

Medical Ethics

An Introductory Essay

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With the rapid advance in medicine and its increasing privatisation, the highest standards of ethical conduct are called for from doctors. It is for this reason that the medical profession is governed by certain fundamental ethical principles. By setting certain ethical principles a doctor's expertise is attempted to be harnessed for the needs of society. What are the issues which confront doctors when interacting with patients?

WITH the medical profession becoming increasingly specialised, the acquisition of higher medical education and knowledge has become the prerogative of the upper middle class, resulting in fundamentally altering the age-long close-knit 'family relationship' that existed between a doctor and a patient. Not only has the doctor become increasingly isolated from the needs of the patient, but the medical profession as a whole has miserably failed to extend its knowledge and facilities for the benefit of the public.

Overawed by the doctor's grasp of medical knowledge, and unable to comprehend the complexities of the medical world, the patient is placed in a hopelessly unequal bargaining position. The surrendering of the patient to the doctor has become complete to such an extent that treatment, even if unsafe, is not questioned. Being thus placed in a position where the doctor has virtual control over the well-being of the patient, it is not surprising that the doctor can, wittingly or unwittingly, abuse his/her superiority. As a consequence of this strained relationship the nagging question that a doctor is constantly faced with and which he has to ultimately decide is: whether the health and well-being of a patient should be given priority or whether private profit and fame should be the driving motive which ought to define the doctor's relationship with his/her patients. Doctors must perforce decide which interests out of the two should prevail and the taking of such a decision depends to a large extent on the personal inclinations of a doctor. Since a patient is not divorced from the rest of society, the doctor's personal views with regard to the mode of treatment of patients has raised important ethical questions like: Should drugs, known to be positively harmful be prescribed to patients without explaining to them their harmful effects? Should technology and research be promoted for purpose other than for remedying the health of patients? Should doctors aid police officials in issuing false certificate certifying the death of a person to be 'natural' when in fact the death is known to be the direct consequence of torture inflicted by the police? Should doctors refuse to give emergency treatment to a person solely because it is a medico-legal case?

These are just a few of the many troubling issues, which doctors are invariably confronted with in their day to day practice while interrelating with patients. A doctor may choose not to answer these questions and wriggle out of a delicate ethical dilemma by arguing that the manner in which a doctor relates to his/her patient is basically a private matter. It has been argued that the setting of standards for medical practice, directly impinge upon a doctor's right to practice and hence no such standards should be artificially imposed. A doctor should be allowed to freely relate with

his/her patients in the manner which he/she thinks is most appropriate. If a doctor uses the medical profession to maximise his/her profits that is the personal choice of the doctor which ought not to be interfered with.

Yet, though doctors may relate to their patients at a private level, the fact is that doctors play a vital role in preserving and maintaining the health of a society and the medical profession cannot be left to regulate itself for important life and death issues are involved. Since doctors do not operate in a vacuum the decisions that they take vis-a-vis their patients have a bearing upon how they see their role within the medical profession. A doctor does not relate only with the patient but assumes various roles which require him/her to take important decisions which may adversely affect others. Thus, when a doctor decides to perform an abortion, despite laws to the contrary, s/he is not only expressing his/her personal views on abortion but is in fact making a public statement as to whether persons have a basic right to choose whether to bear a child or not; conversely, by refusing to perform an abortion because of one's religious or personal views, one is clearly taking a public stand by refusing to extend one's services for performing abortions.

Considering the complex social issues that one is confronted with, it may be extremely difficult to distinguish between what constitutes medical morals and medical ethics. For instance, when does one's personal views become the concern of the public so that public intervention becomes necessary for setting standards with regard to a doctor's practice? With the rapid advance in medicine and its increasing privatisation, the highest standards of ethical conduct are called for from doctors. It is for this reason that the medical profession is governed by certain fundamental ethical principles however outmoded they may be today. By setting certain ethical principles a doctor's expertise is attempted to be harnessed for the needs of society. It attempts to lay down certain guidelines though vague, with regard to what ought to be 'acceptable social conduct' of a doctor.

Evolution of Medical Ethics

If we look at the history of the growth and evolution of medical ethics we find that it was the doctors who initially played a vital role in establishing and setting standards for their profession. It is for this reason that the personal views of the doctors got reflected in the constitution of medical ethics. As the public became increasingly aware of its rights within the health care system, higher standards of practice were sought to be imposed upon doctors, though the code of ethics followed by the medical community has remained virtually stagnant and the changes have been far from

satisfactory.

