

Bioethical Issues And Conflict With Law: An Assessment Of Role Of Social Sciences In Conflict Resolution

Dr. Anjum Parvez¹, Dr. Sandhya Verma², Prof. (Dr.) Rajesh Bahuguna³

1. Associate Professor, Law College Deharadun Law College Dehradun, Uttarakhand University, Dehradun (India).
anjumparvez1975@gmail.com
2. Assistant Professor, Law College Deharadun Law College Dehradun, Uttarakhand University, Dehradun (India).
sandhyaverma54@gmail.com
3. Pro-Vice Chancellor & Dean, Email: drbahugunarajesh@gmail.com, deanlaw@uttarakhanduniversity.ac.in
DOI: 10.47750/pnr.2023.14.02.45

Abstract

Biological and Medical sciences these days have been advancing toward the new heights and discovery of new methods of diagnose and treatment are paving way for saving the life of people and also in unfolding the mysteries of crimes which marred a society, had they not be resolved. However, the possibility of misuse of such medical sciences cannot be ruled out by those who having hold on them. Under legal profession, a lawyer is supposed to bring before the court all the issues and evils prevalent in the society so that court can deliver a suitable judgment for elimination of evil or resolving the issue. This article explores issues of bioethics and their possible resolution through social sciences.

Keywords: Bioethics, Medical, Research, Law, Courts, Lawyers, Medical Practitioners

INTRODUCTION

Bioethics includes the issues concerning the social fields, ethical fields and law fields arising in biomedicine and medical researches. When pure scientific issues come into the area of law, a sort of union between them and sharp conflicts both emerged simultaneously, but, on the contrary, if social sciences make an entry in law fields, they supplement and complement each other. This happens because as natural sciences work on the principle of hypothesis and its testing on continuous experimentation and re-experimentations until a certain result achieved, the law on the other hand, a volatile subject depending on existing circumstances, works on the principle of particular alternating conditions be they political, geographical, social, historical, anthropological, psychological etc. However, as law works for regulating and controlling the external human behavior in a given geographical area, what we call the State or Province, it obviously influenced by culture, religion, social and political values, which in a way mold the law according to the local needs and law also gives a shape to them either according to the political ideology or the general will of the people. Yet nobody can deny the fact that biomedical sciences and technology has made a steady inroad in the current times in daily life of the people and law also gets influenced by them.

This paper attempts to point out areas of conflict arising out of medical science & research like use of stem cell technology, cloning, misuse of DNA and other biological material and its application according to the Rules of Law

in a legal system,. As obvious, all these natural sciences and laws are basically the means for achieving the ends for human beings, thus, what should be the magnitude of scientific experiments, or to what extent scientific experiments are permitted to carry on, becomes the concern of bioethics, and how this phenomenon is to be controlled and regulated, becomes the concern of law.

THE STUDY, METHOD AND MATERIAL

The interference of social sciences in the matters of bioethics is the core idea of this study and the approach is analytical. This study is based on survey of laws, National as well as International and their enforcement through courts of law, especially those which involve the elements of biological and medical sciences within them, from the point of view of involvement of Social sciences. Significance of this study reflects in triangle between biological research, social sciences and law, which appear to be interconnected and unalienable.

BIOETHICAL ISSUES

Bioethical issues are many and often question arise that whether they can be settled by the law? For example, a dead person after autopsy should be entitle for descent burial and his dignity should be protected, or a convict, suffering from bodily ailment is entitled to commutation or pardon from his punishment on the grounds of medical reasons, provided that his fair and impartial medical examination has been conducted and a fair and impartial report has been prepared. Fairness in medical examination and medical research, especially when the conviction or acquittal of an accused person depends upon the result of such examination or research becomes sine qua non and the ethical portion of medical practitioners and scientists. Four pillars of medical ethics for doctors are beneficence, non-maleficence, autonomy and justice.

Beneficence is about the medical ethics, which means all the medical practitioners will adhered with their moral duties for doing best to the patients for his health and also fair reporting about his state of heath. Here all valid medical treatment options are kept open to be applied on patient if the interest of patient can be protected by any one of them. Non-maleficence is another ethical pillar for medical practitioners which mandates them not to cause any harm or allow any harm to a patient due to their own their staff's negligence. Just reverse to beneficence, in non-maleficence, if it appears that treatment would be detrimental to the patient rather doing any good, a treatment may be avoided. However, from the angle of beneficence, if a medical emergency arrives and immediate surgery is fore-mostly needed, the same can be conducted in situ where patient had to be happened at the time of emergency.

