sociality embedded practise." These changes have significant implications for how we think about, and even describe, the creation of a legal framework and the construction of ethical standards for managing scientific and technological communities.

MEDICAL ETHICS

This is a discipline that distinguishes between a legal and a moral obligation, and the interactions rely on the doctor's fiduciary duty to his patient. The reasons for the requirement for confidentiality are mutually beneficial. First, if sick people don't trust doctors to keep the information they share confidential, they won't seek care. It is especially critical in the event of viral diseases like as infection with the Human Immunodeficiency Virus (HIV) (HIV). The doctor must also believe that the patient has provided the whole history of their illness; otherwise, there is a danger that the doctor may make an incorrect diagnosis and prescribe the wrong medication. The legal obligation is not absolute and is susceptible to change. An ex[1]amination of the cases that have shaped and defined the law in this area demonstrates the necessity of people disclosing all of their medical information in the public good. The private interests of[2] individuals are accorded relatively little weight.

The act of Medical Law and Ethics extends much beyond just ensuring that there is no carelessness during medical operations and that individual damage to patients is avoided. The concept of Medical Law and Ethics, on the other hand, goes beyond these previously mentioned aspects of medical morals and focuses on providing guidance to medical doctors and medical associations, thereby assisting in the planning and implementation of health plans and laws, and even reaches out to capacities such as ensuring legitimate assurance to people and executing appropriate risk management strategies in order to check it.

The Supreme Court's major ruling in 1996, which brings the administrations of specialised doctors within the Consumer Protection Act, has put an end to the debate over whether doctors should be included under the 1986 Consumer Protection Act. As a result, there has been an increase in the number of consumer cases in which experts have been accused of a variety of wrongdoings by patients. The latest Supreme Court rulings requiring a thorough examination by Consumer Courts before advancing with patient-filed pharmaceutical negligence lawsuits would be a godsend to doctors who will avoid being drawn into unnecessary litigation.

PROBLEM AREAS RELATING TO MEDICAL ETHICS

Informed assent, data disclosure, confidentiality, patient autonomy, euthanasia, and organ transplantation are some of the contentious zones in medical ethics. A comprehensive clarification is required for a meaningful grasp of this topic.

1. **Informed consent and Medical Ethics:** Because of the widespread illiteracy in India, physicians believe it is impossible to obtain informed permission. They feel that patients are unable to make informed decisions because they are unable to comprehend the complexities of alternative medical treatment, surgeries, or drug trials, and hence take a paternalistic approach, believing that "the doctor knows best.

[1] Available at: https://legaldesire.com/medical-law-ethics-evolution-position-in-india/#_ftn10

[2]Available at: https://silo.tips/download/medical-ethics-in-india

In such cases, what is the old teaching? Before initiating therapy that may result in the patient's death, Charaka encourages the physician to consult close family, community elders, and even government officials. The therapy will thereafter be carried out by the physician. In India, doctors are held in high regard, but the practise is now being questioned by a growing number of individuals. The concept of trusting doctors because of their "goodness" is steadily fading, giving way to the idea that the patient has the right to make the decision. In this case, the patient's agreement is important.

2. **Confidentiality and health care profession:** Members of the healthcare profession decide on confidentiality and medical ethics rules through professional bodies under their supervision. Looking back through history, the Hippocratic Oath is the foundation of the medical profession. The oath still binds the doctor-at least theoretically-because the policy that drives the GMC is drawn from it.
   There are some issues that will not be sanctioned if they are disclosed. There are some issues that are so important that they should be made public in the public or private interest. A wise doctor, it is urged, would be very concerned about relying on such interpretations. In the instance of Winston Churchill, this has been extensively debated. It was discovered after his death that he had been critically unwell for a long time and that his doctors had misdiagnosed him. Lord Meran was chastised for not disclosing it at the time, ostensibly in the national interest. This is the doctor's most serious quandary.

3. **Medical ethics relating to Euthanasia:** The right to die is separate from the right to live. Suicide and the aiding and abetting of suicide are illegal in India. "It is a horrible practise to inflict greater suffering on a man who has already found life so unpleasant, his possibilities of happiness so bleak, that he is willing to face agony and death to quit living," the Law Commission declared in its 42nd report. Although none of our ancient laws permit euthanasia, there were proponents among our ancient physicians for discontinuing therapy when the sickness has progressed to the point where healing is no longer conceivable.

4. **Organ transplantation:** The need for organ transplants, such as kidneys, is increasing, and this desire frequently raises ethical concerns. Only a small percentage of kidneys are donated by family members, while the vast majority of transplants are done for profit. Some physicians in India and the Middle East are in the kidney business, treating wealthy clientele. As middle men, a new class of agents has emerged. Doctors are unconcerned about ethics and steal kidneys from people without their consent or knowledge. Because they are in urgent need of money, the illiterate and poor are forced to donate their kidney. Organ transplantation poses a slew of ethical concerns. Treatment of the terminally sick is another ethical dilemma.

POSITION IN INDIA

In India, the Medical Council Act of 1956, as amended by Act, regulates expert misbehaviour by medicinal professionals. The General Medical Council, which acts at the state level, is the highest organisation for dealing with expert misconduct. The State

Medical Council also has the authority to dismiss or suspend medical professionals from their administration. They might also engage the help of experts who have dealt with disciplinary issues. The Code of Medical Ethics is intended to ensure that specialised doctors' medical ethics are upheld. Experts should follow the guidelines given forth by the organisation. Doctors' responsibilities are outlined in the Code.

