

Bio-ethical principles of medical law with an emphasis on the law of Iran

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Abstract

There has been many talks about the necessity of ethics in all affairs, especially medical affairs which deal with the lives of individuals and the society expects Medical Group to be abide by morals more than laws. This matter indicates on the fact that the society considers ethics as a stronger enforcement of the law and deplores a doctor who has ignored ethics in the medical profession. Thus, they blamed the doctor from ethical aspect more than deploring him from a legal aspect (civil or criminal liability). The legislator is also influenced by public in anticipation of responsibility (both criminal and civil) for doctors and imposes legal rules on this basis. The concept of this article has an extremely close relationship with three concepts of morality, professional ethics and law. Initially first two concepts will be defined and separated and then the relation between professional ethics and medical laws will be expressed. Then, the relation between two concepts of medical ethics and bioethics ethics will be evaluated. Two religion or secularism basis have been taken for medical rights and strengths and weaknesses of each are discussed and the approach of the Iranian legal system will also be mentioned with evaluation of controversial medical samples.

Keywords: *medical law, bioethics, professional ethics, Doctors, patients*

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1. Introduction

Medical law can be considered to be less governing the relations between doctors and patients³. This combined description (Medical law) is a related to ethics on one hand (Law) and professional ethics on the other hand (medical). Thus, separation of ethics from professional ethics and then the distinction between the concepts of medical ethics and bioethics and evaluation of theories and approaches of bioethics are necessary. Medical ethics is a branch of professional

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³ The reason for using medical practitioners instead of doctor will be explained below

ethics and is basically trying to find a mechanism to resolve the legal issues in medical-ethical field and its different aspects will be evaluated in this article.⁴

Ethical issues are raised in medical law with the advancement of science and technology and providing possibilities that formerly did not exist and solving those or giving a satisfactory answer to those is difficult. Studying medical law is not possible without dealing with complex ethical dilemmas of this field. Hence, a conflict may be felt in some cases between ethics and medical law. To be clear, moral rules can cast shadow over all human relations. These laws are either derived from social traditions or dominant religion in the society and both of these are identified from dominant social culture. The ethic is so strong that the Medical science still depends on it in many aspects and has not been able to pass ethical barriers. However, it has passed ethical barriers in some cases and areas due to social necessities and replacing ethics and feelings with rationality. These areas are determined the gender of the child before conception, the sale of organs on financial need, a combination of the human fetus with animal, permissibility or impermissibility of abortion and compassionate murder and following questions can be raised with validity of each of the areas of discussion:

1. When doctors are allowed to separate auxiliary devices from the body of a premature baby?
2. Are parents allowed to choose the gender of their child before birth?
3. Is selling kidney ethically right?
4. Are scientists allowed to produce a combination of animal and human fetuses?
5. Should women have the right of abortion or not? And if so, what limits should be made for the exercise of this right?
6. Should Sweet Death (compassionate murder) be legalized?

Appropriate legal response to such questions regardless of the ethical implications is difficult. Reflecting on this field requires the medical ethics and bioethics fields. Initially, we will look to the definition of medical ethics and newer sense of bioethics.

As much as medical ethics has a long history, bioethics is a relatively new field. From the past, medical ethics have been related to the rules required for a good medical practice which means that a doctor was defined to be good using it. Medical ethics are codes of ethics and conducts behavioral guidelines which is endured by the medical profession to ensure ethical behavior of doctors toward their colleagues and patients. A medical procedure was formerly heavily patriarchal. Among the shortcomings of such a procedure were marginalization of patient wishes and ignoring social causes of disease. But the scope of bioethics in general is broader than the scope of traditional medical ethics.⁵ This field emerged as a distinct academic discipline in the 1960s in response to various factors.⁶

⁴ Seyyed Mostafa, Sasha Deena Abdulaziz, Abbas Mahmoud, *Introduction to ethics, legal, Zysty.antsharat*, 2010, 2nd edition, p. 15.

⁵ Jackson, Emily, *Medical Law*, Oxford. 2010. P 2.

⁶ Kuhse, Helga and Singer, Peter, *A Companion to Bioethics*, Blackwell: Oxford, 1998, p. 45.

