



## THE RELATION BETWEEN MEDICAL ETHICS, HEALTHCARE POLICIES AND SOCIAL JUSTICE: DEONTOLOGICAL OR CONSEQUENTIAL?

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*Ethics, too, are nothing but reverence for life. That is what gives me the fundamental principle of morality, namely, that good consists in maintaining, promoting, and enhancing life, and that destroying, injuring, and limiting life are evil.*

Albert Schweitzer

### Abstract

The term medical ethics is fast gaining traction. Ethics is a safe assumption in any professional field, it is of special significance in the field of healthcare where trust is the baseline and its violation a gross ethical misconduct. In the face of growing concerns about the safest haven where one is inclined to put one's life in trusted care, it becomes that much more necessary to ensure the safety and security of the vulnerable. As suggested by the title, this paper aims to explain terms like ethics, medical ethics, healthcare, etc., meander through history to locate the idea of medical ethics in ancient times across different civilizations to the present times, examine the two approaches viz. deontological and teleological in ethics, scrutinize a couple of actual cases that highlight the point, and analyse the necessity of medical ethics as a matter of policy with watertight provisions in favour of medical ethics and serious consequences in case of violations.

**Keywords-** Ethics, Medical Ethics, Social justice, Healthcare, Deontology, Means-ends relation, Teleology, Utilitarianism, Autonomy.

### Introduction

That there are consequences to any action is a well-known fact. Consequences also arise in some cases due to absence of action. Some of the times the consequences arising from an action or its absence are desired, while some other times not so. The very same consequences while welcome for some may be unbearable for some others. Some of the times such consequences are intended while at other times they are accidental by-products of an act which are purely unintended. Since these consequences have the potential to impact intentionally or unintentionally, not only the agent but a lot of other people in their wake, they become objects of examination. Additionally, since they bring praise or blame to the agent, the agent is subjectable to value judgements for her or his conduct. This presupposes a set of principles which would provide the guidelines for rightness of conduct. Such principles are collectively included under 'ethics' which lays out the governing principles for decisions and behaviour of person/s. Simply put, "Ethics is the branch of philosophy which deals with moral aspects of human behavior."<sup>1</sup>

While the general term ethics points towards guidelines for a right or a good conduct, the specific term medical ethics indicates application of the same set of guidelines in the particular area of medical field. "The central role of ethics in the practice of medicine cannot be too highly rated. Medicine

presupposes certain fundamental values such as the preservation of life and the relief of suffering. These values distinguish medicine from other sciences and imply some special responsibilities, particularly for the physician and other members of the health professions.”<sup>2</sup> The application of ethical principles in the field of medicine when adhered to is expected to promote moral standards among the healthcare professionals which would succeed in reassuring the recipients of medical care of the best possible outcome. Apart from field of direct practice of medicine, healthcare also encompasses within itself the areas like nursing, pharmacy, genetics, social work, psychology, physiotherapy, occupational therapy, speech therapy, etc.

### **Locating the Idea of Medical Ethics: From Past to Present**

While the term medical ethics seems to be relatively new, the practice of ethics in medicine has roots entrenched deep in history. What immediately comes to mind in regards to medical ethics is what Hypocrite prescribed as duties to a person desirous of practicing medicine. He laid out a code of conduct wherein the relation between a physician/ healer and his subject/ patient is clearly determined. Though Hypocrite lived between 460 and 377 BCE, code of conduct with reference to practice of medicine can be traced to many earlier sources as well.

Much before Hypocrite, Hammurabi (around 1750 BCE) had also specified a code of conduct for medical practitioners. In fact, he had imposed severe penal consequences even specifying the quantum of punishment for medical malpractice thereby making the practice of medicine actionable. Even some Egyptian papyri bear have sections in relation to interaction between patient and physician. Similarly, the subject had found considerable place in Chinese healing system. In ancient Indian medical system also, there was due recognition to the idea of ethics in the practice of medicine and the details of the same can be found in *Charaka Samhita* (1st-2nd centuries AD) and *Susruta Samhita* (4th century AD). Ethical code of conduct continued its journey with several references to it found during the medieval times as well. This followed into modern times with Thomas Percival who first wrote a compact version of code of conduct in 1794 which he later expanded into a full-blown book named *Medical Ethics; or a Code of Institutes and Precepts, Adapted to the Professional Conduct of Physicians and Surgeons* thereby introducing the term ‘medical ethics’<sup>3</sup>. While there is no universal code prescribed to the medical profession the world over, most of the institutions training medical professionals also try to instil in them through ethical awareness courses or programmes and ceremoniously administering oath which they are expected to honour. Hospitals and other such places display usually display their code of ethics and pledge their acceptance of medical ethics.

