

LEGAL ETHICS AND MEDICAL PROFESSION
BY
JUSTICE D. MURUGESAN
MEMBER, NATIONAL HUMAN RIGHTS COMMISSION
AT DR. RAMACHANDRA UNIVERSITY FOR MEDICAL EDUCATION.

1. INTRODUCTION

I deem it a matter of pride, pleasure and privilege to be present before this august gathering of participants and extend my sincere appreciation to the organizers. I feel deeply honoured to give my views on the topic "Legal Ethics and Medical Profession".

Though this address, I would discuss some of the lapses on part of the medical practitioners and then deal with certain suggestions which I personally feel, if followed in its true sense, will help in achieving the utmost objective of this noble profession i.e. render service to humanity with full respect for the dignity of profession and man.

Before I delve into discussing the lapses and suggestions that are required to be adopted, I deem it necessary for us in the first instance to understand the importance of medical profession and ethics in it. To give a holistic view, I will also glance at the legal enactments regulating the conduct of medical professionals and their roles and responsibilities. Briefly, I will also discuss professional accountability of doctors under varying heads.

2. MEDICAL PROFESSION

The word profession is derived from the original latin profiteor which conveys a meaning of making public statement of commitment, promise, announcement or confession. A profession is not merely an occupation of highly learned and skilled technicians. It also includes a strong and inseparable moral commitment made publicly. For the medical professional, this public commitment is to the welfare of patients and for improving health status of people. Therefore, Ethics has become a force within and outside the medical profession shaping its contours and the behavior of its practitioners.

3. ETHICS

Ethics have been defined as the science of human conduct. It deals with how man behaves and what should be the ideal behavior. For enforcing certain ethics conduct, ethics depend upon law through the instrumentality of the police, law, courts judges and

punishment. Therefore, in my opinion, every law must be based on ethical principles and should not be divorced from human values.

4. THE IMPORTANCE OF MEDICAL PROFESSION AND MEDICAL ETHICS

Now that we have had a glimpse of the concepts of medical profession and ethics, let us now briefly examine the importance of medical profession and medical ethics. In my view, good medical practice is based on relationship of trust between the profession and society, in which doctors are expected to meet the highest standards of professional practice and behaviour. It involves a partnership between patient and doctor that is based on mutual respect, confidentiality, honesty, responsibility and accountability. Therefore, the practice of medicine has special characteristics, doctors deal directly, and at the time when person is most vulnerable, with the immediate issues of life and death, health and illness. The patient is heavily dependent upon the technical knowledge and integrity of the doctor. The doctor has a unique involvement with the patient, but this relationship between the patient and doctor is not balanced.

Medical ethics is essentially a regulatory mechanism that makes the doctor commit publicly that though medical practice is the source of his living, he will strive to the utmost for the benefit of the patient and not to be driven by just mere personal aggrandizement.² In other words, Medical ethics mandates confidentiality of the patient and frames the parameter of code of conduct that governs and navigates the working practice of doctors.

Having enumerated the concepts of medical profession and ethics and its importance, I shall now deal with the historical aspects of medical ethics.

5. HISTORY OF MEDICAL ETHICS

'Medical ethics' is a code of behaviour imposed by the oath in 1000BC and voluntarily accepted by doctors. The first basic code of conduct of medical ethics was laid down by Hippocratic in 460 BC in Ancient Greece roughly 2500 years ago. After the Second World War, a modern version of medical oath was devised by World Health Organisation known as "Declaration of Geneva" which was accepted by International Medical Fraternity as "International Code of Medical Ethics". Another international declaration was made in 1964 when World Medical Association drew up a code of conduct for doctors. The World Medical

² Amar Jesani, Law, Ethics and Medical Council: Evolution of their Relationships, Medical Ethics, vol. 3, no. 3, 1995, p. 10.

Council prescribed standards of medical professional conduct and etiquette which is yard stick of professional behaviour as applied by the State Medical Council. Again they issued a 'warning notice' which is intended to be a guide for all registered medical practitioners as to their professional conduct. In short the medical oath, the Declaration of Geneva, the Declaration of Helsinki and International code of Medical Ethics are all intended to protect patients as well as to safeguard the doctor's interest.³

After understanding the importance of medical profession and medical ethics along with its history, let us now look at the laws that are concerned with Medical Professionals in India.

