

SOME PROBLEMS IN APPLIED ETHICS

(ABSTRACT)



By

MITALI CHOUDHURY
DEPARTMENT OF PHILOSOPHY

THESIS
SUBMITTED IN FULFILMENT OF THE
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ABSTRACT

My Ph.D. thesis is entitled, "Some Problems In Applied Ethics". This thesis consists of seven chapters, namely:

1. Introduction;
2. Consumerism: Advertising and its Implication;
3. Environmental Ethics;
4. The Taking of Human Life: Suicide, Defence of the Innocent;
5. Life and Death;
6. Medical Ethics; and
7. Theories of Punishment.

In the first chapter, I have discussed the Applied Ethics of traditional philosophers like Plato and Hume as well as the contemporary philosophers, such as Peter Singer, Lawrence Johnson, Aldole Pold, Tom Regan, Doublas Adam, John Pasmore and so on.

In the second chapter, I have discussed the moral problems connected with consumerism and advertising.

In the third chapter, I have dealt with Environmental Ethics elaborately.

In the fourth chapter, I have highlighted the moral problems vis-a-vis suicide. In this connection, I have discussed the views of David Hume, Kant, Emile Durkheim, Hinduism, Buddhism, Jainism, Christianity and also tribal religions.

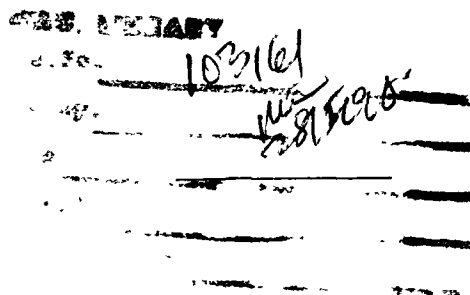
The fifth chapter consists of a philosophical discussion on the moral problems of Life and Death. In this connection, I have considered the traditional views as well as the modern views.

Medical Ethics forms the sixth chapter. I have gone into various problems of medical ethics thoroughly.

The seventh and the last chapter is a treatise on Theories of Punishment.

It must be pointed out that every chapter has a conclusion in which I have given my own views.

It may not be out of place to point out that the thesis consists of a very comprehensive bibliography as well.



Phil.

SOME PROBLEMS IN APPLIED ETHICS

By *Chaudhuri*

MITALI CHOUDHURY
DEPARTMENT OF PHILOSOPHY



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IN LOVING MEMORY
OF MY
YOUNGER BROTHER,
DHARMENDU
WHO IS NO MORE
IN THIS WORLD



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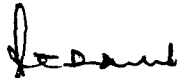
CERTIFICATE

Certified that the subject matter of this dissertation is the record of work done by Mitali Choudhury, that the contents of this thesis did not form a basis of the award of any previous degree to her, or to the best of my knowledge, to anybody else, and that the thesis had not been submitted by her for any research degree in any other University.

In habit and character Mitali Choudhury is a fit and proper person for the Degree of Doctor of Philosophy.

SHILLONG

THE 23rd June 1997.


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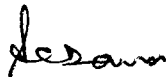
DECLARATION

I, Mitali Choudhury, hereby declare that the subject matter of the thesis is the record of work done by me, that the contents of this thesis did not form basis of the award of any previous degree to me or to the best of my knowledge to anybody else, and that the thesis has not been submitted by me for any research degree in any other University/Institute.

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SHILLONG

THE 23rd June, 1997.

Mitali Choudhury
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CHAPTER I

INTRODUCTION

INTRODUCTION

The title of my Ph.D. thesis is, "Some Problems In Applied Ethics". The thesis consists of seven Chapters, namely:

- (i) Introduction.
- (ii) Consumerism: Advertising and its implications.
- (iii) Environmental ethics.
- (iv) The taking of human life: Suicide, defence of the innocent.
- (v) Life and death.
- (vi) Medical ethics.
- (vii) Theories of punishment.

Question may arise as to why I consider only these problems, and not others. I am well aware of the fact that there are other important problems as well such as 'Are we justified in treating animals as nothing more than machines producing flesh for us to eat? Should we be using paper that is not recycled? And above all, why should we bother about acting in accordance with moral principles anyway, when there is corruption in every sphere of life and so on.' However, I have limited myself to the problems

mentioned above for the simple reason that I consider these problems to be more important than others. I have tried to answer the following questions:

- Can we afford to ignore the environmental crisis facing us today and let all modern advancements destroy our future generations?
- Should a person be allowed to end his or her life just because it is no longer of any use to him or her?
- Could we allow patients to be used as 'Guinea Pigs' or doctors to become commercial in the name of advancement of medical research?
- Finally, when can a person, guilty of any crime, be punished by a severe form of punishment as capital punishment?

This chapter would be a philosophical approach to 'Applied Ethics'. I will try to highlight the use of this approach in the early writings of such philosophers as Plato and David Hume. I will also attempt to bring in the attitudes of contemporary moral philosophers towards these moral dilemmas.

Before we proceed to discuss the problems involved

in this area, we should be perfectly clear about the terms 'Ethics' and 'Applied Ethics'. Behavioral standards relating to a set of principles, values and ideals for human conduct - this is how 'ethics' may be defined. As also "the standards of conduct which indicate how one should behave on moral duties and obligations".

Ethics deals with one's ability to distinguish right from wrong, good from evil, propriety from impropriety; and the commitment to do the right thing.

Ethics governs our sense of moral duty. Moral development is a prerequisite to ethical decision-making. Ethical behaviour is driven by a need to avoid punishment or by deference to power. A person's needs are his primary concern. Approval of others determines moral behaviour. This stage is characterised by decisions on whether the approval of others determines the person's behaviour. Upholding social order is a person's primary ethical concern. For example, you may comply with your superior's instructions just because you consider it wrong to disobey a senior officer.

What is right or good is viewed as a matter of free choice and personal responsibility for the consequences. When you reach this ultimate stage of moral development,

there is no external threat that can force you to make a decision that you consider morally wrong.

Individual needs dictate moral behaviour, compliance with authority and individual conscience are valuable landmarks which indicate the approximate position of one's moral development and the changes one needs to make in behaviour to move to a higher level. The ultimate goal is ethical decision making.

Applied Ethics, on the other hand, is concerned with practical issues like the treatment of ethnic minorities, equality for women, preservation of the natural environment, abortion, euthanasia, advertising, suicide and so on. Some of the issues of Applied Ethics confront us daily. On the other hand, problems like abortion, euthanasia, advertising, suicide and so on, do not confront us daily. Even then these issues can arise at some point of time in our lives. Therefore, these issues are also of current concern about which we need to take certain decisions on the basis of rational reflection.

The second important point which needs clarification is whether there is any thematic unity among these seven chapters mentioned in the beginning of this chapter. The term 'applied ethics' may create an impression that

there is some kind of ethics which is theoretical ethics. This point needs clarification. Ethics may be normative or descriptive. Normative ethics aims at presenting a 'norm' and a moral ideal whereas descriptive ethics aims at presenting a conceptual description of important moral concepts: to the extent ethics engages itself with conceptual investigation to that extent it remains theoretical. In fact, all ethics is theoretical.

The term 'applied ethics' does not stand for 'moral activism'. The moral activist is different from an applied ethicist. By 'applied ethics' we mean that branch of analytical ethics which aims at making a conceptual investigation of certain burning problems of human society at present.

Consequently, I have selected the above mentioned set of problems which need special attention by the philosophers. These problems have also drawn the attention of social scientists, environmentalists, social and political activists. But a philosophical investigation is very much necessary: philosophical reflection aims at conceptual clarity and for any action plan conceptual clarity is very much necessary.

These problems are not just tit bits which have

been woven together in the thesis. In fact, there is a thematic unity among them. The reasons are as follows:

- (i) These are some of the burning problems of today.
- (ii) Humanity is at the cross-road and if these problems are not solved it may face extinction.
- (iii) Modern science and technology, side by side solving certain problems, has also given rise to fresh problems. Man does not know how to go about it. So, philosophical reflection in the form of conceptual investigation may go a long way to bring about right understanding, for right understanding is a prerequisite to right action.

The discussions on Applied Ethics can be abstracted from the early writings of such philosophers as Plato, David Hume and so on. Parallel to the views of these philosophers, I have also tried to bring out the views of current moral philosophers such as Peter Singer, Lawrence Johnson, Aldo Leopold, Tom Regan, Douglas Adams, John Passmore and, so on, with regard to the problems of Applied Ethics.

It would be a mistake on our part to say that Applied Ethics originated in the present century. However, it may be conceded that Applied Ethics has become a specialised branch of ethics in the present century. To any student of moral philosophy, in the twentieth century, the most striking development of the past era would not be any advance in our theoretical understanding of the subject, nor would it be the acceptance of any particular idea about right and wrong. It would be the revival of an entire department of the subject, 'Applied Ethics'.

Peter Singer has termed 'Applied Ethics' as revivalist because it is not new to philosophy. The essays by David Hume and John Stuart Mill (ON LIBERTY, NATURE) fit well alongside modern writings in the eighteenth and nineteenth centuries. These philosophers were doing applied ethics in much the same way that it is done today. We could cite examples of the same branch of study from the medieval scholastics, or from any of a dozen classical writers. From Plato onwards, moral philosophers have confronted practical questions including suicide, infanticide and fetocide, abortion, the treatment of women and the proper behaviour of public officials in high ranking positions. The continuity is evident in Hume's discussion of suicide which draws on Seneca's letter on the same topic; while Thomas

Nagel's discussions of death takes up a problem raised by Lucretius. Christian philosophers like Aquinas and Augustine examined with great care these dilemmatic problems in their much talked about books Summa Theologica and City of God, respectively.

There are very many different kinds of moral situations in which a human agent can find himself or put himself. Without making any pretense of defining the distinction between moral and non-moral situations, let us merely list some kinds of situations which it would be generally agreed can safely be called moral. I should begin with the most straight forward and gradually move into areas which could be described as "dilemmatic". How can we determine when business practices are morally acceptable and when they are not? How far should we go in monitoring advertiser's campaigns? Are we doing anything to stop these ever growing environment problems? Do we have any right to make the globe a garbage of hazardous waste facilities?