### **Important Key Indicators of Social Justice: Medical Ethics, Healthcare**

Social justice aims at setting such governing principles that infuse fairness in the very basic structure or framework of the society. A theory that targets to provide transparently a just arrangement of desirable goods like wealth, privileges and opportunities seeks to establish social justice. A fair distribution of resources would strive for harmony and welfare of all, and in doing so would ensure cooperation from all members of a society.<sup>4</sup> Principles of social justice ask that reasonable access be given to all the members to essential resources like food, clothing, housing, education.

Apart from access, equity is another key indicator of social justice. Equity is not the same as equality. It means acknowledgement of differences and sensitively treating them differently in order that there is a level playing field for everyone. Maintaining equity would provide equality of opportunities and would eventually lead to lessening of the gap between classes in society.

Just and due provisions like access and equity make a safe haven for all its members where everyone feels comfortable and confident enough to partake in the decision-making process. This encouragement towards participation is yet another key indicator of social justice.

It goes without saying that having an inclusive approach in policymaking is also a key indicator of social justice as it displays the attitude of respecting differences. Guaranteeing civil, political, economic, cultural and legal rights of not only individuals but also institutions is a key indicator of social justice as well.

Healthcare is one of the most important key indicators of social justice, the generation of which would not be made possible without cooperation from all the functioning arms of the society. It requires intention on part of the legislature and policymakers, it requires allegiance to policies on part of the executives and medical institutions and forums, it requires judiciary to acknowledge ethical medical practices as a matter of right in society, mandatory to the dignity of the healthcare recipient and have a stern attitude towards infringements. The responsibility of maintaining this key indicator in society is a paramount to the case of medical ethics.

### **Means-Ends Relation and the Contrasting Ethical theories**

Given that ethics deals with values and values are subjective leads to the but natural conclusion that there will be theories that at opposite ends of the spectrum and every other position in between. Humans differ from each other in thoughts, behaviour, preferences and consequently their justifications for choosing to act one way rather than would also differ. Whatever works as a justification for them shows their leaning towards a particular ethical theory. However, a lot of times, one is faced with the dilemma not really knowing for sure which course of action to take up.

Most of the ethical theories are differing expressions or interpretations of the means-ends relationship of where it is by no means an easy task to side satisfactorily with one. At the extreme ends of the scale on which all such theories sit is one that believes that means justify the end, and therefore purity of means alone can justify the purity of ends. They are called deontologists. However, there is the other end of the scale which believes that if the end achieved is noble or moral, then the means employed for the it does not bear any moral significance. They endorse the consequences rather than the purity of the process.<sup>5</sup>

Thus we see that although a few general ethical theories have been derived based on certain ethical principles, as discussed, the biggest contrast exists between Deontology and Teleology as the two main theories that are opposites of each other. Let us examine them a little more closely.

### **Deontology:**

According to deontology, ought ought to prevail over should, right ought to prevail over good. The moral worth of an action must be determined solely by its rightness and no other extraneous consideration like the good that is expected to or that even does come about through the act. The strongest version of deontology is found in the philosophy of Immanuel Kant (1724-1804) who advocated that actions be directed by only by goodwill or good intentions. Duty must be performed for the sake of duty alone. This was categorical and without exception. His belief in this idea was so uncompromising that he would not be willing to allow for even the satisfaction derived from performance of an act as for him it would be an influence and motive for performance of the act and as such would be an external factor which would corrupt the intrinsic morality of the act.<sup>6</sup>

The approach regarding ethical behaviour is based on rationality for Kant. Reason is a priori to experience. It is rationality that must guide one's behaviour and choices which must stay uninfluenced by any external and/or practical considerations. According to Kant, this must be the case every single time a choice is made. There is no exception to it – it is categorical. This must be the case for every single person when a choice is made. There is no exception to it – it is universal. Then and only then any act deserves to be granted morality.<sup>7</sup>