6. LAW RELATING TO MEDICAL PROFESSIONALS

The list of legislation which regulates and conduct of medical profession are:

- The Constitution of India
- The Indian Medical Council Act, 1956; The Indian Medical Council Amendment Act, 2001 with the Code of Medical Ethics, 1972; The Medical Council of India Regulation, 2000; Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulation, 2002.
- Indian Medical Council (Professional Conduct, Etiquette and Ethics) (Amendment) Regulations, 2009 Part I
- The Dentists Act, 1948; The Dentists (Code of Ethics) Regulation, 1976
- The Indian Medicine Central Council Act, 1970
- The Homeopathy Central Council Act, 1973 and Homeopathic Practitioners (Professional Conduct, Etiquette and Code of Ethics) Regulations, 1982, Medical Degrees Act, 1916
- The Indian Nursing Council Act, 1947

There are certain other legislations which must be strictly observed and enforced by the medical practitioners in the interest of public health.

- The Mental Health Act, 1987
- The Drugs and Cosmetics Act as amended in 1964 and the Pharmacy Act, 1948
- Medical Termination of Pregnancy Act, 1971

³ Dr. B.Hydervali, A Note on the Medical Oath and Ethics, Andhra Law Times, Vol 97, 1999(2)

- Transplantation of Human Organ Act, 1994.
- Pre-natal Sex Determination Act, 1994
- Persons with Disabilities (Equal Opportunities and Full Participation) Act, 1995

• Bio-Medical Waste (Management and Handling) Rules, 1998

6.1 Constitutional Provisions:

The Preamble to the Constitution of India coupled with the Directive Principles of State Policy strives to provide a welfare state with socialist patterns of society. It enjoins the State to make the "improvement of public health" a primary responsibility.

Article 39(e)- health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39(f)- children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 42-The State is required to make provision for just and humane conditions of work and for maternity benefit.

Article 47-It is the primary duty of the State to endeavour the raising of the level of nutrition and standard of living of its people and improvement of public health and to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

VII Schedule:

State List- Entry 6: State legislature is empowered to make laws with respect to public health and sanitation, hospitals and dispensaries.

Concurrent List – Entries 23, 26 and 29: Both the Centre and the States have power to legislate in the matters of social security and social insurance, medical professions, and, prevention of the extension from one State to another of infections or contagious diseases or pests affecting man, animals or plants, by entries 23, 26 and 29 respectively contained in the concurrent list of the seventh schedule.

6.2 Indian Medical Council Act of 1956:

The purpose of the Act is to provide re-constitution of Medical Council of India for practice and training in Medical Profession. Its jurisdiction extends to all over India except the state of Jammu and Kashmir. The Act provides for the constitution, composition, power and

functions of Medical Council of India. The Indian Medical Council maintains a register known as Indian Medical Council register. The register contains the names, addresses, qualification of all medical practitioners, who are enrolled with any State Medical Council. The important function of the Council also involves regulation and maintenance of the standard of under graduate and post-graduate medical curriculum and examination all over the country. It also advises and assists the Government of India to maintain and revise the Indian pharmacopeia.⁴

6.3 The Mental Health Act, 1987:

The canvas of mental disorders and disability is very broad therefore the challenges faced by the mental health care are also great. The mental health sector is governed solely by the Mental Health Act, 1987 which came into force in 1993. The main objective of the Act is to consolidate and amend the law relating to treatment and care of mentally ill persons who are incapable of managing their own affairs. In India, it is estimated that about 10 million persons require mental health care. However, this law leans heavily on institutionalized care where patients' choice in admission, treatment and discharge is minimal.⁵

Having mentioned the list of enactments dealing with the conduct of medical professionals, let us now glance at their role and responsibilities including their duties.

7. CODE ON MEDICAL ETHICS

7.1 Role and Responsibilities of Doctors:

The primary objective of the medical profession is to render service to humanity with full respect for the dignity of profession and man. A doctor should be an upright man, instructed in art of hearing. He must keep himself in character and be diligent in caring for the sick. He should be modest, sober, patient and prompt to deliver his duties.

- **Commitment to Professional Competence-** Doctors must be committed to lifelong learning and be responsible for maintaining the medical knowledge and clinical and team skills necessary for the provision of quality care.

⁴Lily Srivastava, Law & Medicine, 2010, p.5.

⁵Dr. Abdul Majid Siraj, Laws and the Doctors, 2014, p.220.

