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Paternalism and Patient Autonomy

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Abstract

Patient Autonomy refers to the patient's rational capacity for self-governance and self-determination, while Paternalism is the interference with one's autonomy with the purpose of protection and prevention of possible harm. Here, the burden of proof lies heavily on the governing body that makes the decision to override one's autonomy to carry out paternalistic actions. From a medical perspective, doctors engage in the act of Paternalism where they may limit a patient's freedom. This paper aims at researching and analyzing the application of these principles of professional medical ethics from an Indian Health law perspective. By doing this, the researcher intends to highlight the scope of these concepts in Indian legislations along with the importance of codifying the length and breadth of Paternalism and Party Autonomy.

Keywords: Patient, Paternalism, Medical, Autonomy

INTRODUCTION TO PATIENT AUTONOMY AND PATERNALISM

Significance of Patient Autonomy within the Legal System

Patient Autonomy refers to the patient's rational capacity to self-govern, while Paternalism is the interference with one's autonomy with the purpose of protecting and by extension, benefitting the patient [1]. Here, the burden of proof lies heavily on the governing body that makes the decision to override one's autonomy to carry out paternalistic actions. From a medical perspective, a practitioner could engage in the act of Paternalism where they decide for a patient on the course of treatment. On the other hand, a patient could exercise their right to Autonomy to make the decision themselves [2].

The principle of autonomy relies heavily on respecting one's capacity for rationality. Where one is capable of making rational decisions for themselves, it is a practitioner's duty to avoid violating or thwarting the ability to do so. Here, respect is an ethical responsibility that places many restraints on the possible decisions a Practitioner can make for an autonomous person.

From a Practitioner's point of view, many motivations can influence these decisions. Beyond the most important one, that being to ensure the patient is not harmed, Practitioners can also be motivated by the possibility of medical advancements that may benefit the society. In situations as such lies the concept of Informed consent. Rooted within moral and legal systems, Informed consent prevents this very form of paternalism from being carried out legally. A practitioner is required by law to disclose any information relevant to the study or course of treatment [3]. Here, the patient is provided with all the information to ensure they make a well-informed decision on whether or not they want to continue. Informed Consent legally protects the patient's right to be respected during the course of this communication - a form of Patient Autonomy has been outlined and protected.

It is also appropriate to say that Autonomy relies on consent as well-here the capacity to make personal choices is protected because we know the

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person is independent enough to decide for him. A practitioner could withhold important procedural information or fail to mention possible alternatives. Irrespective of their motives for this deception, the law agrees that nothing can be withheld from the patient and their ability to make an autonomous decision. This autonomous decision entails that the decision maker is fully informed of all the variables that could influence the decision making process.

The need for Paternalism and its types

Despite the embedded ethical components of rationality and consent, Patient Autonomy may be interfered with for the purpose of protection and the mitigation of detrimental circumstances. Medical Practitioners, with the philosophy of Paternalism, believe they can curtail the decision-making of patients for their own benefit. For example, health officials may quarantine a positive COVID-19 patient against their will in order to prevent further deterioration of the health. In such circumstances, Weak Paternalism is permissible. This form is ethically justifiable as the purpose of enacting this paternalism is purely towards benefitting the patient [4].

It is Strong Paternalism that is generally objectionable as it raises human rights concerns in the field of law and medical morality concerns in the field of medicine. A practitioner impairs or overrides a fully autonomous decision-maker and the simplest of this form is of the physical kind [5]. For example, a woman who needs a life-saving blood transfusion denies this treatment on the basis of religion. A practitioner then administers this transfusion as soon as she falls unconscious due to her illness. This paternalistic act was carried out to save the patient's life, however, this course of treatment goes directly against the patient's wishes. The practitioner has knowingly overridden this woman's previously declared autonomous decision.

It is also important to identify Strong Paternalism in cases where information has been knowingly withheld by the Practitioner [6]. Take for example a researcher who administers a drug to test the efficacy of it in treating a cancer and fails to mention the drug was in it's experimental phase when consent was given by the participant. In experimental trials as such, the use of placebo controls is often incorporated in the methodological design for reliability and validity [7].

Should a participant be placed in the placebo group of the trial, not only are they being deceived of treatment but their illness would also be left untreated unbeknownst to their knowledge.

This Strong Paternalistic act violates a patient's ability to make an informed autonomous decision in the first place as they lack the necessary information to do so [8]. The common denominator in these cases is that these paternalistic acts override an otherwise considerably autonomous person.

