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Reflections on Medical Law and Ethics in India

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Abstract

There is as such no Universal definition of medical ethics and more than that it's quite difficult to explain it but it can be interpreted as a moral and not legal obligation that a medical practitioner is supposed to abide it. However, there are a lot of times when some of the standards which we call as a medical ethics have legal effect as well. We will discuss about the theories of Medical Ethic such as Moral relativism, Moral objectivism and Moral pluralism, Various Approaches such as Principal Approach, Fiduciary Approach. There are some computing areas related to the medical ethics such informed consent and medical ethics, Disclosure of Information, Confidentiality. The paper will also deal with landmark judgements concerning medical ethics in India all cases shows how negligence and unethical conduct medical professionals can be which lead to a serious consequences and can also lead to the death of the patient. Therefore it is always very important for a physician to get the proper procedure along with the code of conduct which need to be followed keeping in the mind the basic morals.

Keywords: Healthcare, Ethics, Efficiency, medical code of conduct, Moral relativism, landmark judgements

INTRODUCTION

There is as such no Universal definition of medical ethics and more than that it's quite difficult to explain it but it can be interpreted as a moral and not legal obligation that a medical practitioner is supposed to abide it. However, there are a lot of times when some of the standards which we call as a medical ethics have legal effect as well.

Medical ethics can be defined as study of moral values and judgement as the applied to a medicines encompassing a history philosophy theology and sociology. Thomas Percival, a British physician and author, crafted the modern code of medical ethics in 1794 and expanded in 1803.

Medical law has come from the different branches of law which can be called as criminal law, Human rights, Law of torts, Law of contract, family law etc. Medical law goes under a very massive changes and also there has been a lot of legislation and rules pertaining to the medical laws such as policy of family planning surrogacy bill, law pertaining to abortions sex determination test.

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Value in medical ethics are recognized by four principles that is:

- Respect for autonomy (the patient has the right to refuse or choose treatment)
- Beneficence (doctor should act in the best interest of the patients)
- Non-maleficence- "First, do no harm"
- And Justice (fairness and equality)

Other value includes respect for the patients, (right to be treated with dignity), truthfulness and

honesty (informed consent) moral values in conflict (conflict of interest). The concept of medical law and ethics have always been a part of medicinal morals and its basically looks into given guidance to medical doctors and Medical Association, thus, helping in the plan and in the implementation of well-being arrangements and health laws and even reaches out to the capacities. Law is connected to medical law and medical ethics. Morality is something called a legal doctrine and it is invertible incorporated with the law in the ethical controversial issues raised by the medical care system and thing which is to be noted is that medical law is inseparable from Medical ethics and we will not be able to understand medical law without understanding the ethical tensions in play.

THEORIES OF MEDICAL ETHICS

The main theories of Medical Ethic are Moral relativism, Moral objectivism and Moral pluralism, Utilitarianism, Right –based theories and duty based theories, Virtue Ethics, Compromise Positions.

Moral relativism, Moral objectivism and Moral Pluralism

Moral objectivist can be defined as who hold the moral believes are capable of being objectively valid in the sense of being true or false are capable of being rational or irrational. Where is on the other hand the moral relativists, who hold the model believes are not capable of being objectively valid and according to the moral relativist all moral theories are based on the truth or rational relativity [1]. Moral beliefs in fact differ from person to person, culture to culture and generation to generations. Moral objectivism holds that many beliefs are wrong. It does not imply that every model question must have a single controversial answer [2].

Utilitarianism

Basically Utilitarianism is a theory of morality which advocates actions that Foster happiness in a poses action that cause unhappiness. It promotes “the greatest amount of good for the greatest number of people" and when used in a sociopolitical construct, Utilitarian ethics aims for the betterment of society as a whole.

Utilitarianism is a collection of moral theory that are morally required to seek the best possible balance of utility or over disutility [3]. Classical or hedonistic utilitarianism is the most famous percentage quiz seeking of maximum pleasure over pain.

