

REFLECTIONS ON MEDICAL LAW AND ETHICS IN INDIA (2016). By B. Sandeepa Bhat, Eastern Law House Pvt. Ltd. Pp. 22+297. Price Rs. 695/-.

THE BOOK titled, *Reflections on Medical Law and Ethics In India*, compiled and edited by B. Sandeepa Bhat, is based on concurrent issues in the areas intersecting law, medicine and ethics. The book contains ten scholarly articles written by eminent scholars in the field.

The first article titled, “Legal Systems and Judicial Responses to Healthcare Issues in India”, is contributed by Bismi Gopalkrishnan. She starts with the constitutional mandate on health and healthcare with special reference to the directive principles of state policy. The author has examined plethora of legislations on the subject of health and various aspects of healthcare, for which she has suggested a classification based on their benign purposes. The author has accounted in detail landmark decisions recognizing the right to health and has adored the role of judiciary for the same. The article criticizes the vagueness of the remedial mechanism for right to health violation in India, while highlighting the structure of Indian healthcare services. Author has suggested that the state should reform the remedial mechanism and ensure realization of a fundamental right.

The second article titled, “Law and Social Order in Healthcare Services in India”, is authored by Mercy Khaute. The article focuses on the issues of public health administration and maintenance of law and order. Highlighting right to health under Indian Constitution, the author approaches the problems of vandalism against hospitals and healthcare professionals and as to how it disrupts the dignity of the profession. Lack of appropriate machinery to curb the problem of vandalism and defensive approach of the healthcare sector is a critical issue for which the author suggests some measures to be undertaken by hospitals. Author is very right in saying that vandalism is not only about law and order but beyond that, and its repercussions are affecting the whole system and hence, state as well as centre must vigilantly take measures to prevent the incidences of vandalism and protect the dignity of the health profession.

The third article, “The Legal Regulation of Abortions in India”, is by the editor of the book, B. Sandeepa Bhat. The author has explained how abortion is gradually becoming a matter of right and individual choice. The author also discusses the judgment of *Roe v. Wade*<sup>1</sup> in the backdrop of Indian legislative journey towards Medical Termination of Pregnancy Act, 1971 (hereinafter MTP Act). Author remarks MTP Act as a balanced legislation towards controlling the increasing population and at the same time penalizing sex selective abortions. The author has critically analyzed the Act

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1 410 U.S. 113 (1973)

on five different heads including the consent factor and period of abortion. In conclusion, the author has questioned the time limit for the abortion and the requirement of consent in case of unmarried and widowed women.

The fourth article is titled, “Legal and Policy Challenges to Surrogacy in India” and is co-authored by Sairam Bhatt and Srividya R. Shastri. The authors have discussed surrogacy in India and other countries as well. They have given a detailed account of Indian scenario including the socio economic issues, regulatory framework, difficulties in the implementation, violation of rights of the parties involved and factors responsible for exploitation. The authors have discussed the judicial attitude towards surrogacy, and in conclusion have given some valuable suggestions like prior approval of the surrogacy contract and restrictions on termination before the term, psychological counseling of surrogates, insurance provisions and maternity benefit reliefs.

The fifth article is contributed by Shameek Sen and Kirandeep Kaur and is titled, “A critical analysis of the Human Organs and Tissue Transplantation Law in India”. The article speaks about the intersection of law and technology with special reference to human organ transplantation, their regulations and hitches. Authors begin with the conceptual explanation of types of organ transplantation and how it has become a common phenomena in the technically advanced world, also cautioning about its exploitation in Indian socio-economic set up. The authors have given a detailed account of The Transplantation of Human Organs and Tissues Act, 1994 with its salient features and objectives. The authors have also given a comparative analysis with other countries and have discussed the WHO guidelines on the issue. The authors have concluded with concerns regarding organ deficiency and illegal organ trading and have suggested some measures like creating awareness, encouraging cadaveric donations, improving infrastructure and to speed up the decision making processes.

The editor B. Sandeepa Bhat authors the sixth article titled, “Euthanasia in India – Is Ethics In the Way of Law?”. As the title suggests, the article comprises of arguments for and against euthanasia. The author discusses the ethical dilemma in euthanasia from various perspectives, such as the patient’s perspective-value of life and quality of life, to that of medical practitioner’s perspective-to save the life or end the sufferings, and dilemma from the point of family members and state. The author has well explained the concerns of the state and consent process in India with the help of rights theory. The author has criticized the court’s approach in not determining the difference between assisted suicide and euthanasia and concludes by strongly arguing for legislation on euthanasia.

The seventh article is contributed by Mahesh Menon, and is titled as, “The Role of Documentation and Consent in Healthcare Issues”. Consent is a condition precedent

for any medical intervention. The author has discussed the relevance of consent in medical interventions and consequences when proper consent is not taken. Author has detailed the Indian position on the concept of consent and competence to give the consent. Author has satisfactorily illustrated the scope of disclosures by medical practitioners and incidences where consent is not necessary. The author has highlighted the role and need of documentation in the whole process of consent and evidentiary values of documentary records. The article proves to be of significance to medical practitioners, as it details the day-to-day controversies arising out of consent issues and how to avoid adverse consequences.

The last three articles of the book are on the topic of Negligence and its different aspects. The eighth article is contributed by Aditya Kamath, and is titled as, “Concept of Medical Negligence—Its Interpretation and Application in India”. The article speaks about the concept of negligence and how it has been imbibed in medical field. The author has discussed in detail the four essentials of medical negligence *i.e.*, duty to take care, breach, consequent damages and their foreseeability. Author has also referred to some landmark decisions while explaining the concepts of breach of duty, damages arising out of it and how the apex court has imposed liability in such cases. He has also expressed his concern over increasing numbers of medical negligence cases and growing defensive strategies devised by the medical professionals.

Monalisa Saha contributes the ninth article, which is in continuation of the scheme of negligence titled, “Medical Negligence and Malpractice—Common Errors by Doctors and Hospitals”. The article speaks about how medical negligence jurisprudence has evolved in India over the time, while explaining the legal aspects of negligence under the law of torts, contracts and criminal law. Along with it, the author has detailed about primary elements of a medical negligence case. In the next part, the author has given an account of defenses available to doctors and hospitals along with some do’s and don’ts to avoid medical negligence charges. The author concludes by underlining that medical professionals should take adequate care and precautions to avoid legal turfs as much possible, but she also cautions legal fraternity to be equipped with the clinical methods to ensure justice in cases of medical negligence.

The last article contributed by Madhubanti Sadhya concludes the theme on medical negligence, and is titled, “Medical Negligence and Misconduct through the Lens of Consumer Laws”. As the title suggests, it is an analytical study of the impact of Consumer Protection Act, 1986 (hereinafter COPRA) on medical negligence cases. The author has taken efforts to explain how the medical field has been brought under

the purview of COPRA while discussing the *V. P. Shanta's*<sup>2</sup> landmark decision. While discussing the penal provisions of COPRA, the author has also described defenses available to doctors. Lastly, the author has also looked into the administrative issues faced by the consumer forums while deciding the medical negligence cases.

The book overall is a good read for those seeking an understanding of prevailing medical laws in India. The editor has taken efforts to arrange and organize the articles in a coherent manner. Considering the dearth of authoritative references on the subject, the editor has done a marvelous job of compiling and editing this book on medical laws and ethics.

*Gouri V. Naik\**

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2 *Indian Medical Association v. V.P. Shanta*, AIR 1996 SC 550.

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