The first factor was rapid development of technology in the medical field which has created complex dilemmas, especially for the beginning and end of life which went beyond the scope of ethical behavior. For example, when it was possible doing organ transplant or keep the heart rate for after death, inevitably this question raised that can the organs of patients -who are in a coma but their heart beats- be transplanted into the body of other patients?

The other factor was that Medical paternalism began to be challenged in medical ethics and the principle of patient autonomy was raised. Patients were no longer blindly accepting the medical expertise of doctors and used their right to make decisions about their own body. Thus, the principle of individual autonomy arose and became important in the medical field. Legislators also approved laws that affirmed the necessity of taking consent from the patient or legal guardian in order to perform surgical procedures and performing surgery without consent from the patient or legal guardians would be criminalized. Islamic Penal Code asserted the need of permission to perform surgery similar to 1925 Penal Code, amended in 1973 and the laws of 61 and 70 in paragraph C of Article 158.⁷ However, there is no need to ask for permission in urgent cases which has been called to be a necessity factor in the criminal law⁸ and is defined as one of the factors undermining the legal element because the obligation to get permission in urgent cases is incompatible with the urgency and necessity of work and can cause harm to the patient.

With this brief introduction, we will discuss the matters in two sections for better explanation. We will talk about the fundamental principles of ethical decisions in the field of medicine in the first section and we will talk about ethical theories in the second section.

We will talk about the principles of ethical decisions in the first speech in order to properly determine the relation between medicine and ethics and clear the dependence of medical science to ethics. The reason for determination of ethical theories is to determine which of the ethical theories determines the framework of medical limitations in the field of ethics because not all ethical theories necessarily create such restrictions and mutually medicine is not associated with all ethical theories.

2. The foundations of ethical decisions in the field of medicine

Many people act instinctively or intuitively against ethical dilemmas. For example, they express about some medical procedures such as producing a combination of human and animal fetuses in this way: "I just know that this is not right" such judgments are hasty and without argument and are not enough to

⁷ Any type of surgery or medical legitimate person or parents or guardians or legal representatives, his satisfaction and respect for technical and scientific, and military government. In urgent cases consent is not necessary.

⁸ Doctor Ali Azmaysh, pleadings lessons general criminal law, the period of free classes, faculty of law and political science at Tehran University, the second semester of academic year 2006-2007.

convince others. A coherent reasoning process or moral principles should be noted to convince others which explains or justifies our position.

A mechanism is required to solve ethical dilemmas which goes beyond our instinctive tendency. Bioethics researchers are trying to determine this mechanism. There are two general approaches in this way. Religious approach and non-religious or secular approach.

2.1 Religious approach

There is a long-standing relationship between religion and medicine. It was commonly believed in the past that illness has mental origin. Thus, people were looking for witches and prayers for treatment instead of medical specialists. There were people at that time who believed seeking medical treatment is an insult to God.⁹

Although this thinking has become outdated in today's world and the medical science has found its place at the heart of society, but there are still those who are concerned with unprecedented power of medicine in production and destruction of life. In a secular society with cultural diversity, religion is a private matter rather than a public issue. Thus, the opinion of religious leaders about Bioethics is merely important for their fans and mostly determines the method of dealing with medical dilemmas, but it does not help in determining policy and public policy. Some of the experts believe that all of the religions can be considered as a very useful source for the new secular field of bioethics because those have a long history in dealing with important legal issues and medical ethics. It is obvious that there are important differences in this regard between different religions and even different tendencies within a religion.¹⁰

However, there are similarities between all religious approaches toward bioethics, which are:

First, religious bioethics usually rely on the specific behavioral inherent rightness or wrongness and tends less toward pragmatic or result oriented arguments. For example, in case of the sweet death, the religious relies more on the legitimacy or illegitimacy of paving the way for the death of another human being than any difficulty of monitoring the behavior of doctors. Because the difficulty or impossibility of monitoring the behavior of doctors makes pragmatism conclude that it should be ignored due to this difficulty. Compassionate Murder has not been accepted by the legislators in Iranian law. The basis of this matter seems to be religious ban, which the legislator does not allow such an action. Euthanasia or Compassionate Murder is in term the condition in which the patient dies calmly and normally upon request. Such conditions occur in n difficult and painful disease and long-term and disappointment treatments.