- **Honesty with Patients-**Doctors should ensure that patients are completely and honestly informed before the patient has consented to treatment and after treatment has occurred. The patients should be empowered to decide on the course of therapy.
- **Confidentiality-** Since the doctors have patients' trust and confidence, they should apply appropriate confidentiality safeguards with regard to the disclosure of patient information.
- **Maintaining appropriate relationship with Patients-**Keeping in account the inherent vulnerability and dependency of patients, certain relationships between the doctors and patient must be avoided. Therefore, doctors should never exploit patient for any sexual advantage, personal financial gain or other private purpose.
- **Improving quality of care-** Doctors should merit the confidence of the patients entrusted in their care, rendering to each a full measure of service and devotion.
- **Scientific knowledge-** Doctors should uphold scientific standards, to promote research, and to create new knowledge and ensure its appropriate use.
- **Research-** Doctors must consider the ethical, legal and regulatory norms and standards for research involving human subjects in their own countries as well as applicable international norms and standards. Medical research should be conducted in a manner that minimises possible harm to the environment.

Therefore, it can be concluded that the honoured ideals of medical profession imply that the responsibilities of the doctor extend not only to individuals but also to the society.

7.2 Duties of Doctors:

The World Medical Profession, in its General Assembly in London in October, 1949 adapted the following code of ethics, popular as International Code of Medical Ethics.⁶ The duties laid down in the International Code of Medical Ethics are as follows:

Doctors' Duty to the Sick-

- A doctor must always bear in mind the obligation of preserving human life from the day of conception. Therapeutic abortion may only be performed if the conscience of the doctors and the national laws permit.

⁶ Declaration of Geneva (1948) adopted by General Assembly of the world medical association and amended by the 22nd World Medical Assembly, Sydney, Australia, August, 1968.

- A doctor owes to his patient complete loyalty and all the resources of his science. Whenever an examination or treatment is beyond his capacity, he should summon another doctor who has the necessary ability.
- A doctor shall preserve absolute secrecy on all he knows about his patient because of the confidence entrusted in him.
- A doctor must give emergency care as a humanitarian duty unless he is assured that others are willing and able to give such care.

Doctor's Duty to Another Doctor-

- A doctor ought to behave towards his colleagues in a way which he will like to have from them.
- A doctor must not entice away patients from his colleagues.

Duties of a Doctor in General-

- A doctor must always maintain the highest standards of professional conduct.
- A doctor must practice his profession uninfluenced by motives of profit.
- A doctor should consider the following practice unethical-
 - a. Any self-advertisement except such as is expressly authorized by the national code of medical ethics.
 - b. Collaborate in any form of medical service in which the doctor does not have professional independence.
 - c. Receiving any money for the service to his patient other than acceptance of proper professional fee or payment of money in such circumstances, without the knowledge of the patient-
 - Any act or advice which could weaken physical or mental resistance of a human being may be used only in his interest.
 - A doctor is advised to use great caution in divulging discoveries or new techniques of treatment.
 - A doctor should certify or testify only to that which has personally verified.

In a recent judgement of *Dr.P.B.Desai vs. State of Maharashtra and Anr*,⁷ the Supreme Court has laid down certain responsibilities of doctors which are listed below:

- (i) To continue to treat, except under certain circumstances when doctor can abandon his patient;
- (ii) To take reasonable care of his patient;
- (iii) To exhibit reasonable skill, the degree of skill a doctor undertakes is the average degree of skill possessed by his professional brethren of the same standing as himself. The best form of treatment may differ when different choices are available. There is an implied contract between the doctor and patient where the patient is told, in effect, "Medicine is not an exact science. I shall use my experience and best judgment and you take the risk that I may be wrong. I guarantee nothing."
- (iv) Not to undertake any procedure beyond his control: This depends on his qualifications, special training and experience. The doctor must always ensure that he is reasonably skilled before undertaking any special procedure/treating a complicated case;
- (v) Professional secrets: A doctor is under a moral and legal obligation not to divulge the information/knowledge which he comes to learn in confidence from his patient and such a communication is privileged communication;

The Supreme Court of India has also opined that in the very nature of medical profession, skills differ from doctor to doctor and more than one alternative course of treatment is available, all admissible. Negligence cannot be attributed to a doctor so long as he is performing his duties to the best of his ability and with due care and caution. Merely because the doctor chooses one course of action in preference to the other one available, he would not be liable if the course of action chosen by him was acceptable to the medical profession⁸.

Before I deal with the lapses on part of medical professionals and give certain suggestions, I think it is imperative for us to discuss the professional accountability of the medical practitioners in order to get a holistic perspective of the subject-matter and also to appreciate the judiciary's attitude in dealing with complex issue of liability of medical practitioners.

⁸ Kusum Sharma and Ors. v. Batra Hospital and Medical Research centre and Ors. (2010) 3 SCC 480

8. PROFESSIONAL ACCOUNTABILITY

Liability of medical professionals falls mainly under three heads namely tortious, criminal and contractual. The remedies can also be availed under the Constitution of India or compensation can be awarded under the Consumer Protection Act, 1986.

