Hamida Sheikh

Balancing acts for health

Some defects in health law, and some of the difficulties in the way of making good laws on health, are discussed below.

The law has had a bearing on health since time immemorial. Today, legal dispositions on health cast a wide net and affect human well-being from conception until death. However, the making of law on health inevitably lags behind scientific advances. Ethical, political, religious and cultural factors have to be weighed before laws can be framed.

Conflicts and flexibility

Even when legislation has been passed there is no guarantee that it will be effective, for a supporting infrastructure is necessary to allow enforcement. Many countries have introduced laws that, in theory, perhaps, should by now have brought the health-for-all goals very close, but experience has shown that civil war, famine, economic problems and other eventualities can greatly hinder progress.

Laws favouring health development may conflict with others encouraging economic growth. Industrial ambitions could, for instance, be thwarted by the application of strict antipollution laws.

There are also conflicts between medicine itself and the law, most notably in the area of organ transplantation. An organ can only be taken for transplantation following the death of the donor, but there is more than one legal definition of death. In some countries the criterion is now “brain death”, whereas in others it is cessation of heartbeat. In still others the law offers no definition of death at all.

Good law can adapt to changes in socioeconomic and political conditions and to scientific developments. How does one create flexible, easily adaptable law without compromising the safety of patients in the hands of unscrupulous physicians? Where does one draw the line in sensitive areas such as those of organ transplantation and experiments with embryos? If the law evades important issues there may be serious repercussions in health systems.

Many outdated laws create problems for health professionals, especially in developing countries, where some laws originated with the former colonial powers. Such are the laws according to which only doctors and nurses are allowed to give injections. In many developing countries, however, the legally authorized personnel may be unavailable, and it is unofficially accepted that junior staff can give injections. Yet when anything goes wrong they may be held criminally liable for performing a task specifically forbidden by law. Anomalies of this kind should obviously be cleared up. Laws relating to professional standards or

Ms Sheikh’s address is 27 rue Plantamour, 1201 Geneva, Switzerland. She has worked as a Consultant with WHO.
trade protectionism sometimes hinder the functioning of health services. For example, although appropriately trained nurses can perform male sterilization, in most countries this is considered an operation that can be done only by physicians. Another point worth noting is that legislators may have to choose between respecting the confidentiality of information held by doctors about their patients and protecting the public interest, as has become apparent in connection with the AIDS crisis.

What should the courts do when somebody knowingly infects another person with AIDS or other communicable diseases? In general, the application of the law in such circumstances is difficult because most legislation in this area was passed before the threat presented by these diseases was fully apparent.

Questions of an ethical or socioeconomic nature may arise where the prolongation of life is concerned. Thus the quality of life is an important ethical issue, and increased numbers of old people may represent a burden on younger generations and national economies.

**Lawyers, legislators and the general public**

One might imagine that health law, impinging as it does on the everyday lives of so many people, would be a popular field of specialization among lawyers. That this is not so can be attributed to the generally un lucrative character of litigation on health-related matters. The tort cases in which large sums may be paid in damages are comparatively rare. It is hardly surprising, therefore, that medicolegal subjects are not widely taught in universities.

Efforts should be made to broaden the scope of medicolegal education. Most countries, even in the developed world, have not given enough attention to the specialized needs of health law teaching. This commonly relates to medical malpractice, hospitals, health administration, bioethics, forensic science, psychiatry, mental health, and the handicapped, but is not restricted to these areas. More universities should broaden their teaching of the health aspects of law to include environmental protection, safety at work and on the roads, drugs, tobacco, alcohol, housing, and the infringement of personal liberty by quarantine regulations and other legal dispositions. Legislators should try to keep abreast of scientific advances and move the law-making machinery as quickly as possible to counter any hazards for health presented by scientific and industrial developments, rather than waiting until suffering has occurred as a consequence of them.

Personal ethics and a sensitivity to legal developments are of paramount importance for everyone, not only people working directly in health services. In the monitoring and drawing up of health law there are roles for private individuals, nongovernmental organizations, and professional groups and institutions. The law is a positive enactment of rules governing society, and since health care is a basic need the general public should be made aware of the likely consequences of legislation relating to it.