

UNIQUE LAW



EST. 2020

JOURNAL OF UNIQUE LAWS & STUDENTS

LLPIN: AAS-8750

WEBSITE: UNIQUELAW.IN

EMAIL: PUBLISH.JULS@GMAIL.COM

ABOUT US

“Journal of Unique Laws and Students” (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. It focuses on theme based, double peer reviewed volume publications which shall be selected from the call for entries for the journal. This is a student-led journal launched with a notion to inculcate and promote the art of legal writing among students.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

UNIQUE LAW is a law related ed-tech premier start up in India that excels in imparting legal education. It is a registered entity under the name Ansh LexPraxis Legal Education LLP. The said LLP is recognized as a start-up India Initiative by Government of India’s Ministry of Commerce and Industry and DIPP63504.

DISCLAIMER

All Copyrights are reserved with the Authors. However, the Authors have granted to the Journal (Journal of Unique Laws and Students), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of Journal of Unique Laws and Students holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Journal of Unique Laws and Students.

[© Journal of Unique Laws and Students. Any unauthorized use, circulation or reproduction shall attract suitable action under applicable law.]

TABLE OF CONTENTS

1) <i>COMPARISON OF COMPETITION LAWS BETWEEN USA, UK, EU AND INDIA</i>	7
2) <i>PREVENTION OF IDENTITY THEFT: AN ANALYSIS</i>	18
3) <i>DOPING IN SPORTS - ITS EVOLUTION AND ITS LEGALITY</i>	31
4) <i>AWARENESS AND CONSCIOUSNESS ABOUT THE WORKING OF THE INTERNATIONAL CRIMINAL COURT</i>	47
5) <i>CHANDRACHUD V. CHANDRACHUD: UNDERSTANDING THE SCOPE OF INTERPRETATION OF STATUTES THROUGH THE FATHER-SON DUO</i>	59
6) <i>HUMAN RIGHTS AMID COVID-19 AND ITS EFFECT ON THE INDIAN ECONOMY</i>	69
7) <i>PREDATORS UNDER THE BLANKET OF PSEUDO FEMINISM</i>	89
8) <i>ORGAN TRAFFICKING: A LESS DISCUSSED ASPECT OF HUMAN TRAFFICKING</i>	102
9) <i>MEDICAL LAWS AND ETHICS IN INDIA</i>	112
10) <i>RESTRICTION OF CHILD MARRIAGE IN INDIA: FACT AND FICTION</i>	122
11) <i>APPOINTMENT OF ARBITRATORS: GRADUAL DEVELOPMENTS IN LITIGATION</i>	135
12) <i>SECTARIANISM UNDER INDIAN CONSTITUTION</i>	152
13) <i>ANALYSING INJUNCTIONS IN CASES OF TRADEMARK INFRINGEMENT</i>	170
14) <i>DELAY IN PROCEDURES LEADING TO MISCARRIAGE OF JUSTICE</i>	180

This issue of the Journal of Unique Laws and Students can be downloaded from:

<https://www.uniquelaw.in/volume-1-issue-1>

MEDICAL LAWS AND ETHICS IN INDIA

Bhavana M E*

ABSTRACT

Law and medicine, despite being two different subjects with nothing in common, may overlap where they find the need for each other. Ethics is a concept of moral instincts that a common being inherits and follows in his lifetime. The notion for ethics can be different for every individual. The topic of interest in this article focuses on the importance and impact of ethics in the medical field and how the law contributes to this aspect, thus evaluating the connection between health care laws and medical ethical issues. The paper will also be focusing on creating awareness on the rights of medical practitioners contributing to the welfare of the society. The need for regulations is because of the malpractices actively being performed in the society. The activities of a medical professional continuously revolve around the life of a patient. While lack of medical knowledge among general society can be neglected because the medical practitioners are there to guide them, but the lack of knowledge or skill amongst medical practitioners creates dangerous circumstances and their ignorance could have disastrous consequences. Thus, the need for well-established sets of rules. Medical environment is a progressive cycle. It is continuously evolving with new technology assisting and aiding the practitioners in the course of treatment. Regulatory Laws also need to keep up with these changes continuously to protect the interests of the practitioners as well as the patients.