Autonomy is yet another important aspect of medical ethics where a patient may choose his treatment i.e. whether he wish to undergo surgery or not or wants to be treated on medicines only. A medical treatment cannot be imposed upon any person even he being a patient unless he consents to do so. Finally comes the Justice, where medical scientists and practitioners have to decide that whatever treatment they have been offering to give to the patients are according to the law or not. For the best interest of patients they may go to any extent for securing the life in the cases of emergency but otherwise even medics are supposed to follow the rules of law relating to their practices and also those laws which are available to all common people. The Apex Court of India, in the case of **Indian Medical Association v. V.P. Shantha** [1] has held that Medical Profession falls under the ambit of "services" as mentioned in Section 2(1)(o) of the Consumer Protection Act, 1986 [2].

Another issue is related with human Organs and tissues transplantation. Advances in medical sciences made it possible today that organ removed from the body of dead persons i.e. eyes, liver, heart, can be transplanted into the body of a living person. Charging higher fee by a surgeon or illegally removing organs from a human body, alive or dead, is another area relating to bioethics. Similarly, to diagnose neurodegenerative diseases, stem cell technology has no contender, yet, the same may be misused unethically for pecuniary gain benefiting those who don't deserve it on the humane grounds [3]. Gene cloning has many positive ramifications as it could be helpful in curing genetic diseases

enhancing the human life, still it is ethical to avoid misuse of it as enhancing the life expectancy of persons such as terrorists or pedophiles may endanger the entire society.

LEGAL ISSUES

Every person has a legal right of development, and to strive to excellence in every sphere of life including medical research [4]. However, a law, on the principle of *lex loci*, must be enforced on everyone who comes under its jurisdiction without taking into account the factors whether he is rich or poor, influential or un-influential, man or woman of whatever race (Hans Kelson-Pure Theory of Law)[5]. Some jurists differ from this view and according to them a law must be implemented in a region keeping in view the social, cultural and geographical conditions of that particular region (Roscoe Pound)[6]. Differences do not lapse here as another set of jurists insist that law must be implemented without logic and emotions, goodness or badness, as law does not concern with just and unjust, right or wrong, ethics or arbitrariness (John Austin, Jeremy Bentham)[7].

According to Julius Stone, law in jurisprudential sense is lawyers' extraversion. In fact, it is true as crystal that lawyers mold the law by convincing the judges of courts by producing irrefutable evidence, which affects the case and reflecting in the form of milestone judgments substantiating the legislations. In brief, law is a typical subject in abstract sense with no perfect boundaries of demarcation from other fields of knowledge as it applies on political, geographical, scientific, sociological and other matters concerning the human actions.

LEGISLATIONS AND BIOETHICAL CONCERNS

In India as well as other Countries, there exist numerous legislations containing the scientific aspect in their provisions which must be complied by the concerned persons or authorities. For example, in India, Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (hereinafter referred as PC-PNDT Act) via section 3A prohibits the sex selection of child before his birth and mandates that no specialist in the field of medicine conduct or caused to conduct such tests like sonography, or ultrasound to know the gender of embryo[8]. But, the enforcement of this PC-PNDT Act is seriously impaired as Doctors and other medics running the clinics of Ultrasound or sonography, often found violating this provision [9]. Provision's mandate of PC-PNDT Act as appeared in section 3A, it is political will emerging from common will of people of India that such malpractices should be stopped at once so that dignity of the Women can be effectively ensured and they should lead the life with respect.

Another issue arises in relation to the investigation of crimes. Although India does not have any specific legislation on forensic science methods but the ordinary procedural laws carrying the provisions of application of forensic methods during the investigation stage as well as during trial in the court. "Code of Criminal Procedure, 1973" (hereinafter referred as Cr.P.C.) is a piece of legislation which for ensuring effective investigation by a police officer carry provisions relating to medical sciences. Section 53 of Cr.P.C [10] provides for medical examination of accused persons (of any crime) at the request of the police officer. Similarly section 53A of the same Code provides for the medical examination of accused of rape and section 54 also makes medical examination desirable of accused so that his state of health can be known in order to avoid procedural and legal implications which may ensue later. Medical "examination" under the above-mentioned sections of Cr.P.C. includes the examination (by medical practitioner) of blood, semen, blood patterns and stains, swabs in case of sexual offences, sweat, skin and sputum, finger nail clippings, hair samples by the use of modern and scientific techniques including DNA profiling [11].

Now from the sociological angle, police must not only be alert but must follow the procedure prescribed in the Cr.P.C. but working of Indian Police is a dismal affair [12].The main reason responsible for this is unawareness or improper training of police officers about the scientific methods by using of which evidence can be lifted from the scene of crime. Obviously, duties of police are vital in every democratic system and multicultural, multi-linguistic, multi-ethnic, and large size diverse population of the country. It will not be wrong to say that they have monopoly of legal force and, therefore, they alone responsible for the safety and security of the people and property coupled with proper

implementation of laws of the country. In the mirror of the current growing violence, social conflicts and serious threats of terrorists' activities, the active and cogent role of police is an important factor in the stability of the country. From the sociological angle, the real enforcement of equality and dignity at the grass root level to the sub-sided minorities and down trodden, weaker sections at par with the majority community, largely depends on the law enforcement by the police. However, lack of performance or un-professional attitude of police make all the efforts futile because as we know that, the courts need the reliable evidence in criminal matters and any dereliction in lifting the same from crime scene may invite the antipathy of courts.

