

RELATIONSHIP OF LAW AND MEDICINE: AN INDIAN OVERVIEW

Yashodhara Pattanaik¹

¹Research Scholar, SOA National Institute of Law, Siksha 'O' Anusandhan (Deemed to be University),
Bhubaneswar, Odisha, India

ABSTRACT

Law and Medicine are two very distinct and different sectors. Beyond the court room and hospital, there are frequent interactions between legal and medical professionals in a friendly discussion regarding the beautiful relation of law and medicine. Due to the changing times and radical transformation in the society, they now have interlinked themselves and go hand in hand. Both the topics have expanded and related in more than the conventional needs in the changing times. For decades, the plight of people against unfair healthcare access has resulted in regulations and compliance laws that have ensure the right to healthcare of the citizens it not breached or exploited thereof. The paper intends to give an overview of the various ways in which law and medicine meet. The interlink between the two notably different domains can be seen in the form of guiding principles for medical practitioners, pharmaceutical guidelines in terms of intellectual property rights, research funding, forensic use, and in health regulatory laws such as reproductive technology, assisted death, organ and blood donation and access to it. The paper has successfully achieved its intention to highlight the linkage of law and medicine with suitable landmark case laws that have shown the path towards the need to study the expanding medical and health laws. The dynamic relation between law and medicine is bound to grow more in the future.

Keywords: Law, Medicine, Healthcare, Medico-legal.

1. INTRODUCTION

Law and Medicine are two distinct fields. They intersect at points where the faith of the society is tested. The need for law and medicine to be explored in a lucid manner is the need of the hour. Law and medicine meet at many points. At surface level these two distinct fields meet when there comes the need of law in terms of regulation of medicine practice or establishing standards, protocols and guidelines. The meeting other way round happens in terms of evidence and expertise assistance. Both the topics have expanded and related in more than the conventional needs in the changing times. The medical law is a hot topic when it comes to medical negligence and use of reproductive technologies. However, there are many ways where both law and medicine meet to create a harmonious balance.

2. METHODOLOGY

For this study, the doctrinal technique is utilized. This involved conducting an in-depth study and analysis of existing articles which are secondary data sources. In addition to determining the relation between law and medicine, the article has highlighted some landmark case laws that showcase the brilliant way both the fields namely, law and medicine have each other's back.

BACKGROUND

The relationship of law and medicine is a tale of times. Earlier due to poor knowledge people were not aware of the existing rights and remedies against healthcare sector. The advancement of technology and societies' transformation led to significant changes, which have resulted in the form of Medical Law at present times. There was a brutal need of such a commendable law in the past, where female foeticide, infanticide, dowry deaths were very much prominent in the society. The lack of consideration from the healthcare sector during those times seriously questioned their morals and ethics. The prenatal diagnostics seriously declined the male female sex ratio during those times. Not only were the people doing such diagnostics were wrong, but the healthcare workers who assisted in this process were also unethical individuals. Following this, in the year 1994 the Parliament of India enacted the Pre Conception and Pre Natal Diagnostics, Techniques Act which banned the determination of sex before the birth of the child, to eradicate female foeticides and put stop on the declining sex ratio of the country.

Earlier the general relation of law and medicine was limited to the intellectual property rights relating to the pharmaceutical industry, the ethical practicing principles of the healthcare practitioners, research funding and healthcare industry's budget allocation for infrastructure, technological and medical practitioners engagement upgradation to provide better quality in the healthcare industry. The significant expansion of their interaction was seen in the last 2-3 decades. The boost in technology has lead to upgraded technical machineries in the healthcare facilities that are doing miracles. The use of reproductive technologies is has become a boon for many people which needs thorough regulation to avoid exploitation and commercialization. There has also been serious discussion on women's reproductive autonomy and termination of pregnancy, the debate on this is still ongoing.

The first basic and legit legal intervention between law and medicine came when right to health or medical aid was not seen as a fundamental right. The case of Paschim Banga Khet Mazdoor Samity v. State of West Bengal, was the first case where a Court stated that health falls under the ambit of life. Hence, right to life also includes right to health and accessing healthcare facilities and medical aid. This was further expanded in Paramanda Katra v. Union of India, where the Supreme Court stated that right to medical access healthcare is a fundamental right. This right did not just restrict itself to government hospitals but also was applicable on private hospitals too. These were where the strong foundation for the relation of law and medicine came into existence.

The relation of law and medicine was further elaborated and was seen broadly in healthcare regulation and compliance. The healthcare regulative laws maintain patient's confidentiality; ensure their safety and looks after the ethical standards and quality of care provided in the field of medicine. The Health Insurance Portability and Accountability Act of the United States of America, also known as HIPPA is one such regulation that stands to protect the patient's health information. Sadly, till date India does not have any similar law as to HIPPA. However, in India, there is the Hippocratic Oath that is an ethical and moral promise of a doctor to help the sick and never wrong them.