* Student of 2nd Year BBA LL.B, Ramaiah College of Law. Email id : bhavanasarma99@gmail.com

INTRODUCTION

The term “health” defines more than absence of illness. Health is a state of complete physical, mental and social well-being¹. Medical care is not only responsible for the absence of disease or infirmity but also to ensure one leads a healthy life. The health sector is a challenging area that persistently changes every now and then. There is a constant tussle between nature and humans engaged in research and development. The situation created is such that the issues keep changing in the blink of an eye. It has become common that the value for medicine changes along with time. While a drug might be used for treatment of a disease in the past, the same can go out of market with the introduction of a new one. If something is found to be incurable it is subject to research for a cure with the help of current inventions.²

The career in medical field shows the strong connection between patients and their specialists, how important their relationship is and how it reflects on the health conditions of the patient.³ It creates the balance in emotions of health provider and the benefiter with assurance of a common goal that guarantees goodness to both specialist and the patient.

Medical law and Ethics is not only defined for the absence of negligence between medical operations and the responsive action of individual harm to the patients but also to provide guidelines to the medical practitioners. The idea of Medical Law and Ethics fundamentally goes past the previously mentioned medicinal practices and basically looks into giving directions to medical professionals and medical associations, helping in the plan and in the introduction of laws for health and welfare of the benefiter and even reaches out to the capacities.⁴ The primary importance is always preservation of human life and is not subjected to any buzz sessions. This is because once a life is lost, it cannot be restored, resurrection is beyond the capacity of man.⁵

The wide interpretation given to Article 21 by the apex court has become the pulse of the Indian Constitution by itself. The judicial interpretation of Article 21 has expanded the meaning and scope of the word “life”. The interpretation of the word “life” when explained does not mean mere animal existence – it has to mean a life keeping with human dignity.⁶ The right to

¹ THE EUPEOPEAN PUBLIC HEALTH, <https://www.europeanpublichealth.com> (last visited Aug. 8, 2020).

² Vincent v. Union of India, AIR 1987 SC 990

³ LEGAL DESIRE, <https://www.legaldesire.com> (last visted Aug. 25, 2020).

⁴ *id*

⁵ Parmanand Katara v. Union of India, AIR 1989 SC 2039.

⁶ Dr. Paramjit S.Jaswal & Dr. Nishtha Jaswal, “*Health Care, Ethics and the Law : A Study of Judicial Attitude in India*” (1997)

livelihood is also part of this article.⁷ Since a person cannot earn his livelihood if he or she is not healthy, health has become an integral part of a lifestyle. The Supreme Court recognized the Right to health as a fundamental right when it observed:

A healthy body is the primary condition for all human activities. That is why the adage "Sariramadyam Khalu Dharma Sadhanam" is followed. In a welfare State, therefore, it is the obligation of the state to ensure the creation and the sustaining conditions congenial to good health.⁸ Thus, right to live with human dignity incorporates right to health care and protection in this regard by providing necessary facilities is the responsibility of government.⁹

In ancient times, the practice of medicine was subject to legal restrictions. The right to practice medical profession was confined to a certain category of society. They were supposed to follow the belief and process of their predecessors. This could have been to protect public from humbuggery. Failure in the course of treatment by medical professionals, causing unsatisfactory results was subjected to harsh punishments offered by the Government.

With time, medical legislations are continuously evolving to regulate practice of medicine while giving importance to the standards of medical profession and protecting the public from unskilled practitioners of medicine who could be injurious to the common and as dangerous as other criminals.

The idea of Medical Law and Ethics fundamentally questions the sacrosanct rights that patients have with respect to their confidentiality of medical history, protection of rights from authorities, privilege of enforcing emergency cases and so on.

As per the 'code of ethics' a physician is not supposed to offer free services to everyone unless it is an emergency, for the sake of humanity or for a noble cause. He should not only be ready to respond to the calls of the sick and injured but should understand what is he had been entrusted with, it is a life and he is responsible for his actions. The patients place their faith and trust in medical practitioners.¹⁰ To be more precise, the health provider should not neglect his customer and he should not commit negligence that may hinder them from gaining necessary medical treatments. The human life is precious and it must be protected at any cost and

⁷ Olga Tellis v. Bombay Municipal Corpn., AIR.1986 SC 180: (1985) 3 SCC 545.