8.1 Tortious Liability:

In tortious liability, negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant- Winfield

Therefore, the definition involves three constituents of the negligence:

- A legal duty to exercise due care on the part of the party complained of towards the party complaining
- Breach of said duty
- Consequential damage

A man cannot be charged with negligence if he has no duty to exercise diligence.⁹ In *Dr. Laxman Balakrishna Joshi v. Dr. Trimbak Bapu Godbole*,¹⁰ the Supreme Court held that a person who holds himself out ready to give medical advice and treatment impliedly undertakes that he is possessed of skill and knowledge for the purpose. Such a person when consulted by a patient owes him certain duties, that is, the duty of care in deciding whether to undertake the case, a duty of care in deciding the treatment and a duty of care in administering the treatment. A breach of any of these duties gives right of action for negligence.

The Indian law also recognises the concept of vicarious liability in which the law holds one person liable for the tortious act of another, even if he has nothing to do with the commission of the tort. In the case of *State of Haryana v. Santra*¹¹, the Supreme Court held government hospitals vicariously liable for the negligent acts of their employees.

8.2 Criminal Liability:

For an act to amount to criminal negligence, the degree of negligence should be much higher, i.e. gross or of a very high degree. To prosecute a medical professional for negligence under

⁹ Donoghue v. Stevenson 1932 AC 562

¹⁰ AIR 1969 SC 128

¹¹ AIR 2000 SC 1800

criminal law, it must be shown that he did something which in given facts and circumstances, no medical professional in his ordinary senses and prudence would have done or failed to do. The negligence should be of such a nature that the injury which resulted was most likely imminent.

Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law especially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It can not be passed in service for determining per se the liability for negligence within the domain of criminal negligence.

In a landmark judgement of *Jacob Mathew v. State of Punjab*¹², the Supreme Court held that a doctor cannot be prosecuted for simple lack of care and error of judgement or accident during treatment and placed medical profession in a different pedestal.

8.3 Contractual Liability:

When a patient approaches a hospital for medical care, it establishes a relationship between the hospital and patient which is contractual in nature. The subject matter of the contract can include good medical services, technical services including para medical staff. The contractual obligation is also for hygiene and health care including good condition of infrastructure of equipment, reasonable pre-operative and post-operative health care services.

8.4 Provisions under the Constitution of India:

The Constitution incorporates provision guaranteeing everyone's right to the highest attainable standard of physical and mental health. In the case of *Paschim Bang Khet Mazdoor Samiti v. State of W.B.*¹³, the Supreme Court held that Article 21 imposes an obligation on the State to provide medical assistance to every injured person. Preservation of human life is of paramount importance. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his rights to life guaranteed under Article 21 of the Constitution. The Court directed the State to pay Rs. 25,000/- to the petitioner as compensation.

¹² (2005) 6 SCC 1

¹³ (1996) 4 SCC 37

In the case of *Irloskar Brothers Ltd. v. Employees' State Insurance Corporation*¹⁴, the Supreme Court held that "right to health" is a fundamental right. The Court further held that it is a right not only available against the State and its instrumentalities but even private industries to ensure to the workmen to provide facilities and opportunities for health and vigour of the workman assured in the provision of Part IV of the Constitution which are 'integral part of right to equality under Article 14 and right to invigorated life under Article 21 which are fundamental rights to the workmen.

8.5 Remedies under the Consumer Protection Act, 1986:

The Consumer Protection Act, 1986 has been designed to protect the consumer by exerting legal, moral and economic pressure on the defaulter against inadequate or deficient services. In *M/s Cosmopolitan Hospital and Anr. v. Smt. Vasantha P. Nair*¹⁵, the National Consumer Redressal Commission upheld the inclusion of doctors under the term 'service':

In the case of *Indian Medical Association v. V.P. Shantha*¹⁶, the Supreme Court held that the medical practitioners were not immune from claim of damages on the ground of medical negligence. It also held that it is not the medical profession alone that comes under the preview of consumer protection act, but all the professionals.

9. LAPSES ON PART OF MEDICAL PROFESSIONALS

In the case of *Martin F.D'souza vs. Mahd. Ishfaq*, the Supreme Court of India defined medical profession a noble profession and stated that it should not be brought down to the level of a simple business or commerce. It was noticed by the Hon'ble Court that sadly, today, in India many doctor (though not all) have become totally money minded, and have forgotten their Hippocratic oath. Since most people in India are poor the consequence is that for them proper medical treatment is next to impossible, and hence they have to rely on quacks which is disgrace to a noble profession¹⁷.