LITERATURE REVIEW

Bioethics: Principles, Issues and Cases (3rd Edition)

This source was paramount in distinguishing between Patient Autonomy and the forms of Paternalism within the medical field. This provided the necessary foundation for the medical perspective in this paper as it placed these ethical concepts within the philosophical and legal environment. The book outlined Patient Autonomy and Paternalism through articles as well as clinical and legal case studies, presenting diverse perspectives within the field that the law often finds difficult to protect wholly.

Stanford Encyclopedia of Philosophy: The Principle of Beneficence in Applied Ethics

These entries provided substantial literature on Ethical Theory - more specifically, on Beneficence. As this quality of altruism is linked to the duties of a practitioner, using this particular entry helped define the frequent need for paternalism within the medical field. In the 'Beneficence in Biomedical Ethics' section, it reiterated the idea that a practitioner must provide care within the limits of certain fundamentals - for example, "do no harm" and "Maximize possible benefits and minimize possible harms".

Furthermore, the entry explains how this moral concept protects patient autonomy. In doing so they are violating their duties of beneficent care.

CONSENT AND MEDICAL TREATMENT: THE LEGAL PARADIGM IN INDIA

This source highlighted the importance of consent in medical treatment and provided for a detailed understanding of the patient's right to Patient Autonomy and self-determination. This journal piece links consent with Indian constitutional provisions to provide the scope of patient and practitioner decision-making. Through this piece, the researcher was able to obtain different perspectives from landmark precedents relating to the subject at hand [9].

MEDICAL PERSPECTIVE

"Duty of Beneficence" and its relation to Patient Autonomy

Historically taken by medical students upon graduation, the Hippocratic Oath requires a new Practitioner to swear on healing gods to uphold the necessary ethical standards when they practice medicine [10]. When we start to question whether overriding a patient's autonomy would entail that the Practitioner has failed to uphold these duties, we acknowledge that some sort of contract has been broken within the Patient-Practitioner relationship. This contract entails that the Practitioner respects a patient's autonomous decision within the, and by restricting autonomy, they are thereby in violation of their duties.

The complexity of this Patient-Practitioner relationship is often overlooked. In its simplest terms, a Practitioner holds a "duty of beneficence" to help the patient in the most altruistic way possible. A Practitioner is to do no harm to the patient and this includes respecting their autonomous decision. These legal obligations within the relationship align with ethical theory where Beneficence includes "all norms, dispositions, and actions with the goal of benefiting or promoting the good of other persons" [11].

There are, however, many cases where the most altruistic method of treatment is to restrict their patient's autonomy. When the Practitioner attempts to carry out a paternalistic act, they must recognize that they are piercing their patient's rights. In doing so, it may be argued that they are failing to uphold certain altruistic duties. However, in the face of the law, this infringement of autonomy may be justifiable - undermining or fully overriding a patient's autonomy is not necessarily futile under law - if the Practitioner commits this act with the aim of protecting the patient from any possible harm, the law must rule in favor of protecting the individual, in spite of the autonomy restriction.

Paternalism as a principle of Autonomy Restriction

In a legal setting, the altruistic duties of a Practitioner must be fulfilled within the Patient-Practitioner relationship. However, it can be argued that the practitioner is failing to act beneficently when a patient's autonomy has been overridden. Legal conflicts between respecting a patient's autonomy and the practitioner's duty of beneficence can be resolved with the philosophy of Paternalism.

We often find cases in which a Practitioner may find it reasonable to thwart or diminish Patient Autonomy. In cases as such, Respect for Autonomy is thought to be prima facie with strong justification [12]. Paternalism is one such justification, and by extent, a 'Principle of Autonomy restriction' that explains why a Practitioner often has legal precedence to override a Patient's Autonomy.

Paternalism and its Legal Precedence

At this point, it is important to distinguish between Paternalism and the Harm Principle, which is another Principle of Autonomy Restriction [12]. This justification, curtails Autonomy to prevent harm

to others. Operating under this principle entails that any interference with Autonomy can be justified in cases where harm could be imposed onto others. It is limited in that it tolerates consensual and self-imposed self-harm or harm to another, thereby allowing for a way to decriminalize 'victimless' acts between autonomous adults. This limitation can leave the harm principle inadequate in terms of achieving legal consensus - it provides the grounds to argue about what exactly constitutes self-harm, the harm to others, and consent.

For example, the scientific community emphasizes on the negative effects of secondhand smoking and pushes for the indoor smoking ban as a mitigating solution [13]. While legislation would apply the Harm principle to prevent harm to others by enforcing this law, it could very well be considered an insufficient justification on its own for Autonomy restriction. Harm to the public in such a case is harder to outline, as opposed to protecting the individual's autonomous decision to smoke. The Harm Principle coupled with Paternalism provides a justification for the indoor smoking ban as the act in itself not only harms others, but the smoker itself. The paternalistic act of banning smoking in public spaces restricts the smoker's autonomous decision to smoke in order to protect the smoker as well as the public against the harmful effects of smoking.