The earliest and the first known medical code was the *Code of Hammurabi* (c. 1900 B.C.), which set out, amongst other guidelines for doctors, the mode of receiving payments from their patients. According to this code, payments should *inter alia*, take into consideration: (a) the results of the treatment; (b) the patient's ability to pay, and (c) the status of the patient. Though the concept of payment for professional services has undergone certain changes, the basic concept of "no cure, no payment" has been deprecated, in modern day medical ethics.

As medicine developed and became more complex, it became apparent that certain standards for the practice of doctors would have to be specifically outlined with a view to prevent malpractices. Thus, a code of ethics evolved, which is today commonly known as the Hippocratic Oath. This oath forms the basis, upon which all subsequent international and national medical ethics have evolved. It is interesting to note that this oath was not a product of any public outcry against malpractices, but received inspiration and support from within the medical community. The oath lays down the following ethics to be followed by doctors:

1. The medical profession is to be harnessed for the benefit of the public and the doctor must, to the best of his ability, do good to the patient.
2. Abortion and euthanasia are to be condemned.
3. The nature of doctor/patient relationship is outlined and to take advantage of the superior position of a doctor is disapproved.
4. Strict medical confidentiality is to be maintained.

A modernised version of the oath was introduced by the World Medical Association as the Declaration of Geneva, which was amended at Sydney in 1968. Certain general guidelines for doctors were outlined (which stressed the importance of the health of the patient and the belief that the doctor should not only practice his profession with science and dignity, but should devote his life to the service of humanity. Great stress was laid on confidentiality which should be maintained even after the death of the patient. Competition within the medical community was also strongly condemned. "Utmost respect for human life from the time of conception" was the advice given to doctors. The strong views of the medical community against abortion is clearly reflected in this declaration even as late as 1968.

This declaration provided the basis for a more comprehensive International Code of Medical Ethics which lays down the duties of doctors in general, namely that a doctor must maintain the highest standards of professional conduct and must practice his profession uninfluenced by the profit motives. The doctor must not do anything unethical like self advertising, collaborating in any form of medical service in which the doctor loses his professional independence or receive any money in connection with services rendered to a patient other than a proper professional fee. As far as the duties of doctors to the sick are concerned the International Code states, *inter alia*, that a doctor must preserve absolute secrecy and must give emergency care as a humanitarian duty unless he is assured that others are willing and able to give such care. As far as duties of doctors to each other are concerned doctors are prohibited from enticing patients from their colleagues and a doctor is advised to treat his colleagues

as "he would have them behave to him". Though all the three codes, the Hippocratic oath, the Declaration of Geneva and the International Code of Medical Ethics are vague and general in nature, the basic principle underlying all these three codes is the subservience of profit to the motives of the health and well-being of the patient.

An international attempt at setting medical ethics with regard to torture and other cruel, degrading and inhuman treatment, has also been made. This statement is embodied in the Declaration of Tokyo, 1975. Since a medical doctor practices medicine in the "service of humanity" having the utmost respect for human life, he is expected not to "countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty". Nor shall the doctor provide any premises, instruments, instances or knowledge to "facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment." The doctor must also have complete "clinical independence" in deciding upon the care of a person for whom he or she is medically responsible. This code for the first time lays international standards and calls upon doctors to take an unambiguous stand against torture, and inhuman treatment of persons. It is obvious, that this declaration is applicable not only to countries under dictatorial rule but equally to countries which operate under the facade of 'democracy'. For it is here that the services of doctors have a greater chance of being misused. Fear of losing their jobs in government hospitals or fear of being deprived of certain benefits and privileges may force doctors to give false evidence or wrongly diagnose the injury of a patient or issue false certificates upon instructions from government officials. To fall a prey to such practices is clearly unethical and the concerned doctor can be hauled up by the national medical bodies for 'misconduct'.

With the increasing growth of medical technology, new inroads are being made in bio-medical research which involve human beings as research subjects, and hence the need was felt by international medical bodies to set guidelines in this regard. The Helsinki Declaration sets guidelines for conducting medical research which are essentially diagnostic and therapeutic in nature as well as for those whose essential object is purely scientific. It declares that concern for the interests of the subject must always prevail over the interest of science and society, and "in any research on human beings each potential subject must be adequately informed of the aims, methods, anticipated benefits and potential hazards of the study and the doctor should obtain the subject's freely given informed consent, preferably in writing". Unfortunately, the Helsinki Declaration bases its recommendations on the premise that if medical progress is to take place at all it must rest, in part, on experimentation which basically involve human subjects. At any rate, the positive aspects of this declaration are being implemented more by their breach.