⁹ Jackson, Emily, *op. cit.*, p. 5.

¹⁰ Ahmadinejad S. and others, *A review of abortion laws in the Muslim Middle East*, „Medical Law Quarterly”, Issue XVI, Spring 2011, p. 168.

Stopping the treatment of a patient, stopping the serum and parenteral nutrition, oxygen cut off, preventing dialysis and removal of vital organs' individual protection devices as well as giving high doses of drugs that reduce alertness and hasten death are among euthanasia methods.

There are different interpretations of the concept of sweet death. For example, in an indirect way, the doctor prescribes a drug which only provide the basics of death and the patient is fully aware of the optional death. But in the direct way, doctor or nurse are the factors of patient death. Lethal injection and cutting patient support devices are examples of these methods which are sometimes undertaken without the knowledge of the patient.¹¹

Indirect euthanasia is legal in some countries such as the Netherlands, Sweden, Belgium and some states of the United States of America such as Oregon, Washington and Montana. There is a clinic in Sweden for which patients throughout Europe take appointment from a long time ago to go there and do euthanasia. Euthanasia is also illegal in Australia and a naval hospital on a ship does it. It was allowed in France in line with respect for freedom and decision-making powers to let patients with incurable disease to plunge into a very deep sleep with administration of medications while the exact time of death will not be determined in this case.¹²

From the perspective of Islam, since humans do not have any control over their birth, they should also not have any control over their death and they are only obliged to take care of themselves. This argument that killing humans is for liberation from suffering is unacceptable in Islam. Endurance has been highly regarded in Islam and many religious groups believe that human suffering can be a good opportunity for self-knowledge and self-purification. It is clear that the concept of Sweet Death faces deeper challenges in our country compared to secular European countries due to jurisprudential approach of the legislator to all trends such as medical ethics on the one hand¹³ as well as religious contexts of the middle layers of society and non-argument able beliefs issue of life and death on the other hand.

Islamic law shows more rigor about deprivation of life (even though it believes murder to be among passable offenses and the case is closed after consent of the next of kin and they have been even no jail time for the murderer and what is in article 612 of the Islamic Penal Code in 1996 has entered our legal system over time and after criticism from lawyers) and complies with statements of Shi'a jurists and does not consider reluctant to killing as a permission of murder (Article 375 AH. D. Or) and that is why it does not consider consent permissible to kill and

¹¹ *Idem*, p. 168.

¹² Leila Mohammadi, the sweet death or euthanasia in the national criminal laws, the right legal base Wide, p. 47, www.haghostar.ir

¹³ In accordance with Article 365 of the Penal Code "deliberate murder and other crimes, can Mjnylyh after crime, until he died, a right to retribution or compromise over the victim's family and heirs cannot, and after his death, as the case may demand retribution or take blood money, but committed to the punishment prescribed in the book V "suspended" is condemned. "

even though the murderer is not obliged to retribution and blood money after by the permission of the victim, the next of kin will not have the right of retribution and blood money, it cannot be considered as consent of killing and Compassionate Murder cases cannot be concluded on this basis.

Second, all religions have two common moral concerns:

A) Love to others (for example, this golden rule exists for almost every religion: behave other the way you expect others to behave yourself).

B) A sense of respect for "God's creation" especially for human life which is called to be "Sanctity principle". That is why religious bioethics focuses on individualism and freedom of human choice less that non- religious bioethics, and it begins with this premise that life is a gift from God and we do not have the right to manipulate it or intervene in it.

Third, if Bioethics is based on the assumption that Life is a gift from God, this question arises that how far can we interfere in the order of nature. The answers are very different, it begins from the belief that modern medicine has undermined the will of God to a more progressive vision which states scientific exploration of human and therefore medical progress is a part of God's creation. Accordingly, it seems the Iranian legislator does not consider abortion to be permissible and Article 623 of the Islamic Penal Code of 1996 and therapeutic Abortion Law of 2005 allow abortion only subjected to certain conditions¹⁴ or the legislator supports the viability of fetuses has predicted retaliation in Article 306 of the Islamic Penal Code ¹⁵ to comply with certain conditions of retaliation in case of the fetus, which is born alive, but dies due to injuries at the time of pregnancy.