Utilitarian unified by acceptance of at least four tenets. Firstly utility is nor itself a moral property, it is defined as something non moral which means a pain or preferences. Secondly its principle is to achieve the best balance of utility over disability. It is the Supreme principle of morality. Though individual interest can be meaningfully added together that is for aggregation or averaging and compared. Utilitarianism quotes that it makes sense for A, Band C interest to be added in some way and weighed against the interest of D. In classical (pain/pleasure) Utilitarianism, it is possible to aggregate the suffering of the four patients in need of life saving tissues to outweigh the suffering of the unwilling Donor patient. Fourth what method are the predicted consequences to the utility balances and nothing is intrinsically good irrespective of its consequences [4].

Right Based Theories and Duty Based Theories

Both Right-based theory and Duty-Based theory is based on the individual interest rather than the collective interest [5]. Unlike Utilitarianism, they do not allow aggregations or averaging of individual interest. They are distributed rather than aggregative. The difference between right based and duty based theory is based on the availability of the benefits of any moral obligation.

Right based theory says that all model obligation reduced to the moral rights, understood as justifiable claims imposing correlative duties, the benefits of which are available to the right-holder [6]. Whereas, duty based theories are do not automatically entitle the recipient of the duty to waive its benefits in the sense of releasing the duty-bearer from their obligation.

All right and duty base theory must deal with the conflicts between rights and duties. For example, a patient confined to his physician that he has an overwhelming desire to kill his girlfriend [7]. If the physician has a duty to keep the confidence of his patience and a duty to protect innocent people from being harmed by dangers patient (that is there is a conflict between the right of the patient and right of the patient girlfriend) both duties and rights cannot be of equal weight. This means that all such theory requires a hierarchy of rights and duties which in turn requires an objective criterion ranking those rights or duties.

Virtue Ethics

Virtue ethics is an Asian Greek philosophy placed in the work of Aristotle. Different versions of a different criteria of value. What Virtuous a doctor must have and adheres to it too if he is to be Virtuous varies from theory to theory. To have a practical application virtue theory need to tell the person how to recognize virtuous person or Virtuous traits.

Virtue ethics aim to provide Universal rules or principles like the principle of utility which institute is not to maximize Virtuous conduct or those associated with right and duty based theories.

Virtue ethics reject all action based on moralities even including utilitarian right based and duty based theories in favor of character-based values [8]. Virtuous straight are held to be instantly good and, typically linked with human flourishing. In this way virtue ethics contrast with action based modalities for which a virtuous character is simply one predisposing towards actions consistent with one moral obligations. For virtue theory, virtuous character traits are not dispositions that are merely instrumental to compliance with moral rules or principles, and are dispositions about feeling, reaction, and acting that are in some sense intrinsically valuable or linked to human flourishing.

Compromise Positions

Compromise Positions can be defined as a collection of moral positions which draws elements from the other four elements. These positions are rarely foundationalism and usually adhering more closely to the ethical reasoning of a layperson. It is essentially a miscellaneous category, capturing almost innumerable moral positions, not all of which are coherent. Some consider rule -utilitarianism to be a compromise position because of its reliance on general rules even where the strict application of the principle of utility requires a different conclusion

The classical compromise position in medical ethics is represented by the ‘principlism’ of Beauchmp and Childress [9]. These two authors advocate four principles of biomedical ethics. Their position explicitly seeks a compromise between overarching deep moral theory and practical ethics by adopting element of utilitarianism, right and duty-based theory, and virtue ethics. Beauchamp and Childress make no claims to foundation list grounding for these principles. Nonetheless, ‘very few critics argue that any one of the four principles is incompatible with his or her preferred theory or approach to biomedical ethics [10].

‘Beauchmp and Childress’ principles are intended to act as rules of thumb, providing a checklist of ethical issues to consider when evaluating a medical issue.

WHAT ARE THE VARIOUS APPROACHES?

The Principlist Approach

Tom L. Beauchamp and James F. Childress elaborated four principles that are now often regarded as foundational for medical ethics. They believe that these four principles represent a common morality and have given various arguments in support and these four principles are – Respect for autonomy, Non-maleficence, Beneficence and Justice.