Now a days, some doctors are working for a profit, asking fee for their service in private sector and consequently, people who fall ill and seek medical care end up paying money on the spot for the doctor's service, as they would in a shop. Therefore, buying medical care is an unpleasant reality for a large majority. For doctors, through their education, training and

¹⁴(1996) 2 SCC 682.

¹⁵ 1992 (1) Consumer Protection Reporter 820

¹⁶ (1995) 6 SCC 651

¹⁷ (2009) 3 SCC 1

historical tradition, have been taught to believe that they are genuine professionals, working not for money but for the well-being of their patients. Doctors have been dealing with life and death of the patients that have kept the doctors self-image as professional alive. This self-image also brings along the question of ethics in medical care, for a professional without ethics is again seen to be retreating to trade and commerce¹⁸.

- In India, there is significant number of medical negligence cases that we come across everyday. Medical negligence means omission by a health care provider in which the treatment provided falls below the accepted standard or practice in the medical community and causes injury or death to the patient. A recent example can be taken of last december, where a NGO- Guru Nanak International Sewa Mission sponsored medical camp in Ghuman village of Gurdaspur district in which 60 people lost their vision. It was found that that the infectinn occurred because when non-sterilised instruments were used. A similar incident happened in Chattisgarh when state government organized sterilization camp in Takhatpur block of Bilaspur district. An Indian surgeon used infected instrument to sterilize 83 women in about six hours, which took the life of 13 women.
- Misdiagnosis and delayed diagnosis also account for a large percentage of medical malpractice complaints. In such a situation, the patient might miss treatment opportunities that could have prevented serious harm or death in some cases. There are cases of medical errors as well where a wrong drug is prescribed by the doctors. Such instances reflect the lack of care on part of medical professionals. The Supreme Court of India has refined medical negligence to include overdose of medicines, not informing patients about side effects of drugs, not taking extra care in case of diseases having high mortality rate and hospitals not providing amenities that are fundamental for patients.
- Female foeticide is one extreme manifestation of violence against women which has existed in India for centuries and still increasing each day. The reasons for this evil are the introduction and proliferation of pre-natal diagnostic test/sex determination clinics and cheaper ultrasound machines that helps in determining the sex of the child before it is born. In recent times, many doctors have been found flouting the laws prohibiting pre-natal diagnostic terms and subsequently, killing the female foetus just for the sake of making more money.

¹⁸ Aditi Iyer and Amar Jesani, Medical Ethics for Self Regulations of Medical, Profession and Practice, CEHAT

- Organ trafficking by doctors has become a very common phenomenon nowadays. Because of the exiting poverty in India, the donors are lured with offerings of small amount of money and then, the organs are illegally transplanted into clients belonging to foreign countries. This also reflects the malpractice existing in this noble profession.
- It has also been found that Pharmaceutical companies bribe the doctors to push their medicine to their patients which are costly than the ones that are available in the market. A notification has been by passed by Medical Council of India in 2009 after amending the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 which prohibits doctors from accepting gifts from pharma companies. However, the practice is still continued.

10. SUGGESTIONS

Now that I have discussed certain lapses that require our serious deliberation, I will attempt to provide some suggestions that can be adopted for keeping the importance of medical professionals in the life of patients intact.

- It should always be kept in mind by the medical practitioners that the patient-doctor relationship is a privileged one that depends on the patient's trust in the doctor's professionalism. The doctors must always be guided by their primary responsibilities to act in the best interests of their patients, without being influenced by any personal consideration.
- The Doctors should perform their duties with utmost sincerity and care so that the occurrence of cases relating to medical negligence is minimal.
- The involvement of doctors in cases relating to organ trafficking and abortion solely depicts the worst form of practice that can be performed by any medical practitioner. They should never forget their sole duty to protect the life of human beings and serve the humanity and therefore, never indulge in such corrupt illegal practices.
- Since this profession involves the process of continuous learning, the doctors should keep a track of latest advancements with respect to medicine and medical equipments so that cases of misdiagnosis and delayed diagnosis can be avoided. Therefore, they should be committed to continuous improvement and excellence in the provision of healthcare.

- Keeping in account the primary role of doctors, they should not charge exorbitant amount from the patients and special consideration should be given to the poor patients. The doctors should also not promote expensive drugs at the request of pharmaceutical companies.
- Associations of doctors can also act in concert to force action by governments and improve the medical boards existing in different states.
- In the end, I suggest that medical practitioners should be rewarded and honored for their ethical medicine practice.

With these few words, I once again extend my heartfelt appreciation to the organisers and wish all the participants, nothing but the best.