It can be said that "abortion is one of the challenging issues in the relationship between criminal law and medicine and it is challenging in this way that Medical science looks at this issue from the perspective of keeping the healthy life for mother and child while the perspective of the law is a holistic approach based on the necessity of keeping mother and her child alive even though the fetuses is not considered medically healthy and full human. The law looks at this issue from this perspective that the fetuses will have all rights that all human beings possess in the case of being born alive".¹⁶

The most important and initial permissibility of abortion is the lack of insufflation of the soul. Thus the possibility of therapeutic abortion exists only before 4 months of age. Another condition is a disability or disorder of fetuses leading to constriction of mother or illness of mother which threatens the mother's

¹⁴ According to this law, "legal abortion with treatment three specialist and confirmation of doctor for fetal disease that causes constriction due to disability or disorder of the mother or maternal morbidity associated with the mother's life is threatened before insufflation of spirit (four months) with the consent of the woman is not allowed and will be punished and the gatekeeper physician steward".

¹⁵ „If the fetus is born alive and has the ability to survive and crime before birth defect or died after, birth defects remain constant or retaliation”.

¹⁶ Doctor Mansour Rahmdel, *Abortion, Proceedings of commemorating the doctor Hassan Dadban*, thanks to the efforts Tahmores Bashiriyeh doctor. January 2011, pp. 308-287.

life due to combination with pregnancy. These must be approved by three expert doctors and forensics. The last condition is mother's consent.

Thus, there is no possibility for therapeutic abortion or abortion under any circumstances after insufflation of the soul, but the therapeutic abortion is possible before insufflation of the soul due to not being considered as human in case of benefits outweighing the risk.

An issue that must be considered in relation to the abortion debate is that the legislator has chosen more important issue over the important issue. It is noteworthy that the issue of abortion is based on following two matters:

1. Survival of fetuses in assumption of being deformed or threatening the mother's life in assumption of continuing pregnancy because continuing pregnancy may lead to mother's death.
2. Abortion to prevent the birth of a disabled child and saving mother's life.

The legislator has chosen the second option from these options and the principles of the legislator's decree can be considered as follows:

First, the birth of a child with physical deformities is problematic for the child too. Such a child faces a variety of mental and physical problems and has difficulties in life.

Second, taking care of such child is emotionally and psychologically painful for mother regardless of great costs and problems related to physical care for mother.

Third, such people are a burden on society and eventually the government should think of providing specific facilities for such people and the government is constitutionally incapable of providing such facilities in many cases.

Fourth, from criminology standpoint, even though there is no direct relation between disability and crime, but there is a kind of indirect relation because disabled people are in unfavorable situations in terms of mental credit compared to healthy individuals and may tend to delinquency due to lack of feeling that they feel.

It can be said about the choosing mother's life over continuing pregnancy in case that continuing the pregnancy threatens the mother's life that the legislator tends to keep the perfect being alive over an imperfect being. Mother has been preferred over child, which is not clear to be born healthy and has an unclear fate since mother is a complete human and has a defined status in the society and is probably the mother of other children and her death leads to collapse of family life (at least the psychological aspects).

But the problem with this issue, the lack of same administration for both mentioned assumptions after insufflation of the soul. Foundations for legislative options are weakened in such cases because if the abortion has been preferred over continuing pregnancy in assumption of disability of fetus, it will remain the period after insufflation of soul and this matter is similar in the case where the mother's life is endangered by continued pregnancy. It seems that the only obstacle of legislator in this case has been insufflation of spirit which religiously makes fetus

to be considered as the owner of the right to live and the legislator has not been able to choose the life of one person over the other. It has been said that “scrap and disposal of the embryo in the womb and the confluence with the woman's egg and in general the use of any harmful or pregnancy preventive tool which prevents the implantation of a fertilized egg and disposal and scrapping of it has been banned in Islam”.¹⁷