⁸ Olga Tellis v. Bombay Municipal Corpn., AIR.1986 S.C. 180: (1985) 3 SCC 545.at 994

⁹ Chameli Singh v. State of U.P., (1996) 2 SCC 549; Jasbir Kaur v. State of Pb., A.I.R.1995 P&H 278; State of Punjab v. Mohinder Singh Chawla, (1997) 2 SCC 83.

¹⁰ Indian Medical Council, (Professional Conduct, Etiquette and Ethics) Regulation, 2002

members of the medical field are ethically bound to satisfy the needs of patients who are brought to them.

Medical ethics is intimately connected with law; this does not mean ethics and law are the same. Often Medical ethics shows higher standards of behavior than law. Moreover laws vary from one place to another, while ethics remains same regardless of the place. In order to interact with the patients, medical practitioners should have the basic discipline to satisfy the expectations of the benefiter. This includes care for the patient, the ability and autonomy to work+ within the frame network of medical ethics.¹¹

Not only legal obligations but also certain long established moral belief of society towards medical profession is taken into consideration. Thus, Medical ethics can be defined as a self-imposed code of conduct accepted voluntarily within the medical profession, the observance of which depends on one's conscience and moral values.¹²

MEDICAL ETHICS

As mentioned earlier it is a moral belief system which involves inspecting specific controversial issues such as abortion, breach of confidentiality, end of life decisions, rationing of scarce medical resources etc.¹³ The main point is try to identify the matter concerned, study with reasonable ideas and arguments and reach at a flexible and morally acceptable decision. It is difficult to sustain the rules and regulations with the changes around time because of the involvement of new clinical concepts, technological advancements and changes in public perspectives. However there are certain principles that medical ethics revolve around. These principles provide guidance moral analysis of medical ethical dilemmas. The following are the set of core principles:¹⁴

- Autonomy
- Beneficence
- Non maleficence
- Justice

¹¹ Ivanović, Sunčica & Stanojević, Čedomirka & Jajić, Slađana & Vila, Ana & Nikolić, Svetlana, "MEDICAL LAW AND ETHICS" (2013).

¹² Dr. HAU Kong-lung, *Law and Ethics in Medical Practice: An Overview*, (Aug. 27, 2020, 9:29 PM) <https://www.fmshk.org>

¹³ *ibid*

¹⁴ *What are the Basic Principles of Medical Ethics?*, (Aug. 27, 2020, 9:55 PM) <https://www.web.stanford.edu>

AUTONOMY

In medical practice autonomy or self-determination is considered as the right of capable adults to make potential decisions about their own medical care. This principle encourages seeking consent from patient before starting treatment. The right of choice is to get treated or not is the advantage given to a mentally stable person. No matter what others say the decisions of the patient is the one taken into consideration. If a decision of the concerned patient is taken forcefully then it cannot be treated as their self-decision and is considered as not respectful in nature. Coerced decisions lack autonomy. Where the young children are concerned the decisions are taken by their close relatives or guardians.

BENEFICENCE

The term 'beneficence' points to the actions done for the well-being of others. In medical context, the principle of beneficence in ethics refers to the act on the parts of medical practitioners to help others considering their legitimate and important interests and stop them from taking any action that may affect them from causing injuries in any way that is morally, physically, or psychologically¹⁵. This principle also emphasis on balancing risks.¹⁶ The nature of beneficence is such that the actions to help others, becomes the subject matter when a third party apart from the patient and the physician is included. For instance this happens when a patient is tested HIV positive; the physicians are in a position of ethical dilemma where they need to answer for the goodness of both to the patient and to the third party interested. The principle of beneficence is obligated to perform on behalf of the collective interest of society¹⁷. This is followed in the case of a medical research where the findings of new methods or processes should involve the welfare of society.

NON-MALEFICENCE

The principle of non-maleficence follows the rule of "not to inflict harm on others." The physicians are obligated to choose the least possibility of harm or no harm to achieve a positive outcome. It is closely connected with the legal maxim *primum non nocere* (first do no harm)¹⁸.