However, the Kantian deontological doctrine is not without its problems. It has been criticized strongly for the following reasons:

- It is impossible to ever determine whether an act has been performed based on absolute moral values alone.
- The unflinchingly absolute nature of the theory totally overlooks rather disparages the practical concerns making it impossible to be followed.
- The theory, if followed absolutely without exceptions, may have disastrous results. Kant non-negotiable approach has not left any space for exception. A moral person would be thus flummoxed when faced with a conflict between two absolute values. E.g. a technically well-qualified person happens to come upon information that a weapon would be launched to cause mass casualty. Now the

person, who is capable can either hack into the would-be perpetrator's system and disable the attack. However, this is morally impermissible according to Kant as it would violate the would-be perpetrator's autonomy. Then following absolute morality in a preventable situation like this would lead to a great tragedy.

### **Teleology:**

As opposed to deontology, the other approach in ethics is that of teleology wherein an act is justified and evaluated based on the purpose it serves or the consequences it brings about. According, an act is deemed moral when it brings about good or happiness as its result. The intention of the agent is not the parameter of evaluation here. The moral worth of the action lies externally, that is outside the agent, in the good that is caused by the action. According to this approach, one must strive for the should or good over the ought or right. It is a goal-oriented philosophy desirous of happiness in its wake.

There are however variations in opinions about what is to be considered as that good. Some philosophers like John Stuart Mill have considered individual happiness, albeit qualitatively determined, to be the ultimate good; while some others like Bentham aim at social good above other factors like individual happiness and consider an action to have moral worth if it brings greatest happiness to the largest possible number of people. Needless to say happiness here cannot mean the crude fulfilment of depraved ends. Every thinker has been careful to infuse morality in the very fabric of the theory so as to completely preclude any frivolous sense or crass subjective interpretation of good or happiness. Whether individual or social good is considered the end to be valued, any theory subscribing to the ideology of good prevailing over right is utility oriented. No doubt then that Utilitarianism is a popular philosophy with Bentham and Mill being its iconic flagbearers.<sup>8</sup>

Teleological doctrines like Utilitarianism also have serious problems and been strongly criticized for the following reasons:

- It presumes that consequences are measurable. However, ethical consequences like good or happiness have infinite variations and their essence and meaningfulness cannot be quantified by any standard parameters. In the absence of comparability of quantitative outcomes, how is one expected to choose between any two actions?
- In real life situations, there are mostly more than one factors at play simultaneously, some of which may even be conflicting! There could be a combination of reasons for a culminating end. This renders it impossible to tie down a single factor (or action) to the resultant good.
- The consequences arise and are available to be assessed only after the act has already been performed. How would one predict the outcome beforehand? If the expected outcome does not materialize for any reason outside the control or foreseeability of the agent, then can the agent be held accountable for any resulting negative outcomes? Then again, if an agent cannot be assigned the blame, can the accruing credit be, if the case be, due to her/him? It would indeed be dangerous to dissociate the agent from the act as it makes scope for justifying or even celebrating questionable (or even criminally intended!) acts should they accidentally bear good results or happiness. This in a way forces us to concede to the Kantian ideology of locating the moral worth in the intention and not extension.
- Additionally, it is impossible to maintain consistency with consequence driven principles because the outcomes for similar acts intended with similar purpose may vary. How can this enable any ethical decision making process, much less synthesise into a theory?
- Doctrines like Utilitarianism commit the fallacy of composition where one mistakenly believes that the maximum happiness of each individual will aggregate into the collective maximum happiness of the society over all.
- The biggest problem with consequence based approach is that it can easily lend itself to justifying the unjustifiable and be compatible with despicable social institutions like slavery. The attitude that the happiness of the majority should be allowed to dominate over helpless minority can lead to anti-

inclusive behaviour, breed toxicity be very harmful for the society. Besides, wherein lies the authority which determines what is good or who or how many are happy?<sup>9</sup>

