Medical Ethics and Law

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Law and Medical Ethics are disciplines with frequent areas of overlap, yet each discipline has unique parameters and a distinct focus. Medical ethics may be defined as follows¹:

Medical ethics is a discipline/methodology for considering the implications of medical technology/treatment and what ought to be.

Roles of Medical Ethics and the Law

Within their distinctive roles, the disciplines of law and medical ethics nevertheless significantly overlap. Consider that both disciplines address:

i) access to medical care (provision of care, emergency treatment, stabilization and transfer).

ii) informed consent

iii) confidentiality of health care information and exceptions to confidentiality (mandatory reporting obligations such as: child and elder abuse, duty to warn).

iv) privileged communications with health care providers.

v) advance directives.

vi) abortion

vii) physician-assisted suicide

There are, however, significant distinctions between law and medical ethics in philosophy, function and power. A court ruling is a binding decision that determines the outcome of a particular controversy. A statute or administrative code sets a general standard of conduct, which must be adhered to or civil/criminal consequences may follow a breach of the standard. Conversely, an ethics pronouncement which is not adopted into law may be a significant professional and moral guidepost but it is generally unenforceable. Lawmakers (courts and legislatures) frequently do turn to the policy statements (including any medical ethics statements) of professional organizations when crafting laws affecting that profession. Thus, health care providers may greatly influence legal standards by their work in creating professional ethics standards.

Good ethics has been described as beginning where the law ends. The moral conscience is a precursor to the development of legal rules for social order. Law and medical ethics

¹ “Law and Medical Ethics” available at http://depts.washington.edu/bioethx/topics/law.html#ques3 (Last Visited on August 1, 2010).
thus share the goal of creating and maintaining social good and have a symbiotic relationship as expressed in this quote:

*Conscience is the guardian in the individual of the rules which the community has evolved for its own preservation*-William Somerset Maugham

**Present Position in India with reference to Amendment to Drugs and Cosmetics Act under consideration**

With the number of incidents related to violation of medical ethics increasing, particularly those involving clinical trials by foreign pharmaceutical companies, the Centre has now decided to bring such cases within the purview of law. The Union Health and Family Welfare Ministry is in the process of amending the Drugs and Cosmetics Act to make violation of medical ethics an offence punishable under law. The Hon’ble Health and Family Welfare Minister Ghulam Nabi Azad\(^1\) delivered that by adding a separate chapter on medical ethics in the Act, that would also prescribe punishment for such offences. At present, medical ethics violation cases, such as negligence\(^2\), are dealt with under various provisions of the Indian Penal Code (IPC). There are number of complaints regarding violation of medical ethics coming in from across the country, the move has been necessitated.

Generally, the doctors were accused of carrying out clinical trials for a multinational drugs company on patients without obtaining their consent, which is mandatory as per the guidelines of the Drugs Controller-General of India (DCGI). The doctors are also reported to have been given monetary incentives and free foreign trips for carrying out the trials. Earlier, the Government of India ordered suspension of clinical trials on tribal girl students in Andhra Pradesh and Gujarat, carried out by a non-governmental organisation, Path-International, for U.S-based pharmaceutical company MERCK for HPV (human papilloma virus) virus to prevent cervical cancer. While it is believed permission had been granted for carrying out such trials, there was violation of guidelines on the ground and this became known after some girls reported adverse side-effects. A three-member committee is looking into the matter.

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\(^1\) Aarti Dhar, “Medical ethics violation to be made punishable offence” available at [http://www.thehindu.com/todays-paper/tp-national/article545280.ece](http://www.thehindu.com/todays-paper/tp-national/article545280.ece) (Last Visited on August 1, 2010).

\(^2\) See section 269 of Indian Penal Code, Negligent act likely to spread infection of disease dangerous to life...
In present day scenario, the Ethics Committee — whether at the national, State or hospital level — can only suspend trials in case of violations. If any doctor is directly involved in the trial, his license can be cancelled. “Law does not prescribe any punishment for this offence”.

**Board of Governors**

The Board of Governors of the Medical Council of India has also set up a working group on medical ethics reforms that would recommend strictures against medical malpractices. These would be taken into account before finalising the amendments. Already, the Lok Sabha has passed the Clinical Establishments (Registration and Regulation Act) Bill, 2010 that makes it mandatory for all clinical establishments to provide medical care and treatment to stabilise any person in an emergency condition.

**First Initiative**

Once the Bill is passed in Parliament, this will be the first time emergency medical care is made obligatory under law in the country. Accident victims are often referred to government hospitals from private facilities to avoid legal hassles. Particularly, women are turned away from private hospitals and nursing homes at the time of delivery if they fail to deposit money in advance.

**Mandatory Registration**

As per the Bill, all clinical establishments will be required to register themselves with the State Council for Clinical Establishments. These include hospitals, maternity homes, nursing homes, dispensaries, clinics and similar facilities with beds that offer diagnosis, treatment or care for illness or injury or pregnancy under any recognised system. The legislation will help in addressing unregulated growth of the private sector, often accused of inadequate treatment, excessive use of higher technology, medical malpractices and negligence.

Conclusion: In our democratic country, there is need of welfare to people and things to be done in efficacious manner in prospective days.

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