

An Uneasy Relationship

sucheta amin

Law and Medical Ethics by J K Mason and Smith McCall R A, Butterworth 1987 (Second Edition), pp 344, \$ 12.95. It should not be correct to say that every moral obligation involves a legal duty, but every legal duty is founded on a moral obligation — Lord Chief Justice Coleridge in *R.V. Instan* (1893) 1QBat 453.

THIS second edition of the book takes account of recent legislation and much of the text, including chapters on reproductive techniques, consent and euthanasia has been rewritten. There is also a new chapter on the treatment of the elderly and the Mental Health Act 1983 is also considered. With the introduction it covers five major topics viz: reproductive medicine, medical practice, death, research and experimentation and psychiatry and the law. The list of cases and table of statistics along with appendices is also given.

The first section on evolution of medical ethics briefly follows the progress through the earlier periods to the organisation of modern medicine. This section also introduces medical ethics and legal intervention in medicine. The crucial question raised is that of determining the extent to which medical decisions should be the object of legal scrutiny and control. Two extreme views exist, one that holds that the medical profession should be left to regulate itself and that it alone should decide what is acceptable conduct. The contrary view expressed, denies doctors the right to regulate their relationship with their patients ie reserving for the medical profession the right to decide on issues of life and death is an improper derogation from an area of legitimate public concern and an encroachment by clinicians into what is, properly, social policy. Broadly speaking these conflicting views are those of two groups representing the medical profession holding the first viewpoint and the patients who are treated by these medical professionals holding the latter view-point. The legal system then is faced with the classic problem of doing justice to both parties. The fear of the medical profession must be taken into account while the legitimate claims of the patient cannot be ignored.

The second section dealing with reproductive medical covers (a) A Reform of Sex Law? (b) Modern Reproductive Technology (c) Control of Fertility (d) Abortion (e) Prenatal and Wrongful Life (f) Neonaticide and selective treatment of the newborn.

Under the topic a reform of sex law, this book deals briefly with application of law with regard to sexual intercourse, rape, homosexuality, incest, transsexualism etc. "Full expression of ones sexuality is now advocated in some countries by responsible educational authorities. Medical knowledge and expertise are moving to serve the changing needs of people. It is doubtful on the other hand if our present sex laws to accurately reflect current public

mores". The topic of rape ie sexual intercourse without consent briefly but concisely brings out various issues related to the subject. They almost take a stand when they state "our feeling is that 'rape' is essentially an act of violence in which sexuality plays only a secondary part. It also brings out the outdated existing laws in the United Kingdom where rape, to be raped requires intercourse per vulvam.' There is a brief mention of approach to rape in different countries. There is a humane though condescending attitude taken by the authors towards homosexuals ^{transsexuals} and transexuals. As for incest when it is sexual abuse ^{of children} by a trusted elder then there can be no place for law that protect such abusers.

Modern reproductive technology has been extensively covered in this book. Being a very sensitive issue needing intense consideration of both legal and ethical issues. The authors seem to be taking a very practical view when they state 'methods are now available for by-passing the natural process. Almost inevitably, these sometimes conflict with laws which were mainly fashioned before such techniques were considered.

If we look at the different reproductive techniques offered at their exorbitant rates, it is a highly commercialised process. So let us not be under the impression that it is concern for childless couples that such techniques have emerged. Why are absurd techniques like amniocentesis in vogue today? Is it to help facilitate female foeticide under the garb of helping correct genetic defects? Why should fascist ideas of eliminating imperfect foetus be encouraged? In almost all cases the woman who has to go through all the painful procedure has someone else making decisions for her. The major being the 'stigma' attached to being infertile. Surrogate motherhood is a mockery of motherhood the way it stands today. The word someone had coined 'technological adultery' would more apt here. There is so much about abortion and laws relating to it. Why is not the woman left to decide whether she wants to abort or not? It is her body, her right to decide. If the socio-economic pressures are the main reason a woman goes in for abortion, why aren't laws passed to deal with exploitation that is going on. Instead of "whether the heart was beating at the time the foetus was aborted?"