The advertising standard council all over the world draws up certain code for self-regulation in advertising which indirectly affects us, the consumers. The term 'consumer' would not only include an adult person but a child alike. Two of these clauses of these standard

councils there are of particular interests to children as consumers. One is that: advertisements addressed to children as consumers shall not contain anything whether in illustrations or otherwise which might result in their physical, mental or moral harm or which exploits their vulnerability. The other is referring to children states: No advertisement shall be permitted which presents criminality as desirable or indirectly encourage people particularly children - to emulate or convey the modus operandi of any crime. No profession is beyond reproach, a one-sided "description" can make any group look bad: ministers, professors, lawyers, and doctors. All that needs be done is to identify the "bad apples", and to focus on the bad practices. The advertising profession is just as concerned about its shortcomings as any other profession. It joins hands with consumers in protesting unethical practices. Today people have as much confidence in the truth of statements issued by reputable advertising agencies as they do in that of statements made by ministers, professors, lawyers and doctors.

I also try to bring out the basic moral codes which 'ought' to be observed by all advertising agencies. They are as follows:

(a) To speak the truth:

(1) Advertising should tell the truth, and should reveal significant facts, the concealment of which would mislead the public.

(2) To be responsible for whatever is advertised: advertising agencies and advertisers should be willing to provide substantiation of claims made.

(3) To uphold good taste and decency: advertising should be free of statements, illustrations and implications which are offensive to good taste or public decency.

(4) Bait advertising: advertising should refer only to merchandise or services which are readily available for purchase at the advertised price.

(5) Guarantees and Warranties: advertising of guarantees and warranties should be explicit. Advertising of any guarantee or warranty should clearly and conspicuously disclose its nature, and extent the manner in which the guarantor or warrantor will perform, and the identity fo the guarantor or warrantor.

(6) Price Claims: advertising should avoid price or saving claims which are false or misleading, or which do not offer provable bargains or savings.

(7) **Unprovable Claims:** advertising should avoid the use of exaggerated or unprovable claims.

(8) **Testimonials:** advertising containing testimonials should be limited to those of competent witnesses who are reflecting a real and honest choice.

This code was sponsored by the American advertising Federations, the American association of advertising agencies, the association of national advertisers, and the council of Better Business Bureaus.¹

The advertising council spends millions every year for causes, not connected with profit, but in service to the public interest. Advertising is not fundamentally deceptive or exploitative, that advertising is only one force of many that produce desires, that created desires are sometimes good and sometimes bad and it is the responsibility of consumers to know the difference, and that advertising has positive benefits in terms of dissemination of informations; the inexpensiveness of media products, the supply of affordable goods in general, high standard of living for all.

One major charge made against advertising is its

1. See Beauchamp and Beowie, p. 198.

propensity to deceive - to deliberately create false impressions in order to sell a product. This deception takes many forms. Although defenders remind us of the slogan, "Let the buyer beware", the fact remains that deception is immoral. While defenders do not condone blatant misrepresentation (and there is not much of that any more), they recommend a more tolerant attitude for opinions markers for all fields. Individuals must distinguish the good "pitches" from the bad and make up their own minds. The critic, however, believe that advertisers should be compelled by law to stop misleading the public. The rejoinder of the defenders is that no set of laws can protect consumers from their stupidity.

Advertising is a form of brainwashing that is employed to exploit the consumer. This kind of action is clear violation of Kant's ethics, for it treats the other as a means only. It is also contrary to the ideas of Plato and Aristotle, for it seeks to corrupt or bypass human reasons. No easy remedy is in sight. One important point that each of us appears to have forgotten is the fact that consumers have the autonomy and the ability of making rational choices.

Advertising is only one influence that consumers have to deal with, and advertising itself does not speak

with consistent voice. No one and no institution can claim the authority to tell the people what desires they should have and on what basis they should make their choices.

The utilitarians charge against advertising is:

(1) Advertising promotes the sales of useless, inferior, harmful, and dangerous products. To the extent that its non-logical appeal works, the assumed ability of the consumers to make wise choices (a staple of the free enterprise ideology) is called into question.

(2) Advertising promotes a standard of happiness that is artificial and false.

(3) Advertising is wasteful of human talents and materials, and the consumer is forced to foot the bill.

(4) Advertising induces us to spend our money in the private sector instead of in public sector, where it will do us more good.

I have also brought the distinction between consumer and consumerism. I have come to the conclusion that advertisement is not completely irrelevant in spite of its many set backs. It is our "right to choose". Had there been no advertisement, then we would have no knowledge of the existence of different products. The buyers should be

able to discern the advertisements, which try to hoodwink and misled the buyers. Buyers should buy only those things which are useful and beneficial to better living.

My purpose in the second chapter is to bring out the close relationship of environment with ethics. Many raise the question, "Has philosophy particularly ethics got anything to do with environment?" The answer would be an emphatic 'yes'. Without ethics, we would have no moral awareness of the environmental problems. Needless to point out, moral awareness synthesise our moral moorings as regard the environmental degradations.

Man's basic needs involve his food, his clothes and the shelter. These needs crop up from the moment he is born and remains with him till the day he departs from this world. Man can satisfy his biological need from nature itself. Thus it becomes extremely important that nature is preserved at all costs. All this make it quite clear that this is a time when people's ideas about the planet they live in and about the way they can survive on it are changing in an absolutely torrential fashions. At the same time, it appears necessary to provide a conceptual framework for this immensely complex subject for which we have coined the term, human environment. We want it to be not merely in a technical setting but in a broad social and

political and moral context and in historical perspective. This awesome task - conservation of our environment can be achieved by not an appeal to world bureaucracies but to the world's leading thinkers, scientists, philosophers, historians, jurists, humanists and others.

In my opinion, the problem of the environment lies in the erosions of the proper relations between man and the environment. I do not feel we need to think in the same level with the environmentalist, who speaks of global warming, air pollutions, deforestation, soil erosion, desertifications and so on. I am not contradicting myself as I have already said that we should appeal to the world's leading thinkers. My only suggestion here is that the moral philosophers also can do their contribution by trying to awaken the mass conscience. Problem of environmental ethical issues could be summed up somewhat as follows:

- (i) Loss of harmony of the relationship each man shares with the nature.
- (ii) Loss of harmony of man's relation with his fellowmen.
- (iii) Loss of harmony of man's relations with himself (conscience).
- (iv) Loss of harmony of man's relations with his creator.

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- (v) Loss of harmony of man with his fellow creatures.

The above basic problems have come to the forefront because, man overcome by greed for material wealth and comfort has lost his 'true self'. The result is the destruction of forests and all our natural resources; at whose cost - his fellowmen and nobody else! for whose benefit - his own! The same answer could be given for air pollutions, noise pollutions and even water shortages that we are facing today!

So let us not linger too long on the newly recognized fact that our total natural system - in the biosphere of air and soil and water - could be irretrievably upset by man's activities. Of course, we have always known that we could chip away at it - here a forest destroyed, there a desert spreading. But the idea that the two great reservoirs of life, our airs and oceans could enter on a general trend toward mortal damage - that is completely new.

But now, since nature is beginning to give us its first warning signals - is it not our moral duty to give a sympathetic hearing to its heart-breaking calls? How much can nature carry on? We do not know. How much of its

tolerance is already used up? Again the answer is, we do not know. But our old self-confidence is fading. We can murder the biosphere!

Environmental degradation inevitably causes a degradation of human life, even if it does not interfere with fundamental biological activities. To cite a small example, a shortage of potable water is not so alarming but good tasting water becoming scarce? Chemical pollutants and unnatural stimuli rarely achieve levels which are acutely dangerous, yet almost any level of pollutants can damage health on prolonged exposure. Are we morally justified in damaging our planet in this way? In brief, environmental degradation may reach such a level that the very quality of human life may be endangered.

In the third chapter, I intend to discuss the most controversial topic ever known 'suicide'. Suicide gives rise to a number of ethical questions both in social as well as religious context.

Suicide is intentional taking of one's own life. But what is suicidal behaviour? Do drug additions, chronic alcoholism, heavy cigarette smoking, reckless driving and other risk-taking behaviour constitute suicide? Is taking one's life against the basic right to life? If a person

succeeds in committing suicide, he is saved from being convicted. But if he survives, what happens, can the law punish? The "right to die" may be possible in a case where a person is not living a dignified life but has been living in a vegetative state or is terminally ill. This category of cases may fall within the ambit of the "right to die" with dignity, when the process of natural death has commenced. These are the cases for "extinguish life but only for accelerating conclusions of the process of natural death which has already commenced". This undoubtedly goes in favour of those arguing for physician - assisted suicide or euthanasia. Assisted suicide or euthanasia again has far-reaching consequences which would be seen by prosecutors as crimes! Yet I choose to ask - can we, in the name of autonomy, choose to die when we judge that our continued survival is humanly pointless or that the quality of our future life is likely to be zero? Can we refuse medical treatment to, or withdraw treatment from, patient when their future quality of life is likely to be minimal? This involves discussions of whether we can impute 'consent' to incompetent patients (disabled newborn children, the comatose, those in persistent vegetative states and so on) who are incapable of giving consent to withdrawal of treatment. Again, the notion of quality of life can be measured objectively and even quantified. As

against this I argue that quality of life can be defined only by reference to the notion of personal autonomy. The question we have to ask is: will the person in question be able to exercise some minimal degree of autonomous control over his or her life if treatment is successful?