Respect for Autonomy: In respect for autonomy four things which need to considered are as follows:

- Respecting patience as individual (that is why respecting their privacy by maintaining confidentiality of patient and telling them about their medical care rather than providing them

false or misleading information). For example it is the duty of the psychologist to keep the private record of the patients and not to disclose them, if he fails to abide by his duty than legal as well as display the actions can be taken against them.

- Providing the information and opportunity for patients to make their own decisions regarding their care. For example practitioner can impose their will on the patience and administer whatever medicines or diagnosis that think is in favor of patient's health. An informed consent is required to be taken say for example if the patient is not in condition to consent then their family member can do them on their behalf and if it is a case of emergency then doctor can go ahead with what he thinks is right according to his experience and knowledge
- Respect the patient decision regarding their choice to accept or decline care. For example- Jehovah's business believe that the blood transfusion is unethical and never agree to that
- Patient have a right to refuse a Diagnostic intervention, patience also has a right to refuse to receive information.

Beneficence: it means to act in the best interest of the patient and advocate for the patient. Mispresentation means misleading any facts therefore misrepresentation of the facts of stating the patients by giving them false information or any prescription is considered as highly unethical.

Non-maleficence: it means avoiding any causing injury or suffering to the patient. Even if minimal all treatments involve some kind of harm but the harm should not disproportionate to the benefits of the treatment to the patients.

Justice: the patient should be treated fairly and equitably.

However, law force physician to violate the above-mentioned for Principal in many ways some of them such as:

- When the positions are required to tell lies for example about link between breast cancer and abortion the principle of respect for autonomy patients gets violated.
- the principle of respect for autonomy also gets violated where in case before the abortion procedure get start, the physician force a patient to listen to a fetal Heartbeat observe a fetal ultrasound.
- Whenever patients are given less than full and truthful information the principle of "do no harm" or "non-maleficence" is violated as the decision made on the basis of such information's receive are often not in the best interest of the patients. for example providing false information about risk in Rise of the breast cancer can result in women increase anxiety for the rest of their lives it also leads to an increase in unnecessary cancer screening procedure such as mammography.

The Fiduciary Approach

Fiduciary relationship means a relationship which is based on the trust. A Fiduciary relationship describe a situation of heightened trust and confidence between the parties. For example the relationship between a teacher and a student's, Attorney and a client. Physicians have a strong fiduciary duties towards the patients which need not to be neglected. Propounders of this approach is proposed that the interest of the patient firstly should be placed above any other competing factors. Since the patients cannot access and evaluate medical information by themselves this makes it much more important for the medical practitioner to be fully supportive and evolve a safe space or provide such decorum to the patient so that they can openly discuss their issues and also it is very important for a medical practitioner to give accurate, reliable and correct information to the patient and should not provide them any mislead or false information.

PROBLEM AREA RELATED TO MEDICAL ETHICS

There are some computing areas related to the medical ethics that are discussed as follows, the first controversy is related to informed consent and medical ethics.

Informed Consent and Medical Ethics

There is some general belief among doctor that it is not possible to get the informed consent because of the illiteracy. The thing that patients are unable to make the reasonable choice because they could not appreciate the intricacies and often a paternalistic view is taken then the doctor knows much better in contact every human being has a right to know what shall be and what shall not be done with their bodies. A surgeon who performs any operation without the patient implied consent said to commit an assault for which they are liable under Section 352 of IPC [11].

The Patient Consents

People would quarrel with a doctor who has by disclosure information has withdrawn from his duty in confidentiality [12]. In this context the patients are entitled to know how much information has been disclosed to them and to whom it has been disclosed so therefore disclosure of information is also another problem area in medical ethics and disclosure of information's also attracts conflict.

Disclosure If Information

Disclosure information is to tell or not to tell. According to Charaka and Susrata, the physician must be very careful in disclosing the information to the patients about their incurable nature of their illness. The doctors should not disclose bluntly [13] the information about their incurable nature of the illness, it may shocks the patient or it may create the anxiety. Therefore it is always preferred to disclose the information about the patient's illness to the patient's relatives.

Present day doctor are suffering in their opinion about what to tell the truth and how much information must be disclosed to the dying patients. There are many conflicting areas like the patient right to know the benefit to the patients and possible harm.