While the Patient-Practitioner relationship would benefit by having these principles of Autonomy restriction outlined explicitly in the legislature, the law still faces many barriers when it comes to generalizing and codifying these principles.

The Patient and Practitioner often tend to differ on what constitutes futility itself [14]. These conflicts make it harder for the law to distinguish between cases of Paternalism being applied ethically or unlawfully. A Practitioner could refuse care on the basis of Medical Futility where they believe treatment, or any further care provided would be detrimental. Here, we can see how a patient's right to skilled beneficence can be at odds with their right to autonomy should the patient demand for treatment that the practitioner deems harmful or unnecessary.

PROVISIONS IN INDIAN HEALTH LAW

Provisions on Patient Autonomy

Consent is a factor we repeatedly speak about because it's a critical point of discussion in medical treatment. Patients giving their valid consent and/exercising their autonomy by having the choice to refuse treatment even in cases that may save their life, is known today. This raises ethical debates in medical law and before commenting on the same, it is crucial to identify the laws governing Patient Autonomy and the scope of consent/autonomy [9]. Indian health law legislates various provisions for patient autonomy, which starts from the Indian Constitution itself.

Article 21 provides that 'No person shall be deprived of his life or personal liberty except according to procedure established by law.' [15] Although not explicitly stating the right of Patient Autonomy, through this fundamental right, patients have the legal right to self determination.

Practitioners need not obtain consent for treatment in emergency situations. In cases as such, a Practitioner can carry out paternalistic acts freely as the patient is unable to make autonomous decisions. However, when obtaining consent, the practitioner shall ensure that it is valid. A practitioner treating without valid consent would be liable under tort and criminal laws of India. Tort laws govern civil wrongs that attract the liability of compensation from the wrongdoer, while criminal laws govern criminal laws and attract imprisonment. Similarly, some patients may sue medical Practitioners based on, for example, tort concepts of 'negligence' or 'trespass to person' and in rare cases, criminal charges for gross malpractice.

Exceptions to Patient Autonomy

In the case of **Dr. T.T. Thomas vs. Elisa [16]**, the patient was diagnosed with a case of perforated appendix with peritonitis requiring an operation. While the patient was admitted into the hospital on

March 11, 1974, no operation was performed until his death on March 13, 1974. The doctor explained that no surgery could be adhered to, although the suggestion, because the patient did not consent for the surgery. Therefore, other measures were taken to ameliorate the condition of the patient, which grew worse by the next day. Although the patient was then willing to undergo the operation, his condition did not permit it. On the other hand, the respondent (i.e., the Plaintiff) contended that the doctor demanded money for performing the surgery. Additionally, the doctor was attending to some chores in an outside private nursing home to conduct operations on the other patients and that he returned only after the death of the patient. The court was presented with the plaintiff's (deceased patients wife) version of the events and the doctor's version. The court delivered a verdict in favor of the plaintiffs stating that consent under an emergent situation is not mandatory and that the doctor should not have waited for the patients consent.

In the case of **Pt. Parmanand Katara v Union of India [17]**, the Supreme Court established some important guidelines:

i. When an injured person approaches a doctor, the doctor shall provide all help that is possible for him at that time. This includes referring the injured person to proper experts,
ii. The doctor treating such people shall be protected by law, as they are not violating any procedural laws of the land (such as jurisdiction, etc.), and
iii. All legal bars (either real or perceived by the doctors) are deemed to have been eliminated by the verdict.

This is in consonance with the Hippocratic oath, which a doctor takes when entering the profession. Therefore, a doctor is duty-bound to treat a patient in the case of an emergency, without waiting for any formalities.

The need to Legislate

The concept of patient autonomy is fundamental to the Healthcare and Health law of a country. Any interference/ blockages in this, would need legal attention and importance. While countries like the United States provide for medical paternalism in their Health Law, India does not codify the same. The Indian judiciary often includes the concept of paternalistic notions of medical practitioners, when delivering their judgments, however, no provisions have been explicitly laid out in Indian Health Law. From a legal standpoint, it is imperative to legislate upon these concepts to give boundaries to medical practitioners and their acts on exceeding patient autonomy.