We find discussions of suicides in writings of philosophers as Plato, Aquinas, Kant and also David Hume. Discussion of suicide is found in Plato's Phaedo.² St. Thomas Aquinas in Summa Theologica uses a battery of arguments - theological, philosophical and utilitarian to show that suicide is a sin. Aquinas claims that the deliberate taking of one's life goes against our 'natural' inclination to preserve ourselves; it is a sin against charity since as a matter of charity everyone should cherish or love oneself; it is an offence against the community since every person is a part of the community and what damages each person damages the community; it is an attempt to play God, since life is God's gift and God alone has the authority to decide when a person should die.³ With respect to the last point, Aquinas admits that concerning the rest of his life a person must use his free will and make his own autonomous decisions; it is only regarding his

2. Phaedo, 61C-62D.

3. Summa Theologiae 2 a, 2 ae, q 64, art 5.

death that he must leave the decision to God.⁴ Again Aquinas argues that suicide is not an act of true courage but rather of 'softness of spirit' (Mollities Animi) of a person not able to bear with life's afflictions.

In the Foundation of the Metaphysics of Morals, Kant asks himself whether a person may, in certain circumstances, take his life when he judges that his continued existence is humanly pointless. Surprisingly, the great apostle of personal autonomy holds that such a person would be acting immorally. Kant argues that one contemplating suicide is caught in a 'contradiction' in that he is, on one hand, concerned to promote his self-interest by seeking to escape further suffering or dying in a situation where he had lost control over himself and has become a 'vegetable'; but on the other hand, he wishes, by taking his life to abolish his 'self' and all possibility of securing his future self-interest. Kant also develops another argument to the effect that a person deciding to commit suicide seeks the taking of his life as a means to an end (the cessation of suffering, the avoidance of an 'undignified' death). He no longer sees himself as autonomous moral agent (or person) deserving of absolute moral respect, or as an

4. See 2a, 2ae, q.65, art 5, ad 3.

'end-in-itself", as Kant puts it, that can never legitimately be used simply as a means. Instead, he treats himself as a thing that can be used for other purposes. The would be suicide is then, for Kant, guilty of a lack of self-respect. Thus according to Kant, it appears that it is morally not permissible to end my life under any circumstances. I have an absolute obligation to preserve my life.⁵

I will be including David Hume's classic essay on suicide and ethical issues as euthanasia, surrogacy, and abortion.

My fifth chapter is about issues of life and death. Human beings have always been obsessed by the idea of death. The reason behind this could be that we wish to avoid it for as long as possible. In medical practice the fascination is no less evident, and the controversy surrounding death as an issue in its own right has centered on three main questions: what is death? When it is right to say that death has occurred? And, how do we know when it is right to say that death has occurred? Put another way, these three questions concern the definition of death, the

5. Immanuel Kant, Foundations of the Metaphysics of Morals, 1785, Trans. by Carl J. Friedrich, in The Philosophy of Kant, New York, Modern Library, 1949.

criterion for determining the occurrence of death and the tests that might show that the criterion has been met.

These questions have assumed a new interest and importance with the advent of our ability to use organs and other tissues for transplantation from one human being to another. Most live human beings want to keep, and are justified in wanting to keep, all their organs and tissues in place. The dead, however, can make no such claims and are owed no duties. Since most organs and other tissue must be taken from either a living, or a very recently dead body, the determination of the moment of death assumes a special significance.

This chapter will also include a detailed discussion of Genetic Engineering and pose such question as - should Gene therapy be used to create healthier foetus? Should companies develop tests to predict mental illness? What about engineering hormones to turn average size children into basket ball stars?

The biotechnology industry is grappling with the development of a host of medical products and techniques that could earn millions but also raise troubling ethical and moral questions. Already, ethical quagmires have developed.

- i) Religious leaders denounced scientists for patenting genes they discover, saying no one can "own" genes.
- ii) Critics protested a biologically engineered hormone to boost milk production.
- iii) They cited a milk surplus and fears that it might promote infections.

The questions such as "why would you test an embryo for disease that won't develop for thirty years or more?" What if the answer comes "if you can test for it, why not?"⁶

'Medical Ethics' is the title of my sixth chapter. Applied Ethics or bioethics would be incomplete without a discussion on medical ethics. I am principally concerned here with the meaning of medical ethics, medicine and medical science. I will also be discussing the set of ethical issues, that have come up in the sphere of health generally, medicine more specifically and biotechnology even more particularly, within a liberal democratic (and ethically pluralistic) society, and with the ways in which the community in such a society can face upto those issues.

6. Bio-tech's Genetic finds lead to exploration of ethics - Laurant Neergaard, Philadelphia, Times of India, June 19, 1996.

In order to keep the discussion within manageable bounds I have focused on a relatively limited set of medical ethical and bioethical issues.

Medicine is not merely a science, but a learned profession deeply rooted in a number of sciences and charged with the obligation to apply them for man's benefit. Traditionally this branch of science was made with compassion and in accordance with a widely recognised moral and ethical code. Thus the responsibility of medicine is three fold:

- (i) To generate scientific knowledge and to teach it to others.
- (ii) To use the knowledge for the health of an individual or a whole community.
- (iii) To judge the moral and ethical propriety of each medical act that directly affects another human being.

These three areas of responsibility commands the efforts of individuals from a wide range of scientific disciplines and professions, but the physicians who are involved in the actual applying of the knowledge are of two sorts:

(i) Those who care for one patient at a time;

(ii) Those who deal with people as groups.

Moral judgement must be made by the physician engaged in individual patient care, but they are to be made on his own professional acts and those of his colleagues; not on the actions of those who have sought his care. The behaviour of patients are private matters, to be kept within himself; he must not permit them to influence his own professional actions. This has been the medical tradition, and it is important that it is not forgotten in the turmoil of today's world of clashing value systems. The prospect of moral and ethical problems of an essentially new type is also now emerging before us. This general awareness, that advances in moral science are leading to various ethical conflicts that have to be faced by the clinical physicians. What is less well recognised, however, is that these situations will become much more widespread and socially serious as advances in biology and medicine, now in the immediate horizon, become more generally applicable through the non-clinical system, whether it be called public health or community medicine.

Finally, we must have a concept of medicine that is ageless. In the life of an individual, there ultimately may

come a time, when all the knowledge so carefully presented has no longer any use. Yet life must go on. Whenever this happens and it happens everyday, it is up to each of us to follow to the fullest measure the charge laid down long ago for "the physician to become himself the treatment".

In the final chapter, I consider the theories of punishment, both Retributive and Utilitarian as against the realities of current modern views. I also include the controversial question - Is capital punishment a necessity today?

What is punishment? Is it giving the transgressor "what he deserves", deterring others from the same behaviour, or saving the soul of the criminal in either a religious or a psychological sense? People often blur all these purposes together in their views of punishment, without realizing that they are often in conflict and that, therefore, one of them must be chosen as fundamental. J. D. Mabbott maintains that the purpose of punishment, if it is to be fair punishment, must be purely retributive. He argues that the deterrent and reform theories are in bad faith because their proponents would not agree that a criminal should go unpunished even if punishing him would neither deter others from that type of crime nor improve the criminal himself. Furthermore, Mabbott's main principle

is that a person can justly be punished for only one reason: that he has broken a law which prescribes that punishment. According to this interpretation of just retribution, the purpose of punishment is not revenge ("an eye for an eye") but simply enforcement of the law. The adoption of a system of laws "involves the surrender of utilitarian considerations in particular case". An offender can be justly punished only for what he "deserves" where desert is determined, not by our moral feelings, but by the relevant law. To punish someone, for the sake of its deterrent effect on others or for "his own good", rather than because the law prescribes the punishment for that offence, is unfair.

The purpose of punishment is to deter violations of the law by setting such a prohibitive price on such violations. Since punishment involves the infliction of sufferings, which is intrinsically undescribable, it should be kept to the minimum, necessary to prevent the greater sufferings caused by crimes.

Criminals fall ~~7~~ into three category:

(1) Those overwhelmed by situational difficulties such as poverty and unemployment, (2) Those who are emotionally disturbed due to psychological problems, and

(3) Those who are immature in the sense that they have not yet learned how to pursue their interests in socially acceptable ways.

Using ethical standards to judge the conduct and character of others assumes that our judgement affects those we judge. The applicability of ethical theory depends on our knowledge of the conditions under which people are responsible for their actions. To say that a man has done the right thing is to praise his conduct and sometimes to suggest that he be rewarded. To say that a man is vicious is to punish him verbally and often to propose more tangible modes of punishment. But when, if ever, are we justified in meeting out praise and blame or reward and punishment?

The conditions for moral responsibility are most needed in deciding when to punish people for their actions. Everyday rules of procedure products of centuries of human experience often serve well enough but at times ascribing responsibility becomes slippery. Were the Germans responsible for the atrocities of the Third Reich? Were some, more responsible than others? If so, to what degree? Is an insane person, responsible for a brutal crime? Does neurosis excuse anti-social conduct? Is a juvenile delinquent, from a broken home, in a slum, less responsible

for his actions than one who rebels against wealthy and indulgent parents? In determining more exactly the condition under which a person can or cannot help doing what he does, the sharp line between free and compulsive, voluntary and involuntary behaviour melts away, and we turn to philosophy for clearer definitions of "free will", "voluntary" and "responsibility".

Yet law-abiding scholars write;
Law is neither wong nor right,
Law is only crimes,
Punished by places and by times....

W.H. Auden - Law, Like, Love.

(The law speaks and reasons.)

CHAPTER II

CONSUMERISM: ADVERTISING AND ITS IMPLICATIONS

CONSUMERISM: ADVERTISING AND ITS IMPLICATIONS

Can business and ethics mix? This commonly asked question is according to Edward Stevens, the wrong question to ask. The more proper question is "How am I now already expressing my values in the business decisions I actually make?" In order to answer this question, it is necessary to examine what our values are, how our value system expresses our life philosophy, and how this philosophy is expressed in business. Business - Ethics enables the readers to begin to answer these questions and to learn more about the philosophies that are prevalent in business today.

"Without civic morality communities perish; without personal morality their survival has no value", said Bertrand Russell, and he could not have been closer to the truth.