Comparison with the Islamic religion, the Jewish religion has a longer tradition in accepting medical interventions. They believe the human body belongs to God and this means our job is to keep it. Judaism not only focuses on preventative medicine such as hygiene and diet but also makes treatment mandatory for patients and doctors.¹⁸

Technological interventions in nature do not violate the ban of changing in God's creation in Islam as long as being for improvement of human welfare. Some of the previous jurists have considered detrimental testing and researches contrary to human dignity and believe by relying on a hadith from Imam Sadiq such actions on dead or alive Muslim is insulting to Muslims. But contemporary jurists believe that Muslim desecration is among Intentional matters and does not occur only due to a series of actions and measures. Thus, if the intention is for the advancement of medical knowledge and treatment of diseases, it is not considered as Muslim desecration but is not allowed if it is for trade or material benefit or to show off and likes it and it is a case of insult to human dignity¹⁹. However, Islam has encouraged preventative medicine about health. This may be the reason for adoption of the law of embryo donation to infertile couples in Sunday, July 20, 2003. According to Article 1 of this law “Under this law, all specialized centers to treat infertility are allowed to act on transferring embryos resulting from insemination out of uterus of legal couples after written agreement of the fetus couple to uterus of women who their infertility (either one or both) has been proved after getting married and medical procedures”. It has been mentioned in article 2 of the mentioned law for conditions for embryo donation that: “the Embryos donation request must be given to court by both husband and wife and the court will issue the embryo donation permission”:

- A) The couple are not able to have a child based on medical certificate
- B) The couple has moral authority
- C) None of the couples being obsolete
- D) None of the couples suffering from incurable diseases
- E) None of the couples be addicted to drugs and couples must have the nationality of the Islamic Republic of Iran.

The Legislator refers to the legitimacy of embryos obtained from fertility as well as the duties of parents to give children and other relations between them in

¹⁷ Hosseini Khorasani, Syed Ahmed, *A legal ruling birth control*, Proceedings "New problems" Vol. II, p. 84.

¹⁸ Jackson, Emily, *op. cit.*, p. 8.

¹⁹ Wasael, vol. 19, about 24 members from chapters Diego. According to the Proceedings of medical law, translator and author Mahmoud Abbas, vol. 5, Legal publications, p. 85.

Article 3 and states: "Tasks and duties of the couples receiving donated embryos in terms of alimony and keeping and training and respect is similar to the tasks and duties of children and parents".

Rental or surrogacy uterus contract is one of the new methods of infertility treatment by which the women, which is called surrogate mother accepts to carry embryos of sperm and egg of infertile couple who are applicant of surrogate uterus, which are called ruling or third party parents, which artificial insemination has occurred in vitro using assisted reproduction methods and give the child to ruling parents after birth and the surrogate mother may charge a fee for doing this or do this for humanitarian reasons.²⁰

Fourth, religious bioethics usually adopts a normative approach to solve ethical dilemmas while secular bioethics cannot provide any correct answers to an ethical issue and only tries to find an acceptable solution which results in a middle status.

Fifth, Religious bioethics is usually rooted in an interpretation of the past sources and is always to some extent within the framework of previous written or oral training and is affected less by the realities and social transformation of society.

2.2 Non-religious approach (secular)

Despite high disagreement in religious bioethics²¹, moral reasoning starts from a point and leads to the answer based on rich interpretation history for the past, but secular bioethics has no clear starting point and has less certainty about whether there is a correct answer or not and it is basically not after the correct answer. Now, this question is raised that if the followers of secular bioethics are not after correct answers to moral dilemmas, what are they after? The answer is that the logical or intellectual reasoning is perhaps the most logical way to solve difficult problems or disputes. It can also be the rational rationalization of moral views and intuitive inferences. We will evaluate ethical theories which can be cited in response to medical issues in follows.