Argument against Full Disclosure

There are four main arguments against full disclosure the first is that there is an ethical and professional obligation not to injure the patience light a such information may cause harm to the patient for example it may cause districts or anxiety in which case the doctor is compelled to withhold it and there is no doubt that such kind of information's may cause harm to the patients [14]. The second argument is that it is an extension of the first suggest that the doctor and patient relationship is like a contract with and implied warranty that doctor could act for the best interest of the patient and do not harm. As part of the contacts patient give the doctor the authority to make decisions on their behalf [15].

The third argument is the inability to understand. The doctor is entitled to withdrawal information because disclosing it will not serve any purpose and the patient will not been any position to understand what was told to them [16].

Fourth main argument against the disclosure is pragmatic it is impractical to tell the patient absolutely everything what the risk benefit and alternative Indore involved in the treatment as there is no time to do so [17].

Argument in Favour of Full Disclosure

The primary argument in favor of full disclosure is to disclosing about the pros and cons of the specific treatment to the patient. The patients have the right to make the on decision whether to accepted treatment commended by the doctor this help patients to determine their own destiny and excise their autonomy and this can only be done if they are given enough information to help them to understand the consequences of their choice. Autonomy has become the trumping ethical value in the last 50 years and so it is not less important in Healthcare delivery.

Confidentiality

The related to the confidentiality and medical ethics are decided by the members of the Healthcare professional to the control of the professional bodies. There are some matters which will not attract

the sanction for disclosure while there is a matter which is so serious that they are ought to be disclosed for the private or Public Interest [18]. It is suggested a reputed doctor will be very worried before relying on such interpretations. For example say in the treatment of the minor in the absence of parental consent when controlling for assisting pregnancy, the doctor is protected by statutory "conscience clause". In such circumstances the doctor has no open minded to beach confidentiality but should refer his or her patient to a professional colleague. The confidential nature of the treatment in minor below the age of 16 is unsatisfactory and vague [19].

In cases of confidentiality within the family is that situation the doctor has to decide whether he must read the individual all the family as a whole. For example the bikes are termination of pregnancy with other husband knowledge the doctor is firmly bound by his duty of confidentiality to his or her patient both legally and ethically. Pregnancy is an intimate matter for a pregnant woman and a husband or partner has no intrinsic right to interfere in the child within the uterus. But what if the wife seeks sterilization and the practitioner made take decision unilaterally. It's doctor for responsibility to convince the patient that this will be a joint decision but if secrecy creates danger to other members of the family the condition could be different for example if the spouse or partner is suffering from a sexually transmitted disease, which he or she is unwilling to disclose to the others then there should be an open discussion with the affected person which might include seeking consent to disclosure.

POSITION OF MEDICAL LAWS AND ETHICS IN INDIA [20]

In 1933 the Indian Legislative Assembly passed an act called the Indian Medical Council act 1933 but later on this ad was highly criticize which resulted in the feeling of the entire act and new act was framed and form which is called the Indian Medical Act 1956. The medical council Act 1956 looks over the wrong doings of the medical practitioner in India.

The General Medical Council is a Apex body to manage the expert of misconduct of medical practioner acting at state level. Some additional power have been given to the state Medical Council to expel or suspend medical practitioner if they are found to be doing any misconduct if required. They are also empower to enlist the medical practitioner who have faced disciplinary actions.

Indian law allows abortion if the continuance of pregnancy would cause a risk to the life of the pregnant woman or grave injury to her physical or mental health [21]. The Medical Termination of Pregnancy Act allowed medical termination of pregnancy for the, 'greater good' of the country in the light of the expanding population. Abortion is severely condemned in Vedic, Upanishadic, Puranic and Smriti literature [22]. It is also against the Code of Medical ethics stipulated by the Medical Council of India [23].

Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 (amended upto 8th October, 2016) indicates the duties and responsibilities of the medical practitioners.

