Emergence of New Legal and Ethical Dilemmas in Medical Field

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We are all aware of the rapid progress by the medical science in the second half of 20th century. Newer investigation techniques, modern life support systems, methods to assist conception and research in the field of molecular biology are some of the areas where we have made rapid strides. In addition, diseases like AIDS are testing our diagnostic and treatment abilities. The all pervading information technology boom has invaded the medical field too. All these gave rise to new medico-legal and ethical questions and dilemmas. The legislatures of different countries have responded by making new laws to cope with the emerging medico-legal problems- albeit slowly. The slow pace of legislation does not match the rapid progress in medical field. Here are some of the medico-legal and ethical dilemmas and the laws enacted to deal with them.

1. Modern life support systems and organ transplantation:-

Machines like the respirator and heart lung machine have been immensely helpful to critical care specialists. But two major questions arising out of the use of these machines are:

- When to declare a person dead and stop them, once he is put on these machines?
- Likelihood of premature declaration of death in such a situation with the intention of harvesting organs for transplantation. This is an off-shoot of the availability of organ transplantation techniques.

These two questions gave rise to the concept of Brain Stem Death or Brain Death as criteria to declare a person dead, even when the heart and lungs are functioning, although with the aid of machines. To prevent premature declaration of death by the physician eager to obtain organs for his patient, due precautions have been incorporated into the Human Organ Transplantation Act 1994[1] viz. the surgeon who is part of the transplant team can not be a member of the team declaring the

individual dead.

2. Assisted conception:-

Modern methods of assisted conception have raised many legal, ethical and social questions. The legislatures have lagged behind in making laws, both to regulate the medical field as well as to tackle legal issues like inheritance, property rights etc arising out of these reproductive techniques.

As regards regulation of the medical profession, in United Kingdom (UK), members of medical community have themselves established a Voluntary Licensing Agency (VLA) to ensure that the assisted reproductive technique is practiced only by persons with adequate qualification and facilities [2]

As regards statutory laws, in UK the Surrogacy Arrangement Act of 1986[3] is the first legislation to be enacted, which deals with different aspects of surrogate motherhood. Subsequently other laws have been enacted dealing with different aspects of assisted conception viz: Human Fertilisation and Embryology Act (HFEA of United Kingdom) - 1990 and its subsequent amendments of 2000 and 2001 [4]. The Indian scenario in this field is quite bleak, the Delhi Artificial Insemination (Human) Act of 1995 being the only statutory act [5]. It is unfortunate that not only the Indian Infertility Specialists have not set up any internal regulatory body, like the Voluntary Licensing Agency of UK, they have opposed steps towards regulation of practice in this field of medicine [6]. We hope that the Indian scenario will fast catch up with that of UK and USA in ethical and legal practice of management of infertility.

The best example of fresh legal issues cropping up as a result of new medical techniques and facilities is the possibility of Posthumous Artificial Insemination due to availability of semen banking, giving rise to problems in connection with the inheritance rights of such a child born, which did not start its life when the genetic father

was alive. Amendment to HFEA affected in 2000 has allowed posthumous artificial insemination using the semen of the deceased husband.

3. Cloning:

Newer techniques in molecular biology applied to human genetics and reproduction have given birth to numerous ethical questions. To curb unethical practice of cloning, UK has enacted Human Reproductive Cloning Act of 2001 [7] which prohibits introduction of embryos created by any means other than fertilization into the womb of any lady. In 2001, amendment to the HFEA was made to allow research on therapeutic cloning. Similarly USA has enacted Human Cloning Prohibition Act of 2001 [8] to regulate the use of cloning technology. Although these acts have created a lot of debate, it is heartening to note that legislatures are fast catching up with advances in scientific field, albeit five years after Dolly was born in 1996.

4. Computers in Medicine:

Computers are being extensively utilised in medical field not only for storing medical data but also in fields like tele-medicine etc. No doubt they are a great boon. But connecting such computers to central data banks accessible to any person, endangers medical confidentiality. In view of this, World Medical Association has adopted a resolution in 1973 on Medical confidentiality and Computers in Medicine, to adopt all measures needed not to jeopardize medical confidentiality [9]. This aspect has become very relevant in the present era of information technology boom as internet, a common purpose world wide network, is being used for transmission of medical records for purposes like medical transcription. Suitable safeguards to ensure confidentiality of medical information have to be incorporated while adopting such innovations.

5. AIDS:

Apart from the diagnostic and treatment problems, this disease has thrown up many legal and social issues. It should be kept in mind that, AIDS patients, like all other patients are entitled to equality, confidentiality, right to information etc. At the same time the doctor has the social duty of making a privileged communication in the

larger interest of society. Recently Supreme Court of India has ruled that the sexual partner of an AIDS/HIV positive patient is to be informed of the fact. The treating doctor also has the duty to inform the paramedical staff involved in the treatment of such patients, the mortuary staff, pathologist and the staff of the crematorium so that due precautions can be taken by these people who are likely to come in direct contact with the infected biological material. The hospital administrators as well as the nursing officers in-charge of safe custody of medical documents should ensure that HIV positivity is not revealed to unauthorised persons.

In conclusion it can be said that, any new invention in medical field is likely to pose new and complicated legal problems. The legislatures are invariably slow in responding to the rapid progress in medical and scientific fields. Unless the medical and scientific community is alert and aware of the legal and ethical problems that may arise, they are likely to be involved in prolonged legal and ethical controversies resulting in loss of reputation and valuable time. Members of medical profession can take steps like establishing in-house regulatory bodies like the VLA of UK Gynaecologist's Association. Statutory bodies like Medical Council of India, should regularly organize discussions and debates on new legal and ethical issues with a view to update the ethical code of conduct. This will not only ensure ethical and quality practice but also enhance the faith of the community in the profession.

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