That ethics has a place in business decisions seemed ~~to~~ to surprise many initially. But now that it is not contentious issue any more, explicit reference to moral and social issues can be occasionally found in the annual reports and reviews of business organisations and non-commercial bodies. There is a growing realisations that

decisions involving moral and social considerations need not be dismissed as questionable indulgence in value judgement beyond the pale of corporate concern.

A typically insidious of the erosion of moral values is the rampant corruption practised with Mephistophelean cunning shrugging it off as a world wide phenomenon is poor consolation.

It would be extremely difficult to bring to light a thirty-five year old executive with a 'Master of Business Administration' (MBA) from a very good school who wants to stay in direct sales because he likes making customers happy, who likes his colleagues and wishes them every success, and who would never do anything unethical, and say, Albert Shapero, 'I will show you a man known as a "religious type", as a loser".¹

While it remains true that "business is business", it is also true that I would rather do my business with a gentleman who realizes that there are certain type of profit for which he has no need.²

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1. Albert Shapero, "What Management says And what Manager Do", Fortune (May, 1976), 276. The sentiments expressed in the quotations are not those of Shapero. Rather they represent an altitude that he is attacking.
 2. John Andrew King, "Business Ethics", A Reader's Letter to the Editor in Business Week, July 12th, 1976.

Objectives of business ethics are:

- (a) Improvement of moral reasoning about issues in business ethics.
- (b) Sensitization to basic spiritual and other values of this society.
- (c) Recognition of that many variables in most ethical issue in business.
- (d) Understanding the more subtle criteria for deciding ethical issues in business.
- (e) Recognition of the diverse ethical theories one can use in analyzing business ethics problem.

Let us now try and find an answer to the questions "what does consumerism mean and 'who is a consumer?" Consumerism is the effort to equalise the right access to information and power of the buyer with those of the seller. Consumer protection in economic justice based on moral law. According to an old proverb, "he who seeks dishonest gains brings trouble on his house".

Eight hundred years ago King John of England had issued this proclamation: "If any default of a baker of

this city be found, let him be dragged through the streets to his house with the false loaf hanging from his neck."

"Consumer" means any person who buys any goods for resale or for any commercial purpose. It also means a person who hires any service for a consideration which has been paid or promised. "Defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained under in law, while "deficiency" means any fault, imperfection, shortcomings or inadequacy in the quality, nature and manner of performance which is required to be maintained under law.³

Advertising is a reprehensible enterprise because it deceives, exploits and produces harmful effects in society as a whole. Not all advertisements are deceptive but most of them are. Not all advertisements seek to exploit people; but most of them do. Not all of advertising's social effects are harmful but on balance they are. Let us look at each of these changes.

We will discuss advertising although that is not the only merchandising practice that has important social

3. Consumer Protection Act, 1986, The Shillong Times, May 23rd, 1993.

consequences. Price settings, market dominance and credit practices are other possible topics. We will discuss government regulation of business so far as it applies to product safety, occupational safety, and protection of the environment while ignoring those kinds of regulations that deal with monopolistic practices.

What good does advertising serve? What evil does it promote? As we would expect, there is a great disagreement in the answers to these questions: One side views advertising as a reprehensible enterprise with very little redeeming value, while the other side views advertising as so essential for economic well-being that its occasional excesses can be exercised.

Everyone believes that some regulation is necessary. But how strict should it be? How extensive should it be? Do we have too much or too little? Are there some principles which warranted interference with business can be distinguished from the kind that is undesirable?

"How many of you check the date of manufacture and expiry that is stamped on a strip of capsules before buying it?" Asks Pushpa Girimaji,⁴ a well known consumer right

4. Girimaji, Pushpa, The Sunday Times, Times of India, 26th March, 1995, on Consumer Rights.

activist and columnist. Do we ever weigh a cake of soap before buying it? The true answer should be - none of us. How often do we inspect the seal on an LPG cylinder when it is delivered at our homes or check the ratio of cotton to polyester, when at the clothiers? Finally, how many of us would answer in the affirmative all these questions?

Girimaji says that years of consumer watching tells her that not many consumers display the level of awareness. Ten years ago such sothicism (sothic cycle or periods, a period of 1460 years after which the beginning of Egyptian years of 365 days again coincide with the beginning of sothic year) would have seemed rational because the economy was state controlled, the consumer had little choice and there was no law to protect consumers. But this won't do in the era of Manmohan Singh economics.

In fact, in the first three decades, after independence, the Indian consumer found himself in what was virtually a seller's market. The decision to have a controlled economy spawned an invidious licence permit raj that was inimical to individual enterprise. The government's economic policy framework suppressed entrepreneurial skills as it acquired a monopoly in both manufacturing and services sectors and consequently found itself distracted from its primary function.

That was an era of shortages and the government manufactured almost everything from watches and bicycles to aeroplanes and machine tools and had the population wholly dependent on it for most of the services such as, insurance, telecommunication, transport, power, water etc. It was also a period which words like quantity, precision and punctuality lost their connotations or worse, suffered an Indian mutation and came to acquire the meanings that the lexicon attributes to their antonyms.

Since one had little to choose from and since one was wholly dependent on a string of government owned monopolies, there was nothing like a consumer movement in India. In fact, for a brief while, in response to shortages and steep price increases one or two consumer groups sprang up, but they did not signify the beginning of a burgeoning consumer movement in the country.

But all that is history now. We are in a new age - the age of Liberalisation and Globalisation in which the government honourably steps back and returns to the one and only task it ought to perform - the task of governance. This in itself is not unwelcomed, especially when one takes stock of the quality of goods and services that it provided in a command economy. But the new age has its perils too, because liberalisation will mean injecting competitiveness

into the manufacturing and services sectors, thereby exposing hundreds of millions of underprivileged consumers to the mercy of market forces.

Globalisation can indeed be heady and a government that has embarked on this path is more preoccupied with lifting controls and inviting foreign Capital than protecting Consumers. Different government departments are working overtime to provide the statistical back up that will turn opinion in its favour, statistics about the phenomenal jump in foreign exchanges reserves, the record buffer stock in the nation's granaries and the inflow of foreign capital. But little or nothing is being said about the consumer in all this. Right now, the government has no time for this hapless being in whose name all this is being done. Indian consumers will, therefore, have to fend for themselves. They will have to unionise and inject life into the consumer protection law that is already there to empower them. In fact, the Motto ought to be 'unionise or perish'.

Why should consumers be unionised now? Here are two instances of the government brushing aside consumer concerns in order to spur the private sector into action:

(a) Goods were specified by the government. This

was a rule that kept consumer's interest above everything else, but recently the government removed such restrictions on most goods.

(b) Dr. Manmohan Singh has in three successive budgets slashed excise duties on a number of consumer goods without a concomitant mechanism to ensure that the prices of these goods are actually brought down. In 1995, he has further reduced duties on cosmetics and textile industries. The consumer group had, in fact, suggested that the government withdraw duty concessions from these industries to "teach them a lesson".

Nowhere was the helplessness of the Indian Consumer more apparent as in these cases. Consumer groups certainly hummed and hawed but, could do precious little but watch their interest being sacrificed at the altar of economic liberalisation. A few groups threatened to use boycott as a weapon to bring the industry to book, but even as they issued the ultimatum they knew that they could not carry out the threat in the absence of a strong and cohesive union of consumers. In western societies, when consumers flex their muscles and declare war against an erring industry, the threat is real. But we are yet to lay even the foundation for building such a strong consumers lobby in the country.

But in the new era of Laissez Faire, (General Principal of non-interference) the consumer has to change. The apathy of the past will have to be shed and the Indian Consumer has to emerge stronger. He can no longer look upon the government as his benefactor or expect others to fight his battles for him. It is also not enough merely to become conscious of one's right as consumer. Every Indian has to become a responsible consumer, which means that he must become equally conscious of his duties. The new age, the changed circumstances, call for heightened consumer awareness. This awareness ought to be the supreme duty of every Indian.

The government's new mantra is that competition rather than a complicated system of rules and regulations will bring down prices and improve quality. But consumers must realise that no manufacturer will enhance the quality of his goods, only an alert consumer who demands value for money can ensure this.

There are at least three areas in which deception operates. First, is effectiveness or quality. We are induced to believe that the product will perform a function satisfactorily or at least as satisfactorily as any of its competitors and better than most. Next is Price, we are induced to believe that the product is a bargain, that we

will get more for our money an alternative purchase. Third is Need. We are induced to believe that our happiness requires the ownership of the product. We cannot be well groomed without a certain suit of clothes. Smell like a man without 'Old Spice' after shave, protect our family without a certain insurance policy, educate our children without a set of Encyclopedia Britannica, be safe on the highway without Firestone tyres, enjoy our vacations without palace on wheels cruise, experience good health without vitamin supplements, or live a gracious life without a plethora of convenience foods and labour saving devices.

Advertisers employ many methods to perpetrate these deceptions. One is that of the flat-out lie. The car dealer is not giving you the "best deal anywhere". The loan at "ten per cent" if you make monthly payments on the entire principle. You are not receiving books or records "free" if you are obliged to buy others. Maruti automobiles are not the easiest cars to park. A healthy skin will not make you popular.

Sometimes the claim that advertisers make are called cases of "puffery". This is a euphuism for "hyperbole" or "exaggeration". But exaggeration is still contrary to the truth and thus a case of deception. Let us study the following case of deception very carefully to

find out how it is so.

The American automobile industry was under the threat from the fuel efficient and safety conscious Japanese models. American models, in comparison, were gas-guzzlers even though high on safety. Americans were switching to Japanese cars and, in a bid to boost sales G.M. (General Motors) decided on a new advertising strategy. In a nation where security and safety dominated everyday lives and where car accidents are a frequent occurrences, the automobile giants realised that they had a chance of surviving in the market if they highlighted the safety aspect of their cars. When first shown on television, the advertisement drew loud protests. It showed the G.M. Automobiles speeding towards and ramming into a truck. When dust settles, the camera highlights the damage done to the automobile and then passes to the interiors where the viewers see a baby smiling back at them; the voice - over says, 'safety is our motto, not looks!'. The question that immediately comes to one's mind is that - if life itself is worth, then what about the innumerable risk involved in advertising this car, that too, the precious life of an infant who does not even understand what death and accident means?⁵ Is the advertisement worth it?