These regulations enforce certain standards which medical practitioners are required to follow. If they fail to do so, legal action can be taken against them and they can be penalized as well. Some of the duties and responsibilities of the physician are:

1. Maintaining good medical practice
2. Maintenance of medical records
3. Highest quality assurance in patient care
4. Patience, delicacy and secrecy
5. Patient should not be neglected
6. Unnecessary consultations should be avoided
7. Punctuality in Consultation
8. Not to conduct sex determination test
9. Advertising is not allowed

10. Contravening cosmetics and drugs act are not allowed
11. Reporting to call for emergency, military situations
12. Reporting of suspected causes of death
13. There should be informed consent of the patient
14. Running an open medical shop is not allowed
15. Ban on practice of euthanasia

Medical Practitioners are required to follow the standards set in the Code. The Code also states acts of commission or omission on the part of a physician which shall constitute misconduct rendering him liable for disciplinary action.

LANDMARK JUDGEMENTS CONCERNING MEDICAL ETHICS IN INDIA

Dr. Kunal Saha v. Dr. Sukumar Mukherjee, AMRI (Advanced Medicare and Research Institute Ltd.) and Ors.

This case is popularly known as the Anuradha Saha Case which was filed against AMRI hospital and against three doctors namely Dr. Sukumar Mukherjee, Dr. Baidyanath Halder and Dr. Balram Prasad.in 1998 [24].

Facts of the Case: the case was filed for medical negligence where the petitioner wife was suffering from a drug allergy and doctor was negligent in describing the medicine due to which the petitioner wife condition got worst and result in the Death of his wife.

Held: Here, Supreme Court founded the doctor guilty and Supreme Court awarded a compensation of around 7 crore to the petitioner for the loss of his wife due to medical negligence.

V. Kishan Rao v. Nikhil Super Speciality Hospital and Anr., [25]

Krishna Rao filed a case against doctor claiming that his wife was wrongly diagnosed which resulted into her death.

Facts of the Case: petitioner was suffering from Malaria but she was treated for the Typhoid fever due to which wrong medication and treatment was given to her and her condition worsened and lead to the death.

Held: Here, in this case court applied the principle of "ipsa Loquitor" it is a Latin word which mean that things speaks for itself. The court founded the hospital in the guilty and the petitioner was awarded a compensation of rupees 2 lakh.

Mrs. Arpana Dutta v. Apollo Hospital Enterprises Ltd. and Ors. [26]

Facts: A woman had a surgery for removal of cyst in her uterus. The doctor told to the patient that the operation was successful but however after a couple of days women complain for severe pain and due to which she died because of severe pain in a lower abdomen. After her body was cremated, pair of Caesar was found in ashes it was later found by the court that the during the operation for removal of cysts for uterus one of the operator had negligently drop the pair of scissors in the abdomen of the women. In this case the principle of vicarious liability was applied that is " *quit facit per alium facit per se*" it is a latin word which says he who acts through another does the act in himself and here in this case that it of the hospital was held guilty and a hefty compensation was awarded to the patient's family.

Pravat Kumar Mukherjee v. Ruby General Hospital and Ors., [27]

The National Consumer Disputes Redressal Commission of India gave a landmark judgement on treating of accident victims.

A boy name Samanta Mukherjee he was a second year student and was pursuing B. Tech accidentally met with an accident. The boy was hit by Calcutta transport boys and girls to a hospital

which was just one kilometre Away From My accident sport he was a very conscious state and was immediately rush to the hospital there he sold his medical insurance card which clearly indicated that he will be given a sum of rupees 65000 by the insurance company in case if he mets to an accident. Relying on at the hospital started his treatment but however after initial treatment Hospital demand of some rupees 15000 and non-payment of demanded money Hospital discontinued his treatment. From there he was rushed to another hospital but before reaching their he died.

National Commission made Ruby Hospital liable and compensation rupees 10 lakh was given to the grieving parents.

Here the above all cases shows how negligence and unethical conduct medical professionals can be which lead to a serious consequences and can also lead to the death of the patient. Therefore it is always very important for a physician to get the proper procedure along with the code of conduct which need to be followed keeping in the mind the basic morals.

CRTICAL ANALYSIS

Medical practitioners often faces difficulties to choose between the following three, i.e.:

- Doing the best they can using the abilities they have for their patient,
- Abiding by the provisions of the law and being a law-abiding citizen of the country, and
- Safeguarding themselves from the consequences of not following the law (For example losing their licenses).