### **The Need for Medical Ethics: A Couple of Cases in Point**

The field of medicine as is the case with every other field, is an ever evolving one. There are emerging sectors within the area which are totally new to the medical personnel, the general public, the legislature, the executive and the judiciary. As such, it might take a while before the issues bearing relevance with regards to ethics in that particular area even become clear. E.g. in the field of assisted reproduction through surrogacy, ethical issues and dilemmas that were previously not encountered come to the fore frequently. From the issue of fertility clinics not disclosing the use of donor eggs or sperms or not destroying the leftover embryos, to the rich and famous using the fertility assistance circumventing the family law provisions, the surrogate mothers being engaged at very low rates and sometimes even abandoned if the foetus is found potentially medically problematic or even for something as frivolous as the relationship between the expecting parents going bust, etc. – all of it without any serious consequences.<sup>10</sup> Different parts of the world may have faced a different kind of problem owing to differences in their socio-cultural economic setup. But problems did come up all across that required being addressed by introducing medical ethics. Let us look at two different kinds of cases and examine them in light of medical ethics.

To begin with, let us consider the general case of societal preference for male child leading to the unfortunate practice of female foeticide in India. During the times prior to foetal sex determination capability, what use to be sorrowful acceptance of a girl child into a house or in the most aggravated scenario – female infanticide, converted conveniently into female foeticide with the introduction of foetal sex determination technology. While the technology itself was not aimed solely at sex determination of the foetus but at monitoring general growth and development of the foetus, in most cases, it could also reveal the sex of the baby to expert eyes; and the ensuing downside of it was that it inadvertently enabled a male child preference driven society to take it further up a notch.

In a country already suffering with an adverse female to male ratio prior to the sex determination technology, there were devastating consequences due to the unregulated use of technology for female foeticide. The situation was crying out for ethical intervention. A code of conduct was set in place which aimed at sensitizing the medical professionals making them aware of the wrongness of aiding in sex determination and/or terminating a normal female foetus making it a professional misconduct on their part. This is an instance where medical ethics aimed to address a social issue impacting and victimising a gender.

Let us now look into a different type of case dealing with a particular victim. The world has recently had to confront the brutal and shocking sexual assault case related to Hacienda Healthcare Facility situated in Phoenix, Arizona where an incapacitated woman who was in a vegetative state for more than 10 years gave birth to a baby. She was raped at the facility by one of its employees, a nursing staff who had access to her. The irony is that the incident did not happen at a random location perpetrated by a stranger; rather she was exposed to danger right where she was supposed to be safe, and she was violated and betrayed by the very person who was supposed to care for and look after her.<sup>11</sup>

This disturbing case has raised many concerns at several level about the practice of ethics in medical field. Firstly, it is of utmost surprise that the pregnancy went unreported for its entire term. It defies reason to believe as claimed that it went unnoticed by the staff altogether. Someone chose to ignore reporting despite noticing it, or failed to notice it despite routinely and intimately attending to the person and being professionally trained to do so, or the facility hired incompetent staff who would fail to notice such monumental medical event for such a long time. Not only did the trained medical personnel fail to notice the pregnancy, they instead treated her unnecessarily for constipation, attributed the but noticeable changes to weight gain and reduced the caloric intake of the expectant mother thereby endangering both the mother as well as the foetus. The implications of this case are huge. Failure to notice the pregnancy deprived the mother and foetus of the recommended nutrition, regular health check-ups and other gestational care which could have significant impact over the well-

being of both mother and child. This is a case that aimed to jolt into awareness the very many aspects and levels at which the agencies cannot have an easy going attitude and shake up their acts, acknowledge the ethical practices due from them.

### **From Ethics to Policies and then to Laws: Necessary Steps Forward**

Mere recommendations, suggestions and/or directives are not sufficient. They may be a good starting point for a conversation that needed to be had, especially if it is an uncomfortable conversation challenging the existing set ways or breaking a popular myth. But ethical recommendations emphasise the lack of ethics which is a dangerous place in itself. Therefore, recognising a case for medical ethics indicates the next logical step – translating the ethics into policies. This would make their implementation mandatory and their violation punishable by law. The shocking fact is that the shocking Hacienda Healthcare case is not the first of its kind. There is an eerily similar precedent which happened in a New York nursing home in 1995 which led to the passing of Kathy's Law in 1998 which mandates background checks for nursing personnel. The severity of the violation of the code of medical ethics should merit a punishment that would serve as a deterrent in view of the fact that when a person submits oneself to the care of someone, he/she is already at lesser than their usual self and thus vulnerable. To add to it, in Kathy's as well as Hacienda Healthcare case, the victims were totally defenceless. This should warrant the immediate policymaking of the kind that necessitates imposition of ethical standards as rules.

