

Medico-Legal & Bioethical Challenges for Protection of Human Rights in the Aftermath of the Pandemic

Dr Rohini Honap¹

1. Principal & HOD, TMV's Lokmanya Tilak Law College, Pune.

Abstract:

The healthcare system is one of the most vital institutions in any society. The common man and particularly people working in the healthcare sector have faced a number of challenges and issues, which required the reexamining of the medico-legal and bioethical boundaries and guidelines followed so far. Several Bioethical Concerns arose in during and post pandemic period, in the backdrop of The Universal Declaration on Bioethics and Human Rights, adopted on the 19th of October 2005. Respect for human vulnerability, personal integrity, right to privacy and confidentiality were trampled upon. Several Legal concerns arose and practical application of medico-legal guidelines were sometimes required to be set aside or modified in clinical and hospital practices. Right to life itself was put at stake with the unavailability of medical resources to save every human life. The right to life is a fundamental right guaranteed to every person. The expansive interpretation of this intrinsic right includes the access to healthcare. By analogy every person has the right to have affordable access to basic life saving drugs and medicine. However this seemed to be distant dream for many unable to get access to health care due to inadequate medical resources. Access to the justice system becomes very crucial and lawyers had to be equipped for the legal transformation and set in motion the law, which many at times felt inadequate to give actual justice to the victims, the aggrieved, to alleviate several suffering arising out of the pandemic. Measures to close these gaps and advance human rights can ensure we fully recover to a world that is better and more resilient, just and sustainable. Respect for human rights across the spectrum, including economic and social rights, and civil and political rights, will be fundamental to the success of the public health response, in the future.

Key Words: Medico-legal, bioethical, fundamental rights healthcare, justice privacy, confidentiality, vulnerability, non-discrimination, redressal mechanisms.

Introduction:

‘A million deaths is a statistic, but a single death is a tragedy, when it happens to your loved ones’

Josef Stalin

Man has always faced and overcome several challenges since the beginning of human civilization. The survival of the human race can be attributed to the resilient spirit of humanity.

An age old adage stated in an old Biblical Latin dictum states

“Man proposes and God disposes,”[1] This may be a reflection of a verse in the Bible (Proverbs 16:9): "A man's heart deviseth his way: but the Lord directeth his steps." In the light of the recent Covid 19 pandemic can be read as “Man proposes and Nature disposed.”

The firm belief that most of us have, is that there is a supernatural power governing the universe and mother earth. This belief has been reaffirmed in this global pandemic, that man cannot claim supremacy over anything and things don't always work out as planned. Mankind felt helpless in the face of this new calamity that struck us, but the ever resilient human spirit allowed us to slowly bounce back.. Though we believe that we can be the architects of our destiny, nature has the power to change its course and we are required to change our lifestyle in order to survive.

The healthcare system is one of the most vital institutions in any society. The common man and particularly people working in the healthcare sector have faced a number of challenges and issues, which required the reexamining of the medico-legal and bioethical boundaries and guidelines followed so far.

A radical transformation in our lives changes the expectations of the people from this system and revolutionary changes were requires to be made in the medical arena, and the way our brethren health care workers operated to save millions of people from perishing or falling prey to this potent bio enemy, namely the Corona virus.

In the face of this enormous adversity the medical and legal systems had to evolve to ease medical and legal suffering that ensued.

Bioethical Concerns :

The Universal Declaration on Bioethics and Human Rights, adopted on the 19th of October 2005, in France, embodies the principles of **respect for human dignity, human rights and fundamental freedoms**. The Declaration acknowledges the co-relation between ethics and human rights in the specific field of bioethics [2].

Bioethical Considerations in the said declaration [3]:

Article 6 of the said Declaration specifically emphasizes on the Consent of an individual who is to undergo any treatment or medical procedure [4]

Article 6

1. Any preventive, diagnostic and therapeutic medical intervention is only to be carried out with the prior, free and informed consent of the person concerned, based on adequate information. The consent should, where appropriate, be express and may be withdrawn by the person concerned at any time and for any reason without disadvantage or prejudice.

2. Scientific research should only be carried out with the prior, free, express and informed consent of the person concerned. The information should be adequate, provided in a comprehensible form and should include modalities for withdrawal of consent. Consent may be withdrawn by the person concerned at any time and for any reason without any disadvantage or prejudice. Exceptions to this principle should be made only in accordance with ethical and legal standards adopted by States, consistent with the principles and provisions set out in this Declaration, in particular in Article 27, and international human rights law.

3. In appropriate cases of research carried out on a group of persons or a community, additional agreement of the legal representatives of the group or community concerned may be sought. In no case should a collective community agreement or the consent of a community leader or other authority substitute for an individual's informed consent.