The Indian code of medical ethics is based upon principles and standards set out under various international codes mentioned above. It incorporate the basic principles with regard to: (a) Service to humanity, (b) Misuse of medical knowledge contrary to the laws of humanity, (c) utmost respect for life from the time of conception; (d) respect for the secrets which

are confided in the doctor; (e) upholding the noble traditions of medicine; (f) treating colleagues as 'brothers'.

The general principles under the code outline the character of the physician and his/her relationship to society. Advertising or solicitation of patients is specifically prohibited. Income from professional activities is to be limited to services rendered to the patient and remuneration to be received for such services should be specifically announced to the patient. A physician is prohibited from prescribing or dispensing secret medicine or other secret remedial agents of which he/she does not know the composition. Duties of doctors to their patients deal with emergency treatment, maintenance of strict confidentiality and provision of proper medical care. The code also deals with duties of the physician to the profession at large, to each other, in consultation and to the public.

The national as well as state codes provide for initiating disciplinary action against a doctor for breach of any of the specified medical ethics. The action may be brought before the appropriate medical council (national or state). The medical council may consider and deal with any form of unethical practice which may be brought before it although it may not appear to come within the scope of the precise wording of any of the categories mentioned in either the national or state codes. It is obvious that if an unethical practice is specifically prohibited by any of the international codes of which India is a signatory, the national or state medical council can take as action against the erring doctor. The appropriate medical council may award such punishment as may be deemed necessary or may direct removal permanently or for a specified period from the register.

At the national level there are various laws which govern medical ethics of the medical profession.

The Indian Medical Degrees Act, 1916 prohibits all persons, save certain specified authorities, from issuing or alleging that they are entitled to issue any degree or diploma in western medicine or surgery. The act is restricted to the western methods of allopathic medicine and surgeons, homeopathic, ayurvedic and unani practitioners being excluded.

The Pharmacy Act, 1948 allows for only those who have attained a minimum standard of professional education to practice the profession of pharmacy. The Central Council of Pharmacy set up under the act is empowered to prescribe minimum standards of education and approved courses of study of examination of pharmacists. Section 36 of the Act lays down conditions under which the name of a registered pharmacist can be removed from the register for e.g. if the name has been entered by error or on account of misrepresentation or if the pharmacist has been guilty of any 'infamous conduct' which includes breach of professional ethics.

The Dentist Act, 1948, contains provisions for the constitution of an Indian Dental Council which is empowered to lay down minimum standards of training and Provincial Councils which are empowered to maintain registers of persons entitled to practice dentistry. Section 17A of the act empowers the Dental Council of India as well as the State Dental Councils to prescribe standards of professional conduct and etiquette or a code of ethics for dentists. Such regulations may specify which violations thereof shall constitute 'infamous conduct' or in other words professional misconduct.

Since the State Dental Councils have powers to adopt rules of professional ethics, they vary from state to state.

The Indian Medical Council Act, 1956, gives representation to licentiate members of the medical profession and provides for the maintenance of an all-India register by the Medical Council of India which will contain the names of all the medical practitioners possessing recognised medical qualifications. Section 20A empowers the medical council (state or central) to prescribe standards of professional conduct and etiquette, and the regulations so framed may specify which violations thereof shall constitute 'infamous conduct' or professional misconduct. Under the act, the name of the medical practitioner can be removed from the register either on his/her own volition or if a misconduct has been indulged in. 'Misconduct' is defined as:

(a) Conviction of a registered practitioner by a criminal court for an offence which involves moral turpitude.

(b) Conviction under the Army Act, 1950

(c) Any conduct which in the opinion of the council, is infamous, in relation to the medical profession particularly under any code of ethics, prescribed by the council or by the Medical Council of India constituted under the Medical Council Act.

For any of the misconducts an inquiry has to be conducted by the appropriate medical council, before any action against the doctor can be initiated.