While legislation of ethics into policies and laws alone is no guarantee of prevention of unfortunate incidents, the need for ethics can be addressed at two ends. Let us look at the approach taken by the Indian government. Firstly, there was legal imposition or a statutory ban on gender reveal, making request for it a crime, mandatory display in clinics and hospitals of non-acceptance of gender reveal requests, etc., accepting such a request would also make them a guilty party. Secondly, there was a pro girl child drive with the numerous policies and programmes by the government to promote the awareness and sensitization towards the girl child. The case for medical ethics cannot be viewed in isolation to ethics in general. They are a part of ethics that indicative addressing of issues that need to be reformed in the specific area of medical practice.

### **Medical Ethics and Healthcare Policies: A Blend of Deontology and Teleology**

Deontological and teleological approaches are both equally necessary for different aspects of medical ethics and healthcare policies. Medical ethics is the minimum due to every individual without exception. At the same time, medical ethics also need to cover the maximum number possible in order to be maximally inclusive and justify its successfully working as a key indicator in a society hoping to champion the cause of social justice.

### **Respecting the Autonomy**

The approach in medical ethics has shifted a lot during the recent years where the autonomy of the patient is given priority over every other consideration to the extent that every information is supposed to be disclosed to the patient.<sup>12</sup> The choice of the patient is honoured. Maintaining the autonomy was of paramount importance to Kant. "One may not restrict nor negate the free wishes of an individual with respect to his own body. One must facilitate any desired action acceptable to a person's own judgement and in accordance with his own choice. The granting of autonomy requires that we recognize and accept the free choice of each person even if that choice seems inappropriate or foolish or even life-endangering."<sup>13</sup>

Autonomy entitles the patient to strict confidentiality which modern medical ethics vehemently promotes. Of late there is an increasing trend towards leaning more and more on this principle to decide matters in medical ethics.

### **Expanding the Outreach**

No moral approach can close its eyes to the beneficiaries of an advocated principle. "Beneficence is defined as the moral obligation to do good for others, and to help them in an active way. Ethically, it

is not enough to avoid doing harm but one must actively do good to others.”<sup>14</sup> The ethical choices in medicine are literally matters of life and death. As such, it becomes the beholden duty on part of the policymakers to adopt means to expand the outreach as far as possible, and do it as fast as possible. This is a place where ‘by any means possible’ somehow doesn’t sound so jarring.

Medical ethics and healthcare policies that encompass the best practice of respecting the autonomy of an individual from deontology and include the benefits for the maximum number from teleology or consequence or utility can coexist to bring about the best laws possible.

### Conclusion

The field of medicine is full of dilemmas at every stage. The development of the field itself is premised on choices that have been extremely difficult for mankind. The very idea of trial on some for benefit of many is the main working principle in many fields including ethics. It becomes especially significant in medicine given that lives hang in balance. To arrive at the composition of a medicine is a tedious process in which one can safely assume that there would have been casualties along the way before striking the right formula. The history of surgery is fraught with not only unethical but also illegal means like stealing bodies, being in cahoots with grave robbers, violating autonomy of a person by disregarding his or her wishes of being left alone, undisturbed and intact in death. Additionally, in the unfortunate event of a catastrophe involving mass victims, e.g. earthquake or major accident, the operating principle on part of the first respondents is to prioritise those cases that are worth investing resources like time, medical supplies, etc. on and disregard the victims with slim chances of survival.<sup>15</sup> Despite the seemingly unresolvable dilemmas existing in the practice of medicine, every effort should be made to introduce medical ethics in detangling the mesh of ever-intersecting lines so that the emerging issues can be settled with the help of ethical guidelines that can become policies and concretise into laws that explore the best possible processes to respect the autonomy and dignity of the individual while at the same time geared towards the maximum outreach so as to be as inclusive as possible. When this is accomplished in both theory and practice of medicine, medical ethics and healthcare policies will be not a hope but a given towards social justice.

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