5. "Negative turns positive", The Times of India (Review, June 6th, 1993).

Indian advertisements continue to portray fairy-tale situations and it was left to Ad Avenues in 1984, to break this trend. With the Onida television campaign in its bag, Ad Avenue had to release an advertisement that would capture the mind of the consumer. The market was being flooded with television sets and a unique advertising campaign was needed. The Onida advertisement, when first shown on television, caused many an eyebrow to be raised. It showed a mischievous looking devil throwing a stone at a sleek pearl black Onida T.V. The screen shatters and the voice - over says: 'Don't just envy the Onida T.V. - Buy it'. Sales of the ordinary looking Onida spiralled. The sales continued to rise once billboards and hoarding across the country began to sport the message: "Neighbour's envy: Owner's Pride". In a country where false social status is deeply ingrained, the thought of being one up in one's neighbour is a tempting proposition. So my trying to show the tricks of these advertising campaign will fall flat to one's eye! what one should be wary of, is that by such negative or risk campaign, one is deceived, not entertained, offended and misled to the extent that he or she develops a strong desire to possess the item at any costs.

Is this not morally objectionable? Obviously, not

all cases of deceptions are wrong. We tell our children about Santa Claus and Easter Bunny. We praise the dinner though the vegetables were overcooked. We tell the mugger, 'We have no money'. Even a Kantian can be persuaded that morality does not always require telling the truth. The case of advertiser is different. They deceive, not to entertain children, avoid offending people, or preserve what is theirs but in order to make a profit for themselves and their client at our expense. This indeed is reprehensible. Deception may be regarded as wrong on Kantian terms as a violation of an injunction not to lie for the purpose of advancing oneself at the expense of others.

Deception may also be censured, for the effect it has in our economic system. Deception is inconsistent with the free-enterprise system, which manufacturer's and the advertisers they hire, profess to support. In this system, the consumers are supposed to be sovereign. They make intelligent choices, thereby encouraging efficient producers and discouraging the others. They express their needs and desires, and producers immediately spring up to satisfy these needs and desires. When supply and demand are equal, a situation, the market always seeks to achieve, the buyer pays a fair price and the seller makes a legitimate profit. Producers compete to supply buyers with the best

products at the lowest prices to satisfy their wants, everyone benefits.

But if the buyers do not know which is the best product, if they cannot make correct price comparisons, if they do not know what their real wants are, they cannot perform the crucial functions the system assigns them. Advertising, far from assisting buyers, confuses them, making intelligent choice almost impossible for most. Deceived about quality, price and need, we are not in a position to encourage good producers and enhance the material dimension of our happiness. Lacking factual knowledge, our choices are not that of a sovereign but are responses to forces outside us. Alfred Shein Wold, whose bridge columns contain perceptive philosophy as well as impeccable logic expressed the point succinctly: "It was once believed that the wealth of nations depended on each person doing what was good for him or her. The theory breaks down when we don't know what is good for us".⁶

Advertising aims not just at satisfying desires, but at creating them. Real or imaginative improvements in products must be displayed to consumers in such a way that

6. Shein Wold, Alfred, Bidge (St. Louis Globe Democrat, 20th June, 1980), p. 150.

a desire for them is produced. New products must be brought to their attention in such a way that they feel they must have them. The contentment they may have experienced before they had ever heard of the improvement or product must be shattered by a sense of discomfort or deprivation. Often their desires are intensified to the point where they are experienced as urgent needs. The consumers feel that they must have the product for the sake of their very happiness. They "want it for themselves", for example, to have a video-tape attachment for their T.V. sets. "Advertisements keep us in a state of perpetual dissatisfaction with what we do have".⁷ The producer sometimes says, "we only give the public what it wants".

David Braybrooke offers six reasons for believing that this claim is "less than fully warranted".

(1) The buyer is often not aware of the alternative.

(2) The "wants" are not spontaneous, but instilled through advertising campaigns. "Half a century of dilation on speed, power and thrills (by automobile companies) has fostered and intensified wants that now seem questionable to many...."

7. Gerald F. Cavanagh, American Business Values in Transition (Englewood Cliffs N.J. Prentice Hall, 1976), p.119.

(3) The public is deliberately confused by advertisers in order to make misjudgements about relative values.

(4) Sellers "obstruct institutional remedies for the lack of information" the buyers suffer from: Consumer research consumer advocacy in government-truth-in-packaging laws, truth - in lending laws, laws against misrepresentation and so on.

(5) The big companies that dominate the market "have a considerable amount of discretion respecting innovation". Consumers cannot choose what has not been offered to them, although they may desire it more than what is.

(6) Producers ignore wants, that are real but can only be satisfied "by concerted action, not in the market".

Desires are produced of course, in order, in turn to produce action: the transaction. People must be moved, trained, or indoctrinated to make the right purchase. No sizable segment of the population is immune to the barrage: children,⁸ adolescents, young married, single men

8. Auxley Aldous points how susceptible children are to propaganda. He calls them "television fodder". They not only can be made to harass their parents to buy the latest sugar coated cereal, but are seen as the buyers

and women on the rise, old people, each has its problems, for which advertisers offer solutions. The appeal may be loud or barely audible, it may employ a large bill board or a tiny insert; it may drum the message home by monotonous repetition or continually change slogans to capture attentions, it may be in bad taste or employ the highest order of acting, art and sentiment; it may employ original times or take over old favourite to plant the message in our consciousness along with the melody. The standard is simply this: what will work?

What has been found to work is a vast array to emotional appeals. Logicians call them 'fallacies of relevance'. They are really not fallacies, for they have no similarity to rational argument - deductive or inductive. They do not represent aberrations in logical thinking but are substitutes for thinking itself. They circumvent rationality by offering considerations that are utterly without relevance to the conclusion or action they seek to produce.

There is yet another method which advertisers seek to employ - "Specific Emotional Appeals". These appeals are of seven types.

of tomorrow: 'Think', writes My-Clyde Miller ecstatically, "think of what it can mean to your firm in profits if you can condition a million or ten million children, who will grow up as adults trained to buy your product as soldiers are trained in advance when they hear the trigger words, Forward March!" - Huxley, Brave, New World, Revisited (New York, Harper & Row, 1958), p. 68.

Appeal to fear:

People have active imagination and can be made to feel fear without being shown that there is reason to be fearful. If they are desperate (or even worried, they can be expected, to seize whatever "solution is offered". The cosmetic industry has made millions from appeals to fear. Fear is used to sell insurances, fires and accidents occur). An advertisement for the Life Insurance Corporation of India shown on T.V., depicts a toddler dressed in a 'dhoti' and carrying an umbrella, not because the child is going to take out a policy but because it tugs at the heart-strings of the adults and adds an emotional dimension to the sales pitch. Automobiles tyres (cars go out of control) and travellers cheque (money is lost or stolen). It is used to sell soap: Do you have 'pink tooth brush' or 'ring round the collar'.⁹

Appeal to hope:

Our hopes may be aroused by a description of what might be coaching classes as an adequate example of appeal to hope. Such study circles cater to our hopes to fare well in examinations and competitive tests. Children as consumers of education services are particularly susceptible to tall claim and misleading advertisements because of

9. Gerald Rumkle, Good Thinking: An Introduction to Logic, pp. 303-304.

the enormous pressure on today's generation of students to do well in order to survive in the 'rat race' for admission to colleges and universities.

'Coaching classes' guarantee success ('No pass, No fees') but the small print that the student is required to sign after paying the fees, lists a whole lot of limiting clauses that protect the 'college' against demands for refunds. Correspondence courses likewise promise degrees, collect money from youngsters, and then disappear without a trace. Instances are known of such operators who advertised in the paper and then vanished with the remittances; the council passes these complaints on to the police for action.

Children also get taken in by various contents^s especially sports related ones, which seem so easy and at that same time promise fabulous prizes for the winners. One has to match, say, half a dozen very well known sports person with the games they play and then write a ten word sentence about the sponsor's product, several thousand entries are sent in; sometime that is the end of the matter (the manufactures, having made his sale already) and sometimes even when a list of winners is announced, there is no way of checking for its authenticity. In many cases, even when the winners are genuine, no prizes ever turn up.

The advertising standard council recently dealt with a complaint from a parent from Bangalore who said that, in a Television contest held a year earlier, for selecting four thousand prize winners, his child was among the 2,43,000 (two lakh, forty three thousand) entrants subsequently, no list of winners was published. On investigation by the council, the sponsors, Food Specialists Ltd., submitted a list of winners, but the children who looked through the list found duplication of names. Some of these contests really take the public for a ride and children being more naive get more attracted easily than adults. The council points out that advertisers have been known to be unscrupulous enough, to even, nail promotional literature for liquor to teenagers.¹⁰

Appeal to people:

People can be made to feel uncomfortable if they are separated from the great majority. They must be a part of the crowd. They will read book, so long as it is the largest seller in the world. If they are too young for 'gin' they want to be part of the 'Pepsi generation'. They will be prompt to change the width of their neck ties or

10. Shakuntala Narasimha, "Hard Sell for Soft Targets", Femina, 8th October, 1992, Courtesy: Consumer Education and Research Centre, Ahmedabad.

the length of their shirts when fashion dictates. They want to do the things that are, "in", to avoid those that are passe. The ad populum appeal operates not only to induce people to select what others presumably have selected, but to feel deprived (in need) if they do not snap up the latest camera, TV attachment, or kitchen appliances. No one wants to drop out of the great middle class.

Appeal to flattery:

Those who are immune to the appeal to the people may be pushovers for the appeal to flattery. Claims are pitched towards the discriminating smokers, the conscientious parent, fastidious dresser.