Article 7

Governs the procedure for Persons without the capacity to consent, only with the best interest of the person concerned.

Article 8

Respect for human vulnerability and personal integrity

Human vulnerability should be considered when using and expanding scientific knowledge, medical procedures, and related technologies. The personal integrity of such individuals should be respected, and special vulnerability individuals and groups should be protected.

Article 9

Privacy and Confidentiality

It is important to protect the concerned parties' right to privacy and the secrecy of their personal data. In accordance with international law, especially international human rights legislation, such information should not, to the greatest degree feasible, be used or disclosed for purposes other than those for which it was acquired or consented to.

The Hippocratic Oath [5] mandates that there should be no conflict of interest between him and the case at hand. Hippocrates, a Greek philosopher, had framed code of ethics for the medical profession known as the "Hippocratic Oath.

In the light of the above provisions of the Declaration and the Hippocratic Oath, the various rights of patients in respect of health care developed further. In tune with Article 47 and Article 21 of the Indian Constitution [6] these rights can be summarized as follows:

1. The doctor-patient relationship being fiduciary in nature must be a healthy one. The expertise possessed by a doctor puts him inevitably in a position of authority. However medical ethics demands that doctors must always use this ‘medical power’ for the patient’s benefit.
2. Right to Emergency medical care requiring foremost the stabilization of the patient’s vital parameters.
3. Right to information. This includes adequate information about the nature and diagnosis, severity and likely outcome, cost of treatment involved. Patient or any other authorized person has a right to get a photocopy of papers like findings, laboratory investigations after admission and discharge card on leaving the care, and a prescription of medicines if required to be taken after discharge.
4. Right to informed consent. In case of any potentially hazardous treatment or procedure or surgery required the patient or any other authorized person on his behalf has the right to give a written consent, which also includes the right to refuse the treatment.
5. Right to Confidentiality The patient has the right to confidentiality or maintenance of anonymity.
6. Right to Second Opinion. All medical information must be made available on demand to the second doctor.
7. Right to respect and human dignity.
8. Non-discrimination on basis of gender, caste or creed or status of the patient.
9. Right to choose alternative treatment.
10. Right to make complaints and seek redressal.

Changing Dimensions of Ethical concerns In the Aftermath of the Pandemic

In the face of an entirely new medical emergency like the Pandemic , these important Bioethical guidelines which require doctors to learn the history of a patient before he examines the body of the patient had to be set aside and the guidelines regarding consent, privacy and confidentiality had to be dispensed with due to the emergency situation.

The exceptions to Confidentiality and anonymity has to be invoked due to the communicable nature of the corona virus and individual patient information had to be provided to the public health authorities.

The tort system makes adversaries of the patient and physician and in such time fracturing the holy fiduciary relationship.

Angry and hostile relationships between the public and the health care systems requiring isolating the patients, and maintaining utmost confidentiality gave rise to several controversies grey areas where the relationship of trust was put to the severest test. Physicians and doctors were required to be constantly wary of accusations of medical negligence from the close ones of those who lost their lives in the pandemic.

Legal Concerns

Legal aspects of confidentiality, privacy and consent and practical application of medico-legal guidelines were sometimes required to be set aside or modified in clinical and hospital practices.

Right to life itself was put at stake with the unavailability of medical resources to save every human life. The right to life is a fundamental right guaranteed to every person. The expansive interpretation of this intrinsic right includes the access to healthcare. By analogy every person has the right to have affordable access to basic life saving drugs and medicine.

However in countries like India this seemed to be luxury only for the privileged class who were able to find even a bed in a hospital and fell out of the reach of basic medical care. The burning issue of affordability of highly priced drugs Remdesivir and the claim for its patent by the Chinese was brought to the forefront in the light of this emergent situation.

Millions of people in developing countries do not have access to potentially life-saving medicines because of high prices. One of the reasons for high prices of these drugs is patents owned by foreign pharma companies. The drug companies enjoy patent protection of at years twenty years and use that monopoly to exploit the market and use their power to keep prices high and out of reach of developing nations.

Access to the justice system becomes very crucial and lawyers had to be equipped for the legal transformation and set in motion the law, which many at times felt inadequate to give actual justice to the victims, the aggrieved, to alleviate several suffering arising out of the pandemic.

The callousness of these pharmaceuticals can be depicted through a few earlier examples;

In 2005, the FDA granted approval for promoting a new cancer fighting drug called Nexavar. Bayer took it to the market shortly thereafter, and it is currently still used as the approved treatment for late stage kidney and liver cancer. That is, so long and you live in the developed world. During a conference, in 2014, the CEO of Bayer, Marijn Dekkers, suggested that his company's life-saving drug isn't for poor people. This was first published in Bloomberg Business week.