¹⁵Munyaradzi, Mawere, "Critical reflections on the principle of beneficence in biomedicine" 11, Pan Af. med., 29 (2012)

¹⁶Jahn W. T., "The 4 basic ethical principles that apply to forensic activities are respect for autonomy, beneficence, nonmaleficence, and justice" 10(3), Journal of chiropractic medicine, 225-226 (<https://doi.org/10.1016/j.jcm>)

¹⁷ Munyaradzi, Mawere. "Critical reflections on the principle of beneficence in biomedicine." 11, The Pan African med., 29 (2012)

¹⁸ Jahn W. T., *supra note* 16, at 5.

The principle of nonmaleficence is the motive of any health providers. It summarizes all four concepts of medical ethics. The outcome of any medical treatment is intended to not cause any harm to anyone.

JUSTICE

The principle of justice is an integral part of medical ethics. The treatment is a process done in a free and fair manner where nobody is discriminated. Any decision taken by the physicians to satisfy the needs of the patients must abide with the law and rights of the individuals. The principle of justice involves distribution of scarce resource in an equal and balanced share to all. It must be justified in the eyes of society.

The four fundamental principles mentioned above are obvious beliefs of any common man. These value systems are actually imbibed within us from the beginning. These should be the first instinct of any health practitioners towards an individual and to the society.

Law and medicine interact with each other mainly on behalf of the legislation and administrative practices of medicine. They work together to solve criminal and civil proceedings. Thus the link between law and medicine is such that they may contribute to different fields but at times they require each other to solve a particular issue

It is difficult to separate the legal and ethics of medical practice issues as both stands together to provide quality standards of medical practices to the society. The legal and ethics of medical practices together treats major complexities of society like breach of confidentiality, euthanasia, surrogacy, abortion, patent rights etc. This overlapping nature of medical ethics and law is established to contribute to the well-being of the society.

Like any other individual in a society medical professional are supposed to follow the rules and regulations offered by the country and are capable to receive civil or criminal consequence if they don't match the legal standards prescribed by the country. On the other hand ethics is a concept of providing moral guidance it does not involve the legal format. It is the actions which are assumed to do for obvious reasons, it may not be enforceable but are powerful in the eyes of law. Thus, medical ethics contributes to the legal standards of society.

ROLE OF CAPACITY & CONSENT

Capacity and Consent plays an important role in allocating medical service to a patient. It was always said that ‘the doctor knows best’ and believing them is ideal. This does not mean, the service provided by them is not questionable. Every action provided by the medical practitioners requires the consent of the patient. This can be in the form of implied consent or explicit consent. The decision to provide consent for the treatment is in the capacity the patient. The consent of close relatives can be taken into consideration if it is found that the patient is not capable to respond. The generous attitude of health providers are vanishing day by day and this culture stimulates decision making power of patients an absolute right.

The Indian parliament law making body passed the Medical Council Act 1933. This Act was highly criticized and thus replaced with the Indian Medical Council Act 1956. The higher body to control the activities of medical practitioners is given to the General Medical Council acting at state level. Certain powers like suspending or expelling is also shared by the State Medical Council. The duties and responsibilities of medical practitioners is prescribed under Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (amended up to 8th October, 2016). If medical practitioners failed to follow these written regulations then legal action can take against them. Following are some of the regulations:¹⁹

- Maintaining good medical practice
- Maintaining medical records
- Reveal registration number
- Do not promote sex revealing
- Revealing unethical code of conduct
- Attending emergency needs of nation if situation ask for
- Report the cause of action for unnatural death

¹⁹ Markose, A., Krishnan, R., & Ramesh, M., “*Medical ethics*” 8, Journal of pharmacy & bioallied sciences, S1–S4 (2016)

CASE LAWS

In the case of “Parmanand Katara v. Union of India”²⁰, a PIL (public interest litigation) was filed in the Supreme Court by a human activist on the basis of a report published in The Hindustan Times titled “Law helps the injured to die”. In this aforesaid publication it was given that a scooter rider was knocked by a speedy car. Seeing the blood bathed victim a person picked him and took him to a nearby hospital where the doctor refused to treat the emergency case and asked him to take the patient to a named hospital 20 km away. Before he could reach the hospital, the victim succumbed to his injuries. The Supreme Court held that “every injured person brought for medical treatment should be given medical aid instantaneously to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death.”²¹ The decision of the Court is based upon the importance of professional ethics and the constitutional obligation to be followed according to Article 21, the Right to life.