Illegitimate authority:

Advertisers seek to transfer our respect from certain well known and loved personalities to the products that they are paid to endorse. For example, in Graveria Suiting, a well known cricketer Monsur Ali Pataudi is shown wearing a suit made of that company's clothing, as people are misled to transfer their respect, not towards the personality but the suiting. Another example is that of soft drinks. As a well known person is found to be enjoying a certain drink, well, all opt for that. Young viewers captivated by the advertisements are not bothered about whether the synthetic drink is healthy or nutritious, they

do not care that, notwithstanding the variety of fruity flavours, that the brand boasts of, there is no fruit juice in it (for instance, the campaign of Coco Cola Susmita Sen, Miss Universe 1994). Growing bodies need to be carefully nurtured with nutritious intake; beside if synthetic sugary preparations become habit, they are likely to be carried on like most habits formed in childhood, into adulthood. Not only this, these advertisements can prove to be fatal for the young awed audiences. Screaming headlines of April 11th, 1996, read as follows, "Bid to copy TV ad proves fatal".

A boy of six years lost his life, trying to copy the feat accomplished in a Television advertisement for a soft drink. To emulate the feat he had seen on the television, he jumped head down first, from the second floor of his Field Hostel residence and died instantly.¹¹

What good does such advertisements do? From this point of view consumption patterns of children merit far greater attention than those of grown ups.

There have been advertisements showing school children relishing cold coffee, when it has bad effects on

11. The Times of India, Lucknow, April 10th; New Delhi, Thursday, April 11th, 1996.

the health of children below the age of eighteen, as it causes insomnia and other adverse effects.

Appeal to humour:

Many advertisements are funny; or intended to be. Good fun or not; it appeals like the others already discussed and serves the simple purpose of arousing and exploiting a particular emotion for the purpose of producing an intended action. These appeals devoid of logical structure, are potent in psychological impact. They are the acceptable forms of a technique we instinctively recoil from: brainwashing.

Advertising has harmful results for society as a whole. First of all, it promotes the sale not only of useless products but of harmful and dangerous ones as well. Chancellor cigarettes used a picture of a teenager swimmer who had crossed the English Channel. Promoting a tobacco product that carries a statutory health warning, through a young achiever leads to the association of high achievement with the use of tobacco is unethical, as well as, misleading.

The perils of influencing children in dangerous ways was shown by another case that the council took up in 1990; which referred to an advertisement on television for

Kelvinator refrigerators in which a child was shown swinging on the door of the fridge. A parent wrote in to protest saying that after seeing the advertisement, his child was trying to imitate it by swinging on the door of the fridge. A refrigerator is an electronic appliance and playing around with it can be highly dangerous. Besides, it is heavy equipment that can topple and cause grievous injury, even if it was not plugged in.

Second, advertising promotes an artificial and false standard of happiness. In another advertisement for 'pan masala' teenagers were shown driving a jalopy; stretching out their hands as they passed a Kiosk (small out-of-door roofed stall for sale of papers, sweets; public telephonic booth) and snatching packets of the stuff. "Such depictions are enough to have school kids emulating the actions; and this can be dangerous", points out Teresa Viju James, Executive Secretary of the advertising standard Council.¹²

Yet another advertisement, again on T.V., shows a teenager stopping a car with his foot, to show how strong 'action' shoes are. This again is a deceptive and dangerous tactic, but to the teenager who knows no danger and fear;

12. Narasimha Shakuntala, "Hard Sell for Soft Targets", Femina, October 8th, 1992.

none will stop to copy the advertisement for 'fun' and end with painful consequences.

Finally, advertising is wasteful. It not only promotes waste by persuading people to buy useless products and to replace what they already have but is wasteful in itself. Billion of rupees and dollars are spent every year, not to produce products but to produce appeals designed to move products.¹³

According to Monorosa Pereira's report,¹⁴ we ask ourselves this serious question - Do advertisements offer false promises and Euphorise lies? Or are they a genuine and essential marketing strategy in today's world of brand battles!

David Ogilvey in 'confessions of an advertising man' says "surely it is asking too much to expect the advertiser to describe the shortcomings of his products? One must be forgiven for putting ones best foot forward". But do advertisers, in the process of putting their best foot forward, lie to the consumer? The bright whiteness of

13. In 1976, Proctor & Gamble India Ltd., spend about \$340 millions for advertising while the total figure for the industry was well over \$33 billions. (Ethics: An Examination of Contemporary Moral Problems), p. 176.

14. "Is Advertising a Lie?", Femina, June 23rd, 1993, pp. 37-39.

a soap - is it real or is it the effect of the camera highlighting the whiteness? Can the cosmetics be really responsible for model's perfect looks? In other word, advertisement is a lie - a lie crafted beautifully to sell to the gullible consumer just another product? For example, in the campaign of "Coco Cola", which was once banned, is now re-introduced to the public. Do you readers, think that, just because Susmita Sen's face (Miss Universe 1994) portrays a supreme bliss by drinking this particular drink - is the best of them all?

Yet, all advertisements are not lies only. As Roopali G., creative copywriter, Lintas, says, "Advertising is a lie. So, is life, a beautiful lie. Advertising is what was called yesterday the pursuit of happiness. No perfume can transform a woman, but if she feels that way it is with just a little help from advertising and by spending a fortune on it. She's got what she wanted. Advertising sells; images pick, what you like, buy the ones you need call the rest a lie and drop them back into the sea.

Amal Kumar Bose, Chairman ASCL, says: Advertising works well in a country like India or for that matter in any other free economy. It plays an important role in boosting the standard of living. He also says that, we do not start anything with mistrust. By and large people trust

because advertising, by and large,
advertising_L is truthful. Based on this fact, branded goods are sold. Advertising is one of the prime instruments of a professional marketing agent.

Today advertising has elements of both - lies and truths. It has solid objectives and it definitely makes an impact.

At this junction, we cannot afford to overlook a very important question "should child modelling be banned?" The parents of the child model, says Shubda Deshpande, are thrilled to no ends about their child's instant fame. But what happens to the child who is promoting the product? Does this part of fame hurtle the child into instant adulthood or can it, just be put down to one more learning experience?

A personal opinion would be that, it is highly immoral of us to make a child give up his/her childhood forever to gain what? Money and instant fame. What right do we have to thrust a baby from childhood to adulthood at once?

Plato and Aristotle would have nothing but bitter taste in their mouths, had they been alive now and been a witness to the doings of advertisers. It would be utterly distasteful to these philosophers as advertisers seek to

corrupt human rationality. To destroy, subvert, or circumvent reason is an affront to the humanistic ideal. Reason rules in every just human. But advertisements destroy every bit of reason in man by arousing the spirit and the appetites. This desire as stirred to clamour for satisfaction, then that. The spirit too is aroused as zeal, pride, and ambition claim their illegitimate due. The individual is not safeguarded against these social pressures. The chances of being a good person in a bad society, as Plato and Aritotle knew, are very slight. Reason cannot control the soul, it cannot foseter harmony; it cannot impose its own pattern in the face of all these pressures from the outside. The result of the permeation of our consciousness by the ceaseless bombardment of advertising, is for many of us, a disordered personality.

Everything in life has its merits and demerits. Advertising is not totally negative. We, as the consumers, do derive certain benefits from these agencies.

First, we get all the possible information on certain products. Advertisement for clothes in Sears catalogue provide material, colour and size. Cigarette ads provide accurate statements of tar and nicotine content. Automobile ads give us EPA gas mileage estimates, horse power, and engine size. Photo development ads indicate the

price for each film size and length of width. Above all, ads provide pictures of the products. With the coming of the 21st century, we can do a great deal of shopping without leaving home. It is quite possible that doctors, lawyers and dentists who object to advertising in their professions fear that too much information would reveal about their fees and service.¹⁵

We would really 'be in the dark' had it not been for advertisement. Whenever you are in the mood for a night out, that is, for a movie, plays, concert etc., you tend to look in the advertising column of the daily newspaper. New drugs, appliances, and fabrics must be advertised before they can find their way into the hands of the people who benefit from them. The very professors who jeer at advertising are pleased to see brochures advertising the texts they have authored.

The third social benefit of advertising is a rising standard of living. People can afford more and more products. The question is why? Simple. Mass production.

15. Two Medical Associations appealed a rule [of the FTC] striking down 30 state laws that kept optometrists and ophthalmologists from publicising prizes. (Studies show that where ads are prohibited, eye glasses costs 25 to 40% more than where they are not), Jane Bryant Quinn, "Regulation the Regulators", Newsweek, January 21st, 1980, p. 73.

Unless the commodities were sold, there would be no mass production. The high sale of these commodities are solely due to advertisements.

The fourth benefit is that quality of almost every commodities is going towards better. This also is the result of advertisements. There are same commodities from different companies. (For example, home appliances as vacuum cleaners, washing machines etc.). There is a great competition among the products and rush for the greater sale. Who benefits in this 'gold rush' - we the consumers.

Fifth, there is a lot of employment. A free enterprise system succeeds only when circulates and products are exchanged. Transaction must take place. Transactions are what advertising exists to bring about. If products are moving, people will be needed to manufacture them. The resulting high employment will put money in the pockets of more people. Advertising will encourage them to spend it and further keep the wheels of industry spinning. "Nothing happens until something is sold" is a business slogan that contain a lot of truth. Advertising makes sure that things, a lot of things will be sold.

Finally, the rising standard of living is a good thing. More people can live better than their ancestors

did, with respect to comfort, diet, drudgery, entertainment and recreation, mobility, and just about everything else. The fact that these goods and services are often material does not mean that those who purchase them are materialists or that advertising engenders a materialistic view of life. Material things are properly seen as means for valuable experience, some of which would be called "spiritual". Typewriter facilitate the production of valuable literature. Telephones contribute to friendship. Travel deepens international understanding. Automobiles transport police officers and social workers. Well constructed homes enhance the possibility of happy family life. Labour-saving appliances make possible greater leisure for study. New drugs and over the counter remedies serve the cause of health. So do the maligned soap products. Television sets provide entertainment for invalids. The invention of the printing press has put the Bible, the Bhagwat Gita and the Quran in nearly every home. That some people, sometimes, become obsessed with acquiring and displaying material goods, does not mean that we are all doomed to lose our sense of value in an affluent society. The wise will be grateful for the help that material goods provide them, in their quest for the good life, but they will keep them in their place as means for other things.