Similarly, courts need the evidence in order to resolve an issue, and in the matters connected with medical or biological sciences, experts are required to give their opinions before the court, because a judge or a lawyer cannot be expected to have adequate knowledge in that field of medical or biological science. Under section 45 of Indian Evidence Act, 1972, an expert's opinion is desirable on the issues of science and technology, and experts are supposed to give the true and fair account of the facts which are in their knowledge.

DYNAMICS AND DIALECTICS OF LEGAL PROFESSION

In the matters of medical negligence, the onus to prove the medical negligence is always on the patient [13]. The lawyers are responsible for presenting the case of their clients before the court with the objective of ensuring justice to their clients. As lawyers are called social engineers because they come from the society about which they know the factual realities be the matters related to crime, morality, culture, ethics or professions. In India, keeping on the lines of Advocates Act, 1961, it has been expected from the lawyers that will play a constructive role in the social and national development by bringing forward the issues of society and ensure justice through the courts. They would inform all spheres of society in higher echelons and push the values of scientific temper among the citizens, the attitude of enquiry and reforms, and also that they will give priority to public grievances rather their own personal benefits. Hortative inquiries from the government about the duties to which that government or governmental agency is bound to perform according to the law of the land is the gist of legal profession in order to compel the said agencies to act according to rule of law.

They are expected to ensure the application of law that it should revved for the cause of the people which is possible only if the person (lawyer) is of higher moral and ethical grade which may instill in him because of his knowledge of social sciences. However, greed and apathy towards the social issues including biomedical issues and preference of personal gain over the social gain will tend to bring the sacred profession down.

Moreover, when issue is connected with biomedical sciences in the court, another problem often arises, that is about approach of different fields. As mentioned earlier, science believes in experiments and more experiments until getting a definite result under a certain given conditions, on the contrary, the proceeding in the courts, though follow the procedure of the law, yet, get influenced by the facts and circumstances of that particular case.

Therefore, following differences can be enumerated here:

- (1) . The object of law is the just resolution of human conflict while the object of science is the search of truth.
- (2) . Proof of Facts is viewed differently by the Law and the Science. Law considers social values and factors while science considers logic and raw factual reality.
- (3) . Courts strive in good-faith to take the evidence and resolution, while science always adopt factual approach on the parameters of standards of science.

DISCUSSION

Preamble of the Universal Declaration of Human Rights, 1948 stress on recognition of inherent human dignity, inalienable and equal rights of human beings as members of human family because they lay the foundation of freedom, peace and justice in the world. Thus, good medical services and research for the welfare of humans become essential. Impartiality and selflessness are the key factors as the benefits should reach to all the people of the world, and this can be ensured by ensuring the justice to common people in all the regions of the globe, particularly in medical fields, and in other fields generally. Even racism is a bioethical issue as discriminating between humans on the basis of their race tend to show the biological superiority of one race over the other[14] . One agency of the world cannot do it nor the single agency of a State can do it, but this can be achieved by decentralization by assigning the powers to different agencies at National, Provincial and Local levels. Therefore, the medical hospitals, police and forensic experts at the local area contribute immensely in the maintenance of law and order and elimination of crime and criminal activities by ensuring the justice to victims.

As mentioned earlier, law is an essential institution for every society so that it can have a direction in the form of regulations and rules, but to a great agony, the perfect definition of law is next to impossible, because the components of the law can never be constant or stable. On the other hand, biosciences, on the principles of science move towards accuracy in their findings and results through the biological data analysis, yet, the possibility of misuse of them is not deniable. After all, the scientists and medical practitioners are human beings prone to errors. For that purpose and for proper guidance law is needed, and the law itself guided from the cultural, ethical, psychological and political values of that society. Even the accuracy of the sciences cannot deter and deflect the social sciences in shaping the law and assisting the law in the endeavor of attaining justice. It seems in the larger prism that natural sciences, social sciences and law, all are complimentary and supplementary to each other.

CONCLUSION

It is important to note that all major laws in existence for the time being in India and around the world, are directly or indirectly relating to the scientific aid either in the form of evidence or procedural aspects before the Court of Law and also are useful as correctional or curative measures, in the Courts as well as out of the Courts viz. investigation of any matter including crime. Bioethics issues are resolved through the general agreement between the scientific community and legal community but for that purpose, onus is upon the scientific community to make bio sciences and medical sciences more perfect so that the same cannot be impeached in the court of law. Ethics can be drawn from political, culture and educational values of the society and may be applied in medical researches. Legislations on the different fields by the national legislature are desirable so that harmony can be achieved in case of conflict between science and law.

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