3. Ethical theories

3.1 The theory of moral philosophy

For thousands of years, our method of response to complex issues has formed the basis of our moral philosophy. The Full descriptions of extensive and

²⁰ You can read more about the different methods of infertility treatment and their legal status, see: Quli, Lily Allah., *Rahmani Justice, the legal status of artificial insemination*, „Medical Law Quarterly”, Issue 2008 .

²¹ Ahmadnejad, S. and others, *A review of abortion laws in the Muslim Middle East*, „Medical Law Quarterly”, Issue XVI, Spring 2011, p. 161.

rich literature of ethics is beyond the scope of this discussion and we will just mention three important intellectual traditions:

3.1.1 Utilitarianism

Teleological or consequentialist theories are theories that judge the rightness or wrongness of an action based on the results. This argument that sweet death hurts the patient-doctor relation is an example of consequentialist argument. Utilitarianism means that we should act in a way that pleasure or joy within the community is maximized or pain is minimized which is the most popular theory of consequentialism.²²

Utilitarianism appeared as a secular substitute for Christian ethics in the late eighteenth century and early nineteenth century through the works of Jeremy Bentham and John Stuart Mill who his father was a disciple of Bentham. Based on utilitarianism theory, the moral principles are not impacted in compliance with religion and it is rather impacted in maximization of human welfare. Since the pleasure and well-being of each human being are equally important, utilitarianism is inherently egalitarian. The main objective of Bentham and Mill was providing help, a letter to lawmakers.

A form of utilitarianism which called "ruled utilitarianism" provides a partial solution to fix some bugs of absolute utilitarianism. Ruled utilitarianism is after a general rule which generally leads to the best results instead of seeking a behavior to maximize welfare. For example, the medical decision-making about the need to preserve the secrets of the patient will be different in each of the two theories: Absolute utilitarianism will respond "It depends": patient's privacy is sometimes good and sometimes bad. Such case-by-case approach requires doctors to predict the results of disclosure and non-disclosure of information of each of their patients, which is impossible and leads to negative results in itself including making the provision of health care services slow. But, ruled utilitarianism expressed in response to this question in this way: In general and as a rule, it is better for doctors to keep patient's privacy because it generally increases human welfare rules. Iranian legislator has followed ruled utilitarianism and has stated in Article 648 of the Penal Code of 1996 that: "Physicians and surgeons and midwives and pharmacists and all those who should keep the secrets of people due to their professional career, are sentenced to three months and one day to one year of prison and a fine of one million and five hundred thousand to six million rials, in case of revealing those secrets". These people do not even have the right to be in court as a witness to testify about the secrets of people, but are required by law to provide information in some cases. For example, in accordance with Article 1 of the law of sexually transmitted diseases and how to prevent contagious diseases approved on Sunday, May 31, 1941 "patients with sexually transmitted diseases are required to treat their disease until a month after notification of the Ministry of

²² Mostafa, Sasha Deena Abdulaziz, Abbas Mahmoud, *Introduction to ethics, legal*, 2010, 2nd edition, published Dvm. p. 77.

Interior in area” and in accordance with Article 3 “treatment is allowed by any doctor who has a medical license in Iran, but if the patient refuses to refer to doctor or government agency in disease contagious period for up to ten days and another doctor does not report about treatment of that patient to the first doctor or agency, the treating doctor is required to bring the matter to infirmary by indicating confidential in order to force patient to treatment” and based on Article 13 of the mentioned law: “doctors and all infirmary agencies that provide diagnosis and treatment of sexually transmitted diseases to send the information of all sexually transmitted patients without profile name at the end of each month”.

In addition, utilitarianism must define a mechanism using which the outcomes (benefits) can be ranked otherwise it cannot be said that the results of "A" behavior is preferred the results of "B" behavior.

3.1.2 Ethical deontology

Theories of Ethical deontology are trying to find out if the inherent rightness or wrongness of an action does not depend on its outcomes and it rather depends on whether it is in line with fundamental ethical principles or not. For example, accepting sweet death with this argument that the autonomy and independence of persons with legal capacity must be respected is a deontological argument. The great philosopher Immanuel Kant is among the pioneers and famous faces of this theory and this theory is usually known by his name. Utilitarianism places the concept of good and evil before right and wrong while the supporters of deontology act otherwise.