The chapter on medical practice looks into issues relating to medical confidentiality, consent to treatment, treatment of the aged. The above mentioned issues are points of con-

conflict between law and medical ethics. The authors have presented the issues illustrated with actual cases. Laws relating to medical ethics emerged as a safeguard against exploitation by of the medical profession. Being a reflection of the capitalist social structure, compensations (torts) will be demanded for medical malpractices. It is inevitable because the patient has his/her right since they are paying for the services. Counsel regarding treatment of the aged is a clear indication of the economic climate and is unlikely to be followed in the foreseeable future.

The topic on 'Death' deals with diagnosis of death, donations of organs and transplantation, euthanasia Biomedical human experimentation, Research on children and foetal experimentation. Issues over which medical profession could exert their power. Euthanasia whether active or passive, voluntary or involuntary is reflective of a person's right to life. The question I would like to raise is whose life is it? Donation of organs and transplantation is once again based on financial gains except a few philanthropists who would donate organs from the goodness of heart. Though research is necessary for its benefits to humanity, the way it is used for commercial purposes leaves one aghast. Then we need

to look within, to question our motives.

The extent to which psychiatry can operate as a political or social weapon constitutes its importance in the current debate. A broad sympathetic view may prevent the unjust punishment of those who are truly not responsible for their action but it may also prove to be socially damaging if criminals are left free under the garb of insanity. The inescapable task then becomes one of charting a course between Scylla and Charybdis. To achieve this the criminal law should adhere to a broad definition of insanity (such as in Scottish or French formulae: refer page 307) which allows maximum leeway for a court to take into account expert evidence while at the same time avoiding necessarily being bound to an acceptance of psychiatric notions of responsibility.

This book is a good reference volume with its pragmatic approach to different issues illustrated by actual cases. It covers topics relating to law and medical ethics in United Kingdom. These issues can hardly be considered applicable in Indian context where law itself is negligent, let alone medical ethics.

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repeatedly stressed that scientists and technologists ought to be accorded higher status and emoluments. The Shrivastava Committee, MCI and other highly placed authorities unequivocally recommended non-practising terms for the medical teachers. The administration has not taken their recommendations in the right spirit. There has developed a nexus of mutual interest between the political-bureaucratic authority and the teaching community. Politicians of all shades and bureaucrats enjoy the free services of teacher-specialists who also make the costly medicare facilities of the state hospitals available to the former out-of-turn. It is indeed difficult to find a political leader or a high government official who is not personally obliged to a medical teacher. In fact, one of the topmost physicians of Calcutta openly maintained unauthorised private practice throughout the entire length of his service career occupying non-practising posts, which included the topmost posts in the post-graduate medical college and the health service in West Bengal: this enterprising doctor professionally served the chief ministers and ministers during both Congress and Left Front regimes. Unless this pernicious system of private practice is removed, other measures will be infructuous. All discriminations in the matter of pay, promotion and retirement benefits should be resolved. More and more university control should be introduced replacing government control. There should be a declared policy of transfer in transferable services. Lastly and most importantly, there ought to be a system of assessment of performance accompanied by incentives and disincentives. This is perhaps the most controversial area and difficult to operate. Because, credibility of assessment depends upon the credibility and competence of assessors. Still, a structural framework for elements and procedure for assessment could be devised and be given a trial. If this is done, then the present system of examinations based on subjective assessment could be thrown away and be replaced by periodic objective assessment of students at every crucial level of curriculum and training.

The task of updating of knowledge should not be left to individual initiative. Updating includes revision and is dependent on research. It may be emphasised that the teaching community is the most effective force in research and the poor state of medical research in India is actually a reflection of the teaching community.

The Bhole Committee observed in 1946.

"No special facilities are available for the training of teachers in the different subjects of the medical curriculum. . . Broadly speaking medical research receives little or no attention in the medical colleges of India. The authorities responsible for staffing and financing the medical colleges are usually ignorant of the importance of research in relation to the achievement of a correct attitude of mind in the students. . . " The role of teachers in shaping the make-up students is crucial and nowhere is it more