The first duty of a medical professional is to take care of the needs of an injured person. It is the moral value that human being possess, which guide them to protect a person who is injured. This is a natural instinct of living beings to help each other at difficult times. But at times, people tend to lose or ignore the basics, not because they fail to have moral values but only because they are afraid of the legal complexities that arise during such situations. For instance, saving road accident victim will lead to needing to answer to police officers. This can turn to a tedious job this may be because of the corruption inside every stream that has become inerasable. And the medical practitioners’ who get involved with the process of investigating any civil or criminal issues, find it hard to go through the process as they are not used to this whole legal procedure.

The popularly known Anuradha Saha case (Balaram Prasad v. Kunal Saha & Ors)²² is a clear case of medical negligence. The petitioner filed a case of medical negligence against the treatment provided by the doctors namely, Dr. Sukumar Mukherjee, Dr. Baidyanath Halder and Dr. Balram Prasad which resulted in death of the patient.²³ The patient who is the petitioner’s wife was suffering from a drug allergy. The doctors were negligent while prescribing medicines which include steroids and others such substances, and further

²⁰ 1989 AIR 2039, 1989 SCR (3) 997

²¹ Dr. Paramjit S. Jaswal & Dr. Nishtha Jaswal “*Health Care, Ethics and the Law : A Study of Judicial Attitude in India*”

²² MANU/SC/1098/2013

²³ Sengupta, Shreyan & Roy, Sreetama., “*The Kunal Saha Case- Accountability Of Medical Practitioners And Medical Institutions In India*” 3, Calcutta Law Times, 45 (2014)

exasperated the condition of the patient which led to her death. The Court of Law decided the doctors were guilty and granted a compensation of around seven crores to the petitioner for the loss of his wife.²⁴ Even though compensation may provide some relief, but it can't compensate for the loss suffered by the victim or his/her family. The result of medical negligence can be dangerous and unpredictable putting life at stake. It can be a mistake of a fraction of second or the result of an unskilled practice. Though a doctor may not be in a position to save his/her patient's life every time, however they are supposed to use their specific knowledge and act accordingly to provide the best care for the patients and live up to the responsibility entrusted on them. Reputation of a doctor or the hospital attracts patients and they are expected to provide medical treatment with expertise, skill and knowledge at their command.

Introduction of technology changes human perspective towards the medical field. It has created a huge impact on life and death situations. From well-equipped surgical hands to performing robotic surgery the world of medicine has changed drastically. Nowadays we can see the advancements in laboratory sciences where the test results are out as soon as the process is complete. Artificial organs and smart inhalers provide super qualified life conditions. The impact of technology has proved to be of great influence in the medicinal background, at the same time it has gained position in legal networks. The legal framework within which health service is provided makes it more compatible as well as challenging. The field of medicine has gradually evolved to a business where it has become an interaction between consumers and producer, more than a noble profession. It has occurred to be a market of selling and buying services. Knock of laws has tried to regulate this possibility to an extent.

²⁴ Sengupta, Shreyan & Roy, Sreetama., *"The Kunal Saha Case- Accountability Of Medical Practitioners And Medical Institutions In India"* 3, Calcutta Law Times, 45 (2014)

CONCLUSION

Despite the introduction of Indian Medical Council Act 1956, the number of unethical activities around the corners of medical practitioners continues to increase. So it is highly recommended to modify existing laws and rectify the defects. Medical professionals should promote more stringent laws. The Council acts upon the complaints they receive. Most of the victims avoid raising complaints. This can either be because of their lack of knowledge on the procedures or they are not interested to act against the doctors. In such cases the Council finds itself to be helpless. The prescribed rules and regulation for the redressal of the medical malpractices can be time consuming and there is no proper way of enquiry or investigating the scene. Due to the unexplainable reasons the process of such investigations by the representatives may turn out to be fruitless. In a nutshell, people rarely instigate disciplinary action against medical practitioners and when they do, it does not seem to lead anywhere.

Medical tourism is a developing sector in the country which contributes to a share in the economy. Many foreigners visit India for various treatments and procedures. Unscrupulous people take advantage and often scam innocent tourists. Proper legal measures should be taken to act against such malpractices.

Active participation of the medical council alone cannot solve all these problems. An effective law is a necessity for better medical practices.