That aspect of Kant's philosophy which is specifically associated with medical law is categorical imperative. Kant defines three versions of the categorical imperative:

1. Behave based on a law which can at the same time be called a universal and global law
2. Behave humans not as a means, but as an end
3. Legislation for a moral society²³

The first two versions are associated with medical law, the first rule requires us to act consistently and fairly. The second rule which is invoked more in medical ethics, requires us not to use other merely to satisfy our goals and do not allow others to act like this.

Based on the theory of utilitarianism, you must evaluate each action using its consequences, but Kant's theory says that there are some actions which are not predicted by any possible result or in other words, some of the means are not defined by any goals.²⁴

²³ Torpedo Ali Reza, Mehdi Alam al-Hoda Sayed Ali, Panahi Ali Akbar, *An analysis of Kant's Categorical Imperative*, „Journal of metaphysics”, Faculty of Literature and Human Sciences, New Era Issue 13, Summer 2012, p. 82.

²⁴ Morton, *Edema, philosophy in practice*, translated by Fariborz Majidi, Maziar Press, p. 270.

3.1.3 *Virtue ethics*

Virtue ethics is rooted in ethics philosophy of Greece, especially the works of Aristotle and it emphasizes on what is good and prosperity of human life. Virtue ethics focuses on only on good outcomes but also on character and motivation of people. According to this theory, a person who acts as a virtue-oriented when he/she does a good job with a good motive.

In fact, virtue ethics is ethics with no general rule which means that if a single act is issued from a bad person, then it is bad and it is good if it is issued by a virtuous man. Like saying that God uses guile and takes vengeance. Such seemingly bad actions are not bad because of being done by God.

There's a list of do's and don'ts in result and duty ethic, but this list permanently changes in virtue ethics.

The problem of virtue ethics is that virtue ethics does not show a solution to us in many cases, but it confirms some of the answers which comply with the criteria of virtue.

The virtue ethics also has this problem that virtuous people may act incorrectly despite having good intentions. For example, a doctor who diagnoses an incurable disease in patients may have a Sensitive treatment but make a wrong decision. That is why Iranian legislator considers doctor responsible in case of violation of the Medical Council even in case of being allowed to operate and be acquitted of blood money. In accordance with Article 616 of the Penal Code: "If involuntary manslaughter occurs due to carelessness or negligence or attempted to commit something without knowledge in it or due to non-compliance with procedures, the person responsible is sentenced to one to three years of imprisonment as well as payment of blood money in case of demand of next of kin unless the error is pure". Even though this article does not refer to doctors but without a doubt one of the best examples of the mentioned article are doctors who are causing someone's death due to carelessness or negligence.

3.2 *Theory of fundamentalism*

Even though using theories of philosophy of ethics can improve arguments on medical issues but those rarely provide a transparent solution for doctors. For example, utilitarianism philosophy suggests "A" and Kantianism philosophy suggests "B" in dealing with a problem of ethics and the doctor would not know what to do in dealing with such an issue.

Fundamentalism is a more practical solution for medical questions which was raised by Biochamp and James Chaldres in their famous book called "biomedical ethics". They mentioned four principles in their book: Autonomy, not being harmful, kindness and justice. They believed that these four principles can help in solving medical problems. These principles are more tangible compared to the theory of moral philosophy, but have been adapted from previous philosophical traditions. For example, respect for patient autonomy as a principle can be

described as task-oriented principle because the patient's decision is worthwhile regardless of the results. Kindness and not being harmful are straightforward consequentialist principles which make us consider the losses and benefits of any action. Kindness and justice as a virtue, relate to virtue ethics.

Thus, even though conservative approach enables us to describe a moral dilemma in terms of conflict between competing principles, but similar to virtue ethics, rarely provides a practical solution. When principles are at odds with each other, we are forced to decide which principle is more appropriate in particular circumstances. A solution can rank principles, but each ranking requires justification which is not derived from principles.