The ethical content of business decisions assumes critical significance as technology advances and gets more complex and the corporate behaviour affects more and more people in a competitive environment.

The market oriented system, for which India has opted, is typically dominated by two principles forms of productive organisation, viz. the small individual or family owned business and the giant bureaucratised corporation accounting for nearly 80 per cent of the employment as in the USA. The multinational corporations have enormous power and influence apart from their social sway and political reach, while their subsidiaries and chief executive enjoy, in most cases, wide discretionary powers.

The shift of emphasis, from the public sector organisation, with the hybrid variants to the private sector, led globally oriented economic strategy has thrown up new challenges for even top notch managerial expertise. Close liaison between business units and governmental institutions is all the more necessary now, for regular flow and feed back of vital information and to evolve a coordinated approach to problems of corporate growth and social equity in a competitive world.

The conflict between economic performance and

social responsibility has to be resolved within the organisation of the first instance. The top executive must not only direct the course of business for best results, but also inspire confidence as an authoritative symbol of moral values. Ethical consciousness can be promoted more convincingly by setting personal examples rather than by issuing memos and making verbal appeals.

The best way of enforcing ethical responsibility is by institutionalising it. It is a two-fold approach:

- Concern for moral values may be made an integral part of the organisational goal along with the economic objective of profit. The employees can then take the right decisions with an eye on fair play confidently.
- The companies ethical stance may be reflected in the jobs description of every employee and included in the performance appraisal as well, to facilitate accountability.

Codes of ethical behaviour, ombudsmen and the like, however, well-intentioned, serve as more than as palliative because they cannot go to the root of the problem, viz., the individual propensities. Only the externalities receive attention. But organisational values stem from individual

values revealed quite often in inter-personal relationships and reflected in the extended psyche. Moral perceptions are shaped by individuals attitudes. Pre-occupation with skill information, in training and manpower planning, in total disregard of normative values is, therefore, found to be a flawed approach.

It will be pertinent to recall Will Durant, who wrote in The Story of Civilisation, "India will teach us the tolerance and gentleness of matured mind, the quiet content of unacquisitive soul, the calm of the understanding spirit, and a unifying pacifying love for all beings."¹⁶

In the conclusion I would once again focus on the question - "Can business and ethics mix?" Earlier talks of ethics in business came as a surprise to many of us. But today, we can see the extreme necessity of ethics to keep moral values in business alive.

In this chapter, I have highlighted the following problems:

- (i) Do advertisers tell the truth and thereby reveal significant facts?

16. "Ethics in Business", The Times of India, Wednesday, February 7th, 1996.

- (ii) The advertising agencies ought to be responsible for what they advertise.
- (iii) All advertisings ought to be in good taste and decency.
- (iv) Whatever is being sold should be sold at the advertised price.
- (v) Guaranties and warranties should be explicit.
- (vi) Advertising agencies ought never advertise false price claims.
- (vii) They ought also refrain from unprovable and exaggerated claim.
- (viii) Lastly, testimonials regarding advertising should reflect a real and honest choice.

I have also brought out distinctly the meaning of consumerism ,and who is a consumer. Consumerism is the equalisation of the right access to information and power of the buyer with those of the seller. A consumer is a person who buys any goods for resale or for any commercial purpose.

I then, discuss the question, 'What good does advertising serve?' What evil does it promote? when we

speaking of good, we mean utility or necessity? Advertising is a necessity since it provides us with the knowledge of availability of different products and their prices. Without the advertisement of products we would be buying items 'blind folded'. The undeniable evil of advertisement seems to be deception. The dream merchants successfully make us desire things and compels us to buy products beyond our capabilities and needs. It's almost like wishing for the moon and yet buying it!

To rectify these drawbacks, I have suggested the following:

- (i) Improvement of moral reasoning about issues in business ethics.
 - (ii) Sensitization of basic spiritual and other values of this society.
 - (iii) Recognition of that many variables in most ethical issues in business.
 - (iv) Understanding the more subtle criteria for deciding ethical issues in business.
 - (v) Lastly, recognition of the diverse ethical theories one can use in analyzing business ethics problems.
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CHAPTER III

ENVIRONMENTAL ETHICS

ENVIRONMENTAL ETHICS

Predictions about environmental catastrophe have come thick and fast for the past few years. Scientists and green warriors alike warnⁿ of the risks of devastating climate change, of floods, draughts, crop failure and mass movement of population, unless drastic preventive action is taken by governments. According to a United Nations report on global warming, within the life time of today's children, the earth could be hotter than at any time in the last ten thousand years and with a century it could reach temperatures unknown in the last three million years. Entire communities in the Maldives, Tuvalu and Kiribati could be imperilled by rising seas, coastal areas of Egypt, Bangladesh, India, China and Indonesia could be inundated; parts of East Anglia could disappear.

Strong views on the matter are to be found not surprisingly, in Oxford. "Environmental change will undoubtedly be the most important challenge in civilized history", says Professor Sir Richard Southwood, Vice-Chancellor and former Head of the University Zoology Department. 'The real problem will not be caused by rises in temperature or sea levels. They will be generated by changes in

rainfall pattern. Dry weather will directly affect crop production. If the world's bread baskets should fail then political destabilization, even warfare, could occur.'¹

Now one might wonder what has environment got to do with Ethics? The answer is there is a lot to be done. ✓ Environmental Ethics is something which no one can ignore. However, not all the concerns of environmentalists have been touched here. Omitted here have been such concerns as the conservation of natural resources such as coal, oil, minerals, the protection of animals and plant life, and the reduction of noise pollution. But perhaps enough has been highlighted so as to make us aware of the threat to the quality of life on our planet earth in the years ahead.

Cutting of trees and disappearance of forest has effected us in many ways. The life-saving drug or in other words, the anti-malarial drug is being manufactured in lesser quality, as there is not enough trees left for the vital drug to be manufactured,) So people are helpless like flies in fire and die when struck by malaria, say some doctors in the Paneery Central Hospital of Williamson Magor

1. Sir Southwood Richard, "We've got the whole world in our hands", Oxford Today, University Magazine, Vol. 3, No. 1, Michael mas issue, 1990.

Company in the Darrang district, of the state of Assam.²

✓ "Pollution is making a hole in the ozone layer and the earth could go bang. It will just disappear if we don't do something." \ To combat this ozone depletion, Indian scientist in the Antarctica, "South Gangotri"³ (February 1987, in collaboration with other countries are trying to find out whether the ozone layer is decreasing). So they send balloons into the atmosphere to find this out! That, it has already decreased is evident from the ultra-violet rays which is more in Trivandrum in the South, than Delhi in the North of India. Thus skin cancer is more prominent among the South Indians. Not only this dreaded illness, but also eye problems.

Next important question is what do we do to save our planet from these dooms? The future is indeed a frightening place for the children of the green revolution. Is this morally justified? Why should the children of tomorrow be deprived from a beautiful and wonderful world?

Measures should be taken to do something about this acid rain, ozone depletions, deforestation and the green house effect. The measures are - an official stamp of

2. Dr. Choudhury, Bibhu, A Report, Paneery Central Hospital, Darrang District, April, 1993.

3. Scientific Research Centre.

approval has been recently given to the syllabus of the school curriculum - which aims at children developing a "uniformed concern" about the environment and sense of responsibility for the earth, and its people!✕

Such measures may seem drastic to us, but there are evidences of the extent to which global environmental risks like ozone depletion have struck terror in the west. Closer home, a new breed of zealots have surfaced in various parts of our country - embracing within their fold not merely journalists, scientists, and activists but also some very powerful businessman and they all speak the language that is fast becoming universal - environment, speak, the new idiom that rails against the assault (in the guise of development) on the fragile ecosystem of our planet and, consequently, on our health. Reeling under the assault of garbage, pollution, congestion, greed and apathy, a large section of urban Indians have rapidly converted to the new cult.

Not only in India, the whole world is aware of strangers and scientists all over are trying their level best in saving our earth. In the University of Oxford, a new environmental change unit has been formed which will coordinate research on environmental issues among different disciplines, spanning the sciences and the humanities, from

archaeology to zoology 'Environmental issues are all pervasive', says Professor Andrew Goudie, Head of the Task Force which set up the E.C.U.⁴ They impinge on politics, economics, national and international law, philosophy, and ethics as well as area of science. Our approach is to wield together the talents that Oxford possesses in these different disciplines.

This unit has among its strength, a Director, an Assistant Director, four full-time researchers, lecturers and a supportive staff consisting of two research officers, an administrative assistant and technicians. Research groups will concentrate on six main areas.

1. ✓ Global climatic change, with particular emphasis upon atmospheric gases and air pollution.
2. Environmental degradation including deforestation, soil erosion and desertification.
3. Hydrological modification with particular emphasis on water supply and water pollution caused by acid rain, nitrates and toxic chemicals.

4. "We've got the whole world in our hands", Oxford Today, Vol. 3, No. 1, Environmental Change Unit.

4. Land-use change involving a loss of habitats, ecological diversity and genetic resources.
5. The environmental implications of different socio-economic system including the impact of urbanization.
6. Environmental policy, politics forecasting and management strategies.

Sir Richard Southwood, though, mindful of the dangers ahead, is nevertheless hopeful. So are we, and so can the world be, if we are a little bit cautious and careful in handling our fragile environment and nature though people are reluctant to take decision, yet it can be solved if the whole world does a little bit of sacrifice.