pronounced than in the field of medical education. The attitude towards both science and society is involved. The student is influenced not only by the teachings and preachings of the teacher but is influenced most by the teacher's practice. The teacher's admonition against indiscriminate use of antibiotics or random use of steroids cuts little ice with the student when the latter discovers the very teacher's indiscriminate and random prescriptions in private practice. The student thus learns the difference between theory and practice and this influence is intensive and sustained, shaping the professional career and attitude of the student. The teacher's conduct, in its turn, is determined by his/her position in the society and the profession. Social and economic compulsions dictate terms. In the conflict between pursuit of science and commercial gain, the latter generally prevails. Medical education cannot wait for the development of the intrinsic goodwill of the teachers. Unless measures are taken to ensure job satisfaction, medical colleges will always remain short of dedicated teachers. Unless the standard of teachers is improved, teaching can never improve and consequently medical care cannot improve. However, grandiose or rational might be the curriculum or methodology of teaching. Unfortunately this profound role of teachers in medical education is yet to be recognised in India.

Ajoy Mit
Sujit K. Datur

Appeal to Subscribers/Readers

We regret that the last few issues of the *Radical Journal of Health* have been delayed. This has been because of printing and other difficulties, none of which fortunately are insurmountable. We hope to bring the publication up-to-date in the next couple of months. Please bear with us!

The RJH is for you and is sustained mainly by the support of regular readers like you. So far the journal is being subsidised by donations from concerned individuals. We would not like to pass on the burden of the extra cost to our readers by increasing the subscription rates. The Socialist Health Review Trust, the publisher of RJH has started a campaign for creating a corpus fund which can continue to absorb the extra cost as far as possible.

We appeal to you and your friends to generously contribute to this fund. *All donations may be made payable to the Socialist Health Review Trust and are exempted from Income Tax under Section 80G of the Income Tax Act.*

Why don't you write for us?

This periodical is a collective effort of many individuals active or interested in the field of health or interested in health issues. The chief aim of the journal is to provide a forum of exchange of ideas and for generating a debate on practical and theoretical issues in health for a radical or Marxist perspective. We believe that only through such interaction can a coherent radical and marxist critique of health and health care be evolved.

Each issue of the journal highlights one theme, but it also publishes (i) Discussions on articles published in issues (ii) Commentaries, reports, shorter contributions outside the main theme.

If you wish to write on any of these issues do let us know immediately. We have to work three months ahead of the date of publication which means that the issue on Medical Technology is already being worked on. A full length article should not exceed 6,000 words and the number of references in the article should not exceed 50. Unless otherwise stated, authors' names in the case of joint authorship will be printed in alphabetical order. You will appreciate that we have a broad editorial policy on the basis of which articles will be accepted.

We provide an author's style-sheet and will send it to you on request. Please note that the spellings and referencing of references are as in the original and are NOT as per our style.

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On Eliminating Quackery

The laws against quackery were intended to protect physicians in their special interests, to secure their curative privileges; the patients were put under the guardianship of the government, of the patronising police state. The modern state which is to establish the equal rights of free citizenship must therefore, automatically be against the maintenance of the law of quackery. . . .

. . . We must (now) ask how the state . . . can and shall prevent quackery. For it cannot be denied that it lies in the public interest to restrain as far as possible the treatment of patients by ignorant persons.

The main tool of democracy is education. If we raise the educational level of physicians as well as that of laymen, quackery will correspondingly become less frequent. The more perfect the educational institutions of the state, the more scientific and practical medical education, the stricter and the more careful the medical examinations, the more reliable will be the physicians, "accredited by the government" and officially recommended to the laymen and the greater will be the confidence they will meet and acquire. . . . But just as important, or perhaps even more so, is the education of the

layman. As long as our schools devote their main efforts to the transmission of certain types only of knowledge and of doctrine consolidating belief in authority, in the best cases, producing a sterile scholarship; as long as education, from primary school, to university is not throughout based on perceptibility by our senses, as long as it does not aim to maintain and increase by critical faculty and by the power of independent thought, sound, genuine and unadulterated human understanding side by side with a large fund of positive knowledge in the natural sciences, in natural history, the basis will be laid which would enable the layman to form his own judgement on his physicians and pseudophysicians. Not only the uneducated but also the educated laymen, common as well as the outstanding people will remain servilely subordinate to medical authority and a resounding title such as a privy court, or sanitary counsellor constitute a most lucrative shingle for the medical quack. . . . Let a few generations pass — and that which now appears as a logical postulate, as a pious wish will turn out to be an actual necessity, a cultural achievement.

— Rudolf Virchow