“Is this going to a big effect on our business model? No, because we **did not develop this product for the Indian market, let's be honest. We developed this product for the Western patients who can afford this product, quite honestly.** It is an expensive product being an oncology product [7].”

Would the period of the pandemic and thereafter be any different and magically change the attitude of these gigantic pharmaceutical conglomerates?

The era of globalized markets is also an era of globalized sovereignties. Considering the ethical guidelines in the health sector our intellectual property laws in context of patenting policies must be reviewed carefully.

India has ostensibly a dismal record in protecting pharmaceutical patents. But the recent health disaster faced by the world has prompted India and other nations to rethink their policies about making life saving drugs and vaccines available without charge or costs to the grassroots levels of the populace. Humanitarian principles are required to be added to ethical considerations in the Medico-legal arena.

Human Rights Considerations

While access to essential life saving medicines ought to be seen as a human rights issue, international law likes to keep the ineffective propensity of human rights talk firmly quarantined in separate boxes.

It becomes all the more pertinent for a country like India to assert the potential of progressive legislations like the Patent Act, and leverage sovereign space of co-equal rights in the field of life saving drugs made by our own pharma industry.

The global COVID-19 crisis has been fuelled by deepening poverty, rising inequalities, structural and entrenched discrimination and other gaps in human rights protection. Only measures to close these gaps and advance human rights can ensure we fully recover to a world that is better and more resilient, just and sustainable. Respect for human rights across the spectrum, including economic and social rights, and civil and political rights, will be fundamental to the success of the public health response [8].

Right to Health

Improved health is essential to human existence and well-being. A healthy person can make contributions to the economic, social, political, religious, and many other facets of a country that an unwell person cannot. As a result, there are a variety of factors that affect a nation's capacity to offer its population high-quality healthcare.

Access to Information

According to Article 19 of the International Covenant on Civil and Political Rights, everyone has the right to seek out accurate information. (ICCPR) Information on the subject of health issues in the nation and around the world, including preventative and regulating measures, is included.

Through a variety of media, the Government of India was able to educate the common man about the virus's characteristics, lever of danger and spread, and the available precautions and measures to be taken to curb the spread. Citizens have the right to receive this information, about

potential actions and the anticipated outcomes, and the steps being adopted by the public municipal authorities to control the epidemic from spreading.

Freedom of Movement

In India, more than 1.3 billion people remained confined to their houses. To defeat the COVID-19 pandemic, the government employed this strategy. However, as a result of the Indian government's decision, a sizable segment of the populace was in disbelief and primarily worried about their safety. The Indian government overlooked several fundamental human rights in its rush to overcome this unusual situation and flatten the curve at the expense of protecting its citizens from the virus.

The Indian government is under obligation to uphold international human rights standards even during lockdowns and to correct any mistakes made during that time. India is a signatory to and abides by Article 12.1 of the International Covenant on Civil and Political Rights. It outlines the freedom of movement inside the nation's borders. According to 12.3, only extraordinary situations, such as the protection of public health, can result in a restriction of this right.

Since the lockdown was enforced, there have been numerous instances of migrant wage workers walking hundreds of kilometers back to their home towns and villages because they had no other choice due to the closure of small, unnecessary businesses and the suspension of all publicly owned transportation, leaving them with no other means of support.

Right to Privacy

Article 17 of the ICCPR guarantees right to privacy. The same right has been recognized by the Hon'ble Apex Court of India in a series of cases [9]. The Indian Government's Aarogya Setu application during this period was a key concern in this situation. It operated for Covid-19 tracking, which informed the users whether or not they were in close proximity to any infected individuals. Its location monitoring feature was not meant to be given to any third-party. It featured a provision that allowed reports on people to be sent to the government.

Additionally, it posed the risk of spying on civilians, and people had begun to realize that it might be abused if it ends up in the wrong hands. Although downloading this app was not mandatory, the government heavily urged users to do so by aggressive advertisement on a variety of channels. A possibility still persists that, in the future, the data collected on Aarogya Setu may serve as an electronic gate pass to access private information of users and be an axe in the wrong hands who intend to misuse the data.

Social networking sites posted information of persons who were only suspected to be contaminated positive without maintaining their anonymity, turning a delicate situation into a hassle. These led to others putting those persons and their families in danger. Due to the state's overt intrusion into their personal, this was a blatant infringement of Article 17 of the ICCPR, which states the right to privacy.

Conclusion

It was the responsibility of the government to effectively connect with the populace and foster faith in the political system by putting up efforts to increase openness. Some nations used the corona virus as justification to violate human rights by taking advantage of individuals to increase their own authority. They aggressively closely watched citizens, targeting their privacy and violating their rights.