Role of the Medical Council

Since the Medical Council is the governing body of the medical profession, its main function has been the protection of a doctor's interest, and moves into action only if the conduct of a doctor brings disrepute to the medical profession. Take for example the highly unethical practices indulged in by the Federation of Obstetric and Gynaecological Societies of India (FOGSI) which took upon itself the task of representing and promoting a particular contraceptive. The Federation had circulated letters to the medical community urging them to promote the use of *Today*, a contraceptive manufactured by Bliss Chemicals. (Report by Rupa Chinai, *Indian Express*, 5.4.1988). The Maharashtra Medical Council because of the publicity, was forced to act against Dr. Daftary chairman of the Medical Termination of Pregnancy Committee. Clause 30 of the Maharashtra Code of Medical Ethics clearly states that medical practitioners would be guilty of 'misconduct' if they associate with "medical agents or manufacturers in the advertisement of products of particular manufacturers." This is not the first time that a medical body like the FOGSI has been closely associated with drug manufacturers. In the public hearing on high dose EP drugs held at Bombay, FOGSI filed affidavits supporting the use of this drug despite the existence of voluminous evidence to show that the drug was harmful. High dose EP drugs are being promoted by various pharmaceutical companies and it is evident, by going through the affidavits alone, that the FOGSI in collaboration with certain drug manufacturers was promoting the drug realising fully well that the drug had been banned in certain western countries because of its proven harmful side effects. The medical council has not taken any action against the FOGSI.

With the growth and proliferation of pharmaceutical companies, the bond between doctors and drug companies has

become stronger. In order to promote a particular brand of a drug company, doctors prescribe medicines to their patients, which are either of no use or are patently harmful. The tremendous hold of the drug industry over the health care system in our country, was recently brought to light by the Lentini Commission. Another example of the proliferation of useless and spurious drugs is the fact that more than 20,000 kinds of non-prescription drugs are on sale in the Indian market, most of which are non-essential and about 25 per cent of them spurious. As against this, the WHO has prepared a check list of only 200 essential drugs. Though the medical council is fully aware of the unethical practices of doctors prescribing drugs known to be harmful and useless, why has the council not prosecuted the doctors and more importantly should not the medical council have powers to initiate proceedings against drug companies?

The research establishment, both private and government, also collaborate with drug multinationals in conducting human trials. Human experimentation by the medical community is justified on the ground that such trials are for the benefit of humanity. For example, experimentation by administering injectable contraceptive Net-pen, which has not been proved as a safe drug is being conducted on several thousands of Indian women, who are being used as guinea pigs without their informed consent. These trials are being initiated by the government's family planning programme. The Helsinki Declaration clearly states that no tests should be conducted on human beings unless they are proven to be safe and without obtaining the informed consent of the person on whom the experimentation is to be done. The Net-pen tests are in clear violation of this declaration. The govern-

mental institutions are the most consistent violators of medical ethics and yet the medical council and courts have been hesitant and unwilling to take any action. In the Bhopal case, the government and its research institutions have effectively suppressed all medical information pertaining to the after-effects of MIC, and the treatment to be given to the victims. For example, though the Indian Council of Medical Research (ICMR) prescribed mass detoxification to the victims, by injecting sodium thiosulphate, the medical community in Bhopal ignored this recommendation.

The recent scientific advances in the field of reproduction like amniocentesis, chorion villi biopsy (CVB) are calling into question the philosophy and values of medical ethics. Those techniques which were meant to detect genetic deformities are now being widely used for sex-determination. Not a single doctor has been prosecuted by the medical council.

These are just few of the examples where not only doctors but government institutions have flagrantly violated the various international and national codes. And yet nothing has been done and the medical system continues to devour and maim a large number of people.

The extent to which the medical profession will conform to proper standards of medical care will depend to a large degree on the development of the public's awareness of the issue. The basic rules of social conduct can be ensured only if the public maintains a constant and vigilant eye on the doctors in particular and the functioning of the health care system in general. It is only then that the doctors will be forced to abide by the highest standards of medical practice.

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selective abortion of female foetuses could continue unabated. The callous and blatant attitude of the medical profession towards this question can be illustrated through a front-page advertisement appearing in one of the city's evening papers barely five days after the Maharashtra government's triumphant declaration of intent on January 1. This advertisement read in bold type, "Boy or Girl? Contact clinic." A proposed legislation that will, in all likelihood ban such blatant advertising did not deter the doctor couple offering sex determining facilities. It must not be forgotten that, though pushed into a corner on several occasions, the medical profession refused to take an ethical stand before the government's declaration of bringing in such legislation. Apart from the high level of vigilance, a commitment from an ambivalent medical profession, faced with the loss of quick commercial gains, is a must.

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the groups should utilise the avenues available to participate in the implementation process, in order to expose the hollowness of the bill.

The medical establishment had earlier argued that a law would force female foeticide underground. Now they have, in collaboration with the government, brought a law which can partially keep female foeticide above ground, within the purview of law. There is no alternative but to continue struggle against the medical practice of female foeticide.

This Bill has been passed in the Maharashtra Assembly without any significant amendment in April 1988.

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