The primary purpose of the medical profession is to provide administration to the general public. Doctors should be available to their patients and partners, as well as for the benefits of their professional successes. The right to die isn't always justifiable in [3]comparison to the right to live. Suicide is prohibited in India, as is aiding and abetting suicide. "It is a large procedure to impose extra suffering on a person who has effectively found life so unpleasant, his possibilities of fulfilment so tiny, that he would confront agony and death to quit existing," the Law Commission stated in its 42nd report. Indian law allows for the removal of a foetus if the pregnant woman's life or physical or mental health would be jeopardised if the pregnancy were to continue. In view of the growing population, the Medical Termination of Pregnancy Act allowed for the medical termination of pregnancy for the better good of the country. In Vedic, Upanishadic, Puranic, and Smriti writings, abortion is strongly condemned. It also goes against the Medical Council of India's Code of Medical Ethics.

CASE LAWS

1. The first decision that comes to mind when we think about landmark judgments in medical negligence cases is one of the most high-profile and widely discussed cases with the greatest amount of compensation awarded to date. The case of **KUNAL SAHA VS AMRI** (Advanced Medical Research Institute), also known as the Anuradha Saha Case, was launched in 1998 with allegations of medical negligence against Kolkata-based AMRI Hospital and three physicians, Dr. Sukumar Mukherjee, Dr. Baidyanath Halder, and Dr. Balram Prasad. In layman's terms, the wife had a medication allergy, and the physicians were neglectful in giving treatment, worsening the patient's condition and eventually leading to death. In summary, the facts and circumstances of the case were as follows: the Supreme Court issued a final judgement in this matter, awarding a compensation of about 6.08 crore for the loss of his wife.

2. Krishna Rao, an official in the malaria department, made a complaint against the hospital for improper treatment of his wife in the matter of **KRISHAN RAO VS NIKHIL SUPER SPECIALITY HOSPITAL** in 2010. Due to the hospital's incorrect treatment, his wife was diagnosed with typhoid fever instead of malaria fever. Finally, a decision was reached, and Rao was granted Rs 2 lakhs in compensation. The concept of *res ipsa loquitor* (things speak for themselves) was used in this instance, and the plaintiff was compensated.[4]

[3] Available at: https://silo.tips/download/medical-ethics-in-india

[4] Available at: https://legaldesire.com/medical-law-ethics-evolution-position-in-india/#_ftn10

3. **APARNA DUTT v. APOLLO HOSPITAL ENTERPRISES LTD**. A woman had cysts in her uterus removed during surgery. The procedure was believed to be successful, but the woman died a few days later from intense discomfort in her lower abdomen. A pair of scissors was discovered in her ashes after her body was burned. The court determined that while the hospital performed cyst removal surgery, one of the operators in the operating room dropped a pair of scissors into the women's abdomen. The notion of vicarious responsibility is founded on the latin adage "*qui facit per alium facit per se*," which means "who facit per alium facit per se," which means "who facit per alium facit per se." In this situation, this premise was established.

4. The National Commission of India delivered a landmark judgement in the case of **PRAVAT KUMAR MUKHERJEE v. RUBY GENERAL HOSPITAL AND ORS**. What happened in this case was that the complainants were the parents of a deceased boy named Samanate Mukherjee, a 2nd year B.tech boy who studied at Netaji Subhas Chandra Bose Engineering College, and the complaint was filed with the National Commission of India. A Calcutta transit bus hit the youngster, and he was transported to the hospital, which was 1 kilometre away from the accident site. The boy was conscious when he was taken to the hospital, and he showed his medical insurance card, which clearly states that the boy will be paid Rs.65,000 by the insurance company in the event of an accident. Based on this, the hospital began treating the boy, but after some initial treatment, the hospital demanded Rs15000, and upon non-payment of the demanded money, the hospital stopped treating the boy, and the boy was rushed to another hospital, where he died. This was the case, and the National Commission found Ruby Hospital guilty and awarded the parents Rs.10 lakhs in compensation. So, in this case, the court looked at the situation from a humanitarian standpoint, and the complaint was given compensation.

   These are the seminal instances in the field of medical malpractice. However, there are an incalculable number of medical malpractice instances. One thing is consistent in all of these cases: each doctor was in a rush to do the procedure without considering what would happen to the patient if he was not treated properly.

CONCLUSION

Even after the implementation of the Medical Council Act, there are still various unethical practises in the medical field. As a result, it is critical to amend the Medical Council Act to eliminate all malformations. This medical profession necessitates a high level of discipline. MCI only engages in disciplinary actions in response to complaints. The majority of patients who are victims of medical malpractice may not want to fight the doctor's case or may not be aware of the procedure to follow. In such circumstances, the council is powerless to intervene. Aside from that, the Medical Council Act of 1956 does not specify any technique to be followed in conducting an investigation, nor does it specify when it should be completed.

Because of their lack of accountability, such investigations are typically undertaken by ad hoc advisory bodies, which set aside a significant period of time to deliver results. To summarise, disciplinary actions against experts accusing them of medical negligence are seldom undertaken, and professionals are rarely penalised [5]for the same. With relation to the emerging medical tourism and its impact on commercial sectors, some type of legal machinery is essential. Medical tourism has lately become as popular in India as going to the marketplaces. Pharmaceutical advancement and innovation have created new obstacles in the medical industry. Some of the contentious concerns include infertility therapy, artificial nutrition and hydration, and the management of patients in coma. Formal and informal restrictions by specialists and institutions are critical in the new world of medical innovation. As a result, a strong law can improve the environment for medical practises.

[5] Available at: https://legaldesire.com/medical-law-ethics-evolution-position-in-india/#_ftn10