3.3 Theory based on analogy

Clinical specialties are interested in practical cases as much as philosophers and moralists want to talk about general and abstract principles. In deductive reasoning, we start from response to objective issues instead of starting from the general and abstract principles and then start comparison to other cases which is exactly like judicial procedure in a way that it has been developed in the common law. Basically, the starting point of this deduction is where ethical certainty of our common intuitive answer to existing items is achievable. Thus, we can draw similarities and differences between new and previous cases which have been solved and try to solve the new issues. In valid deductive reasoning, if introductions are true, then result is true too. Some types of analogy are permitted and others are wrong in the principles of jurisprudence. For example, authorized analogy is permitted which results in emendation.

Supporters of analogy use mental or thought experiments in addition to using actual cases. For example, Judith Jarvis Thomson asks reader in his famous essay about "abortion" to assume that you find out one day after waking up that body of a famous musician has been connected to your body because of the urgent need for kidney which is only compatible with your body in terms of blood groups and your kidneys are detoxifying your body as well as his body and he is completely connected to your body for nine months or James Rachel want us to assume about on the separation of actions that is there a difference between Mr. A who is drowning his nephew and Mr. B who leaves his nephew to drown with the same intention or not? ²⁵ Is there a beneficial hypothetical in these examples? On one hand, in case of being too subjective and strange, those will lose relation with actual cases. On the other hand, these examples can change perspectives toward ethical issues and prevent the domination of old perspectives.

²⁵ Jackson, Emily, *Medical Law*, Oxford, 2010, p. 19.

4. Conclusion

There are two religious and secular foundations in the field of medical law and each has its own strengths and weaknesses. Secular perspective has better mechanisms for dealing with new phenomena while medical perspective can dissolve and digest the new issues less and instead, can boldly respond to medical issues.

Currently, none of the existing approaches can alone, solve the medical ethical issues. It can even be said that all of these together cannot provide a proper answer to some of the medical issues.

In recent years, a change has occurred in medical from a paternalistic model to patient's autonomy. Medical paternalism was based on this idea that the doctor knows best in case of patient's own interest even compared to patient him/herself, but the patient autonomy is based on the assumption that a patient with legal capacity must have an almost absolute right to refuse medical treatment. However, it is wrong to consider patient autonomy as a superior value in all medical decisions. Patient autonomy is a negative right to prevent forced interventions, but the patients do not have the right to demand any type of medical treatment in all circumstances and with whatever means or ask for a treatment which is contrary to the clinical judgment of doctors or is morally rejected by legislators or considered to be illegal like simulation and female circumcision.

Among ethical theories, it seems that virtue ethics theory is preferred over deontology and consequentialism theories since it states an action is ethical when done with the right intention and motive because a rule which has dangerous and unacceptable results in some cases is not absolute. However, subject of virtue ethics may also mistake in identification of appropriate technical action in practice, but it will never lead to unreasonable results like utilitarianism. In addition to this, what is prescribed by it is the right thing despite of being diagnosed wrong in action. In addition, such event does not occur in case of many medical ethics issues and the only methods of entering a debate on these issues can be discussed.

Either ethics can also be referred to or opinions of religious leaders can be asked or there can be reference to ethical theories while making decisions about medical issues but in the end, perspectives and arguments of a person are the outcome of his experiences and values. For example, a religious man with a strong faith is influenced by his faith more than anything but a person whom has one of his relatives hospitalized and is gradually dying with pain is affected more by this experience. Our intuitive implications are starting points to begin the process of our reasoning, but we should remember that we should never expect others to have the same reasoning or we can convince someone with our reasoning because it is entirely relative and is different in different cultures and societies.

It can be concluded with an evaluation of method of decision making about controversial issues such as abortion, sweet death, contraception and the use of surrogacy that Iranian legal system is not subject to principles nor philosophies of consequentialism or deontology or virtue ethics in dealing with these matters and

religious foundations are ruling the country's judicial system due to religious authority. That is why religious principles and guidelines define solutions for medical Ethical Dilemmas and valid legal sources are the base of legislation. But two things are worth noting, first is that contemporary scholars will comment on some issues in which circumstances require a revision of past procedures with compliance with not being harmful and philosophy of utilitarianism which means that an action must be totally useful and have positive results and not be harmful for the body or mind.

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