By definition, a Paternalistic act is carried out to protect and prevent harm to the patient and, in doing so, the practitioner is questionably upholding their beneficent duties [18]. With Medical Futility, the law could find reasonable ground to restrict the patient's autonomous decisions and side with the Practitioner. Comparably, the law can also recognize and protect an autonomous patient's decision to refuse treatment. This further complicates the ability to clearly outline the principles of Autonomy restriction in law as both parties within the relationship can justifiably violate these principles and be argued in favor of.

LANDMARK JUDGMENTS

Ram Bihari Lal v Dr. J. N. Srivastava [19]

In this case, the doctor acted with a paternalistic notion. In this case, the patient was suspected to have appendicitis. The doctor proceeded with the operation, after consent was obtained from the patient. However, during the surgery, it was found that her appendix was normal without any inflammation. Despite having the knowledge of the normalcy of the appendix, the doctor removed her gangrenous gallbladder and therefore, was held liable for operating without consent. Although the doctor claimed to be acting in good faith and with the patient's interest, Indian health law does not allow for this paternalistic notion. The doctor was liable of trespass by operation on the gallbladder. His actions were said to be sans valid consent, which was an extreme case of professional paternalism and gross disobedience to the right of the patient's autonomy.

C A Muthu Krishnan v M. Rajyalakshmi [20]

This case is regarding proxy consent. In Indian health law, there are no clear regulations in cases when the patient is unable to give consent himself. If such a situation exists, the medical practitioner may proceed with the treatment after having taken consent of any relative of the patient or even an attendant. In this case, the wife of a patient informed the hospital authorities in explicit terms that she had no objection to her husband undergoing bypass surgery for his heart. Her consent was considered sufficient for the purpose of any formalities that the hospital needed.

Samira Kohli vs Dr. Prabha Manchanda & Anr [21]

In contrast to the case mentioned above, in this case, a forty four year old unmarried female consulted her doctor and was advised to undergo a laparoscopy. A few consent forms were taken from her of which one was for admission and another one was for the surgery. The consent forms granted the doctor the right to carry out a "diagnostic and operative laparoscopy" and there was an additional confirmation that a "laparotomy may be needed". After the patient was unconscious in the operation theater, another proxy consent was taken from her mother for a hysterectomy. This meant that her uterus, ovaries, and fallopian tubes were removed. Consequently, the doctor was held liable when an action was brought, it was held that the operation was conducted without real consent of the patient herself and a hysterectomy was nowhere mentioned to the patient before she was being operated on. The doctor was held liable.

Chandra Shukla v Union of India [22]

In respect to relations, in this case, the the patient and his wife were in a strained relationship. The patient was operated on for sterilization and while giving consent he deposed that he is married and has two baby girls. It was also made known that his incentive for undergoing an operation was for money. After the operation, his father opposed that the patient was of unstable mind and was not competent to give consent. In this case, the court held that if the doctor does not sense, under any circumstances that there is foul play and a doctor does not doubt the patients ability and capacity to give consent, then he is protected. The doctor does not have to act as an investigative agency and in respect to the topic at hand, the doctor cannot act in a paternalistic manner to exceed his authority to investigate.

CRITICAL ANALYSIS: CONCLUSION

Through this paper, we have been able to establish that patient autonomy is fundamental within healthcare services throughout the world. Medical practitioners are duty bound to provide complete information to the patient, in order for the patient to make a rational decision with consent. When medical paternalism is stronger than patient autonomy the 'prudent man (patient) test' is employed by the courts. In the case of Sideway **vs. Board of Governors Bethlem Royal Hospital**, [23] the court upheld clinical judgment regarding disclosure of information about the procedure. Court decisions often question the rationalization by the medical practitioner at the time of decision-making and this paternalistic approach may not be completely acceptable. The factor of consent is one of the critical issues in the area of medical treatment today. There is a great debate on medical ethics and when a medical practitioner can intervene and curtail patient autonomy. This especially is the case when it is a patient's right to refuse treatment even if the said treatment will save their life. In India, there is not a codified law that governs both, strong and weak paternalism. Although, courts have repeatedly used this concept to explain health law disputes involving autonomy restriction, they have not provided for/legislated upon the same. It is increasingly important to provide for this concept to give scope and dimension to the law that governs the power that medical practitioners possess.

The law presumes that the medical practitioner is in a dominant position and possesses beneficent skill and knowledge needed to operate and provide aid. With Paternalism clearly defined in the legislature, the law can protect the patient-practitioner relationship by setting boundaries. These boundaries outline the extent to receiving a practitioner's skill as well as the extent to giving out this

skill. In order to protect both the patient and the practitioner, providing an explicit piece of legislation ensures a clear and smooth functioning of medical care.

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