Aspects such as pharmaceutical regulations, healthcare professional's certification and licensing, subjects and standard of clinical trials all fall under the ambit of medicine and law. Both healthcare and legal professionals work together and reach at a point to ensure and enforce such regulations that do not violate any law and ensure a standard of care.

Addressing issues such as clinical research funding, healthcare insurance regulations, public health initiatives and development of healthcare infrastructure needs a good understanding between medicine and law.

3. DISCUSSION

Legal disputes regarding the pharmaceutical industry and intellectual property right is an age old relation of law and medicine. Dealing with compulsory licensing and generic drug production connects medical field towards the legal assistance.

Ethical principles are the guiding lights of the healthcare discipline. They guide for patient's confidentiality and concern for their well being. The finest of these is the informed consent. To provide proper information regarding the patient's healthcare issue along with the benefits and risks associated during its curing process, any alternative available, every single information that can make or break a patient's life is provided to ensure a fair shot is given to the person. Following this only can the patient make an autonomous decision, rightfully making use of the principle of informed consent.

The medical or healthcare service falls under the ambit of consumer services, there by completely allowing the merge of legal discipline to assist medical service in case of breach of law. Indian Medical Association vs. V.P. Shantha was the landmark case that added medical services as a consumer service. The Apex Court in this case established that a patient who has faced medical negligence can come to the Consumer Forum to seek redressal, adding medical services under the ambit of services in Consumer Protection Act. This clearly shows that medicine can rely on law in case things go south.

Medical ethics can be seen in aspects like organ donation and transplant, reproductive rights and end of life decision. The case of Aruna Shaunbaug v. Union of India was the landmark case which stated that right to life also includes right to die with dignity. The patients who are incurable need not live a destitute life of pity and can have a medically assisted death. This medically assisted death helps them die a dignified death instead of a miserable one.

Abortion or medically terminated pregnancy is one such point where law and medicine are often seemed to clash. Reproductive autonomy is the right of every woman, but it should be done only when need arise and never be assumed as an alternate to contraceptive. The Medical Termination of Pregnancy Act has laid down regulations that should be followed for safe abortions. In the case of Suchita Srivastava v. Chandigarh Administration, the Apex Court recognized that right to access safe and legal abortion is a part of woman's right to life with dignity.

Surrogacy is another important aspect of intervention of law and medicine. This form of having children is known as assisted reproductive technology. This technique has made many childless couple become parents.

In the case of Baby Manji Yamada v. Union of India, the need to regulate surrogacy became urgent. Many similar situations have happened where after the surrogacy procedure while the woman carrying the baby is still pregnant, the couple who commissioned for the surrogacy refuses to take the child for x, y, z reasons. In such case the burden comes down to the woman who is carrying the child, who might not be ready to accept such big responsibility. The Assisted Reproductive Technology Bill 2010 was a boon for such women as, it regulated surrogacy to cut on its commercial use and protected the rights of all the involved parties.

The forensic use of medicine and law is like magic and police has been using it for a good time. There has been assistance of forensic experts in legal field be it during court proceedings or criminal case. These experts have assisted in solving

many criminal cases like murder, rape, suicide and helped in gathering evidences like DNA from hair or blood sample, fingerprint, poison and many more.

In the case of Vishal Yadav v. State of Uttar Pradesh, also known as the Nitish Kalra Murder Case, the police was able to nab the criminal after the forensic experts were able to solve a murder case and gave a report which identified the deceased's body by matching his DNA with that of his parents. The use of such medical techniques to identify criminal is a versatile form of amalgamation of law and medicine.

4. CONCLUSION

There are many such scenarios where law has relied on medicine and medicine has relied on law. There recent progress on medical law also has shown how beautifully both can work together, uplifting each other in the process. Beyond the court room, there are frequent interactions between legal and medical professionals in a friendly discussion regarding the beautiful relation of law and medicine. But, the practical relation between the two is a little more sensitive and requires generous attention while mitigating the general notion of differences. As society continues to advance, societal norms and healthcare advancements also seem to grow. The dynamic relation between law and medicine is bound to grow more in the future.

5. REFERENCES

- [1] Gibbes, J. Heyward (1950) "The Relationship of Law and Medicine," South Carolina Law Review: Vol. 3 : Iss. 1 , Article 6.
- [2] StudyCorgi. (2022, August 25). Law and Medicine: Relationship Analysis. <https://studycorgi.com/law-and-medicine-relationship-analysis/>
- [3] Christie, N. (1971). Law and Medicine: The Case against Role Blurring. Law & Society Review, 5(3), 357–366.
- [4] Vanita Mohod (2022), Significance of Law in Medical Profession, Dr. D.Y.Patil Law College Blogs <https://law.dypvp.edu.in/blogs/significance-of-law-in-medical-profession>