Medical petitioner who only follows the law but does not pay attention to the medical Ethics of the professions can lead to the provisions of the profession integrity. They are required to be highly sensitive to the action the Undertaker and action of even one individual Candy to calamitous consequences. Hence it is very necessary to maintain the balance between following the law and keeping the patience integrity intact and also validating the professional ethic.

Since medicines especially antibiotic medicines are becoming Complex day by day and one is needed to cure them self from the viruses, patients are now becoming more depending on the medical practitioner. One cannot be dependent upon the internet since they do not provide accurate information and the incorrect information or incorrect medicines can lead to a complications later on**.** A medical practitioner who deliberately give wrong information to the patience this respect the patient autonomy and also loses the patience trust that is the fiduciary relationship gets destroyed. This mistrust in one physician can lead to the mistrust in the entire professions.

Often it is seen that there is a clash between the principal and the cases which lead to the infringe in one principal in order to abide the other principal. Say for instance when a particular treatment is necessary in order to save the patient's life but the treatment involve risk and one cannot agree to the same since he is in the conscious state now here in this case there is a clash between the principles.

Fiduciary model says that **"doctor knows best"** but it **has now weakened** over the years now the arguments presented for the same are doctor instead of taking care of the patients are involved in the profession to make money. For example it is very common in Indian pregnant women are forced to get operated rather than going for a normal or natural delivery of the baby.

The above principles has failed to lay the basic principles of respect and purity. Many aspects of virtue ethics are still left unaddressed and are often challenged in debates relating to medical law and ethics.

CONCLUSION

The medical research world becomes increasing globalized, there is a need to make research both methodologically and culturally valid. Conducting research on human subjects stretches the current

norms of medical ethics as well as stretching the current capabilities of international law. To rely simply upon minimum standards of non-binding and vague medical ethics instruments for conducting research on humans is both naïve and culturally insensitive. Regardless of the privileges of a patient referenced above, there are a couple of special cases as well. Sections 80 and 88 of the IPC contains protections for medical specialists blamed for criminal obligation.

There is conceptualization of risk and provision for both oral and written consent in keeping with the sociocultural realities of the caste system and of illiterate populations. Simultaneously, in line with global trends, the guidelines affirm the multidisciplinary nature of health research, which includes biomedical, public health, and social and behavioral health research. Without necessarily pointing to weaknesses in the international guidelines, the National Ethical Guidelines for Health Research Involving Human Participants is a resourceful document and is of great relevance for many contexts in and outside India.

Even after the formation of the medical council act many Anil at activities came up in the medical professions which is highly unethical. They forcing me all the consequences it is highly needed to amend Medical Council at with provisions to remove all the malformation. Medical professions need a strict disciplinarian actions which is need to be taken only on the complaints. There are some of the cases where victim of medical negligence or not interested in proceeding against the doctor and sometimes are not aware of the procedures to be followed.

Apart from this the medical council Act 1956 has not provided anywhere the procedure which need to be followed for conducting an enquiry or neither have the specified any time for its completions suggest 30 days or one week or one month like that, such investigation is open conducted by Ad Hoc committees and they take a long time to submit the reports due to their an accountability. To sum up there are hardly any disciplinary actions are taken against the doctors for the guilty of their medical negligence and therefore there are hardly punished for the same.

Also advancement of Medical and Technology has created a new challenge in the medical field problem like infertility treatment artificial nutrients and hydration team of patients in coma or the patients who are suffering from the Corona are the controversial issues in this regard. The regulation to medical practice could not be done by the Council alone therefore in the new world of the Medical Technology formal and informal regulation by professional and institutional are necessary. An effective log can provide better decorum in medical practices.

From the above discussion it can be Interpreted that medical law and ethics it is indeed a very complex and a different concept to understand is everyone have different leaves notions and interest attached to the life. However, it is expected of experts and thinkers that in future, a better approach which is acceptable by all may come in force but till then, we need to be careful of what the practices are around the world as the lives of human beings are at stake.

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