The government had a duty to effectively communicate with the people and foster trust in the system by putting policies into place that encourage openness. Some nations are abusing human rights by taking advantage of people to increase their own authority by blaming it on the corona virus. By using invasive monitoring, they are violating the rights of citizens and targeting their privacy

Although it is a very difficult effort in and of itself to provide adequate protection and care for one-sixth of the world's population. Human rights should not be neglected at this time; on the contrary, in order to resolve the current situation, we urgently need to protect them.

The COVID-19 pandemic has led to a variety of human right violations around the globe, including censorship, the expression of criticism, and the imbalanced use of police force. This is similar to previous pandemics. Immigrants and members of minority groups have found that they are particularly vulnerable to abuse, as well as to the stigma and violence connected to Covid-19.

A Profound Effect On Human Rights Violation Of Vulnerable Groups

The stigma associated with Covid-19 affects some groups more than others, including minority groups that are held responsible for spread of the disease, like Muslims in India, Americans of Asian descent, or Southeast Asians. The aged, who may legitimately be concerned about being abandoned to die in nursing homes or about the possibility of bigoted classification in some hospitals; or LGBT groups, who experience increased shame and intolerance in many countries.

Several communities observed women's and children's rights being abused during the severe lockdowns, and rates of intimate partner abuse that were rising as a result of severed social networks and closed workplaces and educational institutions. When women and children are displaced due to war or natural catastrophes, like the pandemic the risks are even higher. They were not only unable to keep Covid-19 at a safe distance from them, but were also exposed to sexual assault in the evacuation camps. Sex workers who had to discontinue working were more vulnerable and dealt with the dangers of being arrested, and targeted of extortion, and being mistreated as a result of increased police powers [10].

The Positive Outcome

The State of Rajasthan recently introduced, “The Rajasthan Right to Health Bill” in the Rajasthan Assembly on September 22, 2022. All government and designated private hospitals would fall under the scope of this Bill. The bill envisages to protect the health of all the citizens of the state to receive free, consultations, medicines tests, transport, procedures and emergency care from these medical institutions.

Treatment will be given if the police report is not received in some cases. The patients will have the right to complete information about the treatment, and the right to choose the place to obtain the medicine and get tested.

The Bill also equips the patient to go to the civil court against the decision of this grievance cell. They will have the right to seek a second opinion, and there will also be a constituted grievance redressal mechanism in the Act.

Such progressive legislation, if adopted by other States in India too, will strengthen the fundamental Right to Health of the Indian citizens on the national level.

The eminent jurist Prof. H.L.A Hart had stated “Human beings are very vulnerable and so rule of law is required to protect them.” Law being omnipotent the Epidemic Diseases Act, of 1897, was invoked and gave further occasion to understand the power of law in every sphere of life.

To take a health and human rights analysis seriously is to consider a whole human being made vulnerable to a wide variety of pathogens and unhealthy conditions as a result of how the person is treated by society – expressed and articulated in the language of human rights and dignity - Jonathan Mann[11].

References –

1. Proverbs 19:21-23, Living Bible
2. Universal Declaration on Bioethics and Human Rights. (2005). Retrieved from <https://www.unesco.org/en/legal-affairs/universal-declaration-bioethics-and-human-rights?hub=66535>
3. Ibid
4. UNESCO. (2005). Universal Declaration on Bioethics and Human Rights. Paris, France: UNESCO.
5. Hippocratic Oath. (n.d.). Retrieved from <https://www.britannica.com/topic/Hippocratic-oath>
6. The Constitution of India, 1950. (1950).

7. Buffering the Pharma Brand: Restoring Reputation, Rebuilding Trust - Panel (2013), FT Global Pharmaceuticals and Biotechnology Conference, Retrieved from <https://www.ft-live.com/ft-events/ft-global-pharmaceuticals-biotechnology-conference-2013/sessions/buffering-the-pharma-brand-restoring-reputation-rebuilding-trust-panel>
8. Office of the High Commissioner for Human Rights (OHCHR). (2022). OHCHR and COVID-19. Retrieved from <https://www.ohchr.org/en/covid-19>
9. Karak Singh v. State of U.P. AIR 1963 SC 1295. See also Govind v. State of M.P. AIR 1975 SC 137, District Registrar and Collector v. Canara Bank AIR 2005 SC 186 and Justice K.S. Puttaswamy v. Union of India, (2017)10 SCALE 1.
10. Human Rights and COVID-19. (2020, June). Retrieved from https://globalchallenges.ch/issue/special_1/human-rights-and-covid-19
11. Human Rights and Health. (2008). Retrieved from <http://https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1751825/>