✓ In continuation with the issues in environmental ethics, we can say the Bowling Green conference has been a useful resource on the issues of global warming, the siting of hazardous waste facilities, international environmental law, zoning and the "lackings" issue, and the cost benefit analysis. The effects of our environmental recklessness are now coming home, threatening the integrity of the biosphere and possibly, life itself! The planet appears to be warming, its protective ozone layer thinning, its lush forest disappearing. Our rivers and lakes are

dirty; our air is unclear. Pollution besets us.~

According to Barnali Sen, Reporter, Times of India, in our country, about one lakh fir trees are cut every year for Christmas only to be discarded after the festivities. Readers are cautioned here, that I do not mean to go against any religious sentiments. Even among the Hindu Community, we find that if not trees, flowers are given on the feet of Gods and Goddesses as offerings, only to be discarded after the festivities are over. Now one might be wondering why I am talking of flowers instead of trees? Certain flowers contain medicinal value, which are destroyed when not allowed to bloom and thereby attain full growth, once plucked. Why we cannot be more conscious and prevent these little thoughtless actions on our part?

With Christmas around the corner, it's not just Santa's sledge bells that are jingling but almost all the cash registers in town as well. One of the main items on the agenda being the 'eternal tree of life' - Christmas tree.

As an old German legend has it a forester was once sitting with his family by the hearth, on a cold December night, when there was a knock at the door and lo! there stood a tired, hungry and shivering child. The child was

invited in and served hot milk with a full meal. While the forester's son slept on the floor, the little guest was offered a warm bed.

Next morning, the forester's family woke up to the strains of celestial music and realised that their visitor was none other than the child Christ himself, now enveloped in an ethereal glow.

The child plucked a bough from the nearby fir tree and planted it firmly on the ground. This tree was to bring the kind man prosperity and solace during winter. And now, it is this very tree which has come to represent the spirit of Christmas.

Grown on the hills of Nainital, Shimla and the Himalayas, these fir trees are cut down before the season and transported to the plains where they are in great demand. *Cedrus deodars*, popularly known as Deodar in India and as Indian or Himalayan cedar in the west, is considered to be one of the finest in the world, with durable and fragrant wood. A full grown deodar is sometimes as tall as 240 ft.

Every year the trees as well as their branches are supplied to various florists, super markets all over the town from where the buyers pick their choicest tree. About

a lakh of these fir trees are cut every year. The price can range anywhere between Rs. 1,000 to 22,000, depending on the size and quality. And the buyers are mostly five star hotels, embassies, departmental stores and even individual households.

Environmental Dr. Iqbal Malik of 'Shristi' feels that in the metropolis owning the biggest Christmas tree itself is made an issue and is actually nothing but a vulgar display of money, at the cost of helpless trees. "It is specially tragic since they are going to be dumped away as garbage within a week", she adds.

Chatterjee, executive housekeeper, La Meridian (New Delhi) places her order with a florist in Khan Market (New Delhi). She buys only the pine branches with which she creates her own trees. The branches are sold at the rate of Rs. 50 a dozen. She requires about 50 dozen to create a 12 feet tall tree.

The life span of these cut trees is short and thus they enter the market only a few days before Christmas and have to be sold out almost immediately - before they start drying up. Some stores order around 100 to 150 trees and at times not all of them sell.

Creation of "artificial firs" are where environmentalists step in to protest against the destruction of the pine trees. The denuding of forest slope which, in turn disturbs the ecological balance is hardly an issue to ignore.

Happily, most five star hotels patronise this pursuit. Some well known hotels have however ban the use of live fir trees and replaced them with artificial counterparts instead. Says Ms. Bhavana Mehrotra, Marketing Manager, "it certainly is environment friendly as it is a sheer pity to see a full grown tree being cut down only as to be used for a few days".

But there are some people who are not at all eco-friendly and do not want to replace real fir with synthetic ones. Ruby Sadhu, housekeeper, Imperial Hotel, New Delhi, is one of this group who says, "How can you have the feel of Christmas in the air without a real tree around? The magic will be lost completely".

But, is not the true spirit of the festival the one which lies deep within our hearts? We may ask, the spirit of giving and sharing.⁵

5. Vindhana Chhabra, "Must we fell these trees", Times of India, Saturday Times Report.

Professor of Philosophy T. Regan begins by saying:
"The concern of environmental ethics might begin with the food on our plate." Food is of great concern because the farmers are now constantly using hundreds of chemicals in crop production, including fertilisers, herbicides, and pesticides. Although chemically intensive agriculture has yielded many benefits, it also raises worries about harmful chemical residue left in food, result - health hazards. Are we not going against nature, trying to create a 'human nature' and thus playing God! What right do we have in trying to make nature produce more than it already produces; are we not against Naturalistic ethics? Who is responsible for the filth in our lakes and rivers? But we humans, with our zooming industries and factories, emitting black smoke!

The result is we are leaving behind us for the children of tomorrow an industrial world devoid of greenery and infested with various diseases.

A public health disaster in Puerto Rico is but one dramatic and tragic example. An estimated 3000 youngsters under ten years of age - some as young as seventeen months - began suffering from abnormal sexual development, including menstruation and fully developed breasts. Authorities suspect an environmental contamination,

probably the steroid hormone estrogen, in the food chain. One possible source of the estrogen is growth stimulant for cattle and chickens. Although estrogen is restricted, some experts believe its use is common in Puerto Rico. That claim raises the spectre of government agencies that, while setting standards regarding food contaminants, are unwilling or powerless to enforce them. This conclusion approximates the one drawn by Lewis Reganstein says that:

✱ A review of the government's policy in setting and enforcing tolerance levels of toxic pesticides leads to the inescapable conclusion that the programme exists primarily to ensure the public that it is being protected from harmful chemical residues. In fact, the programme, as currently administered, does little to minimize or even monitor the amount of poisons in our food, and serve the interests of the users and producers of pesticides rather than those of the public.

As early as 1972, Environmental Protection Agency was given the job of regulating new pesticides and of re-evaluating the old ones using modern standards. The old pesticides with about 600 active ingredients constitute the bulk of those in use, but the agency has only evaluated a handful of them. "It is almost as if the 1972 law has never been passed," the Washington Posts has commented, calling

pesticides our most serious environmental problem and the one we are doing least about.⁶

✓ As food is contaminated so can our water. The toxic chemicals used in farming can and do run off into underground reservoirs which are a major source of our water. The drinking water of every major cities of India, contains dozens of cancer causing chemicals and other toxins, many of which can be traced to chemicals used in agriculture. (Example, the Jamuna river in Delhi).⁷

Pollutants also contaminate the air we breathe, despoiling vegetation and crops, corroding construction materials, and threatening our lives and health. Survey of the environment reveals the presence of toxic air pollution; it showed that the level of dangerous substances discharged by industrial plant into the atmosphere is far greater than previously estimated. These toxic substances in the atmosphere are bound to bring about dangerous diseases such as skin cancer, lung cancer and damaged nervous systems - at whose expenses? Does this doom not spell disaster for us?

6. Manuel G. Velesquez, Business Ethics, Englewood Cliffs, N.J. Prentice Hall, 1982, p. 235.

7. "Hum Zamin", Report Zee Television Ltd.

Electric power plants emit non-toxic substances like sulfur and nitrogen oxide which are a major source of acid rain. Besides the volatile chemicals from gasoline vapour and various industrial and commercial sources, react with sunlight to create ozone, a chief ingredient of the smog that blankets so many of our Indian cities such as Delhi, Calcutta. The National Academy of Science estimates that 15,000 deaths per year and 7 million sick days are traceable to air pollutions. In addition, some scientists believe that the release of chlorofluorocarbons is leading to the destruction of the atmosphere's ozen layer, which partially screens ultra violet rays from the earth's surface (chlorofluorocarbons are widely used in refrigeration, air conditioning aerosol cans, and the manufacture of plastics, computer chips, and numerous other products). Other Scientists have linked the release of carbondioxide and heat into the atmosphere to a "green house effect", which is leading to a gradual and potentially dangerous increase in the earth's temperature.⁸

Every living organism affects its environment, yet the species, Homo Sapiens possesses the power to upset dramatically the stability of natural ecosystems. The

8. Richard T. De George, "Ethical Responsibilities of Engineers in large organisations", Business and Professional Ethics Journal 1 (Fall, 1981).

problem to be considered is that many human commercial activities (for example, using pesticides and establishing oil fields) can have unpredictable and disruptive consequence for the ecosystem.

Tampering with the ecosystem does not always have injurious effects however. On the contrary, sometimes unforeseen benefits result; as was true of the expansive oil and gas drilling activity in the Gulf of Mexico. Much to everyone's surprise, the operational docks, pipes and platform provided a more beneficent place to which lower forms of life could attach themselves than the salt laden sea ever did. As a result, oil drilling in the Gulf of Mexico has greatly increased the commercial fish catch in the area.

But even in fortuitous instances like this, environmental intrusions affect the integrity of ecosystems. And that's the point. Because an ecosystem represents a delicate balance of inter-related entities and because ecosystems are interlocked, an intrusion into one will affect its integrity and the integrity of others. Dr. Paul Ehrlich, one of the best known exponents of ecological awareness, has put the matter succinctly, "There are a number of ecological rules it would be wise for people to remember", Ehrlich has written, "One of them is that there

is no such thing as free lunch. Another is that when we change something into something else, the new thing is usually more dangerous than what we had originally".⁹

The world and its inhabitants have reduced themselves to such utter selfish living being that everyone has thought not for the large but for himself at the cost of whatever it may be. The savagery and thoughtlessness with which our early ancestors treated this rich continent (earth) shows our hallow hearts.

This attitude is present in the present world also; our rivers are poisoned by reckless dumping of sewage and toxic industrial wastes, the air of our cities is filthy and dangerous to breathe from belching or uncontrolled products from combustion of coal, coke, oil and gasoline.

Business has considered the environment to be free, virtually limitless goods. In other words, air, water, land and other natural resources from coal to beavers (trapped almost to extinction for their pelts in the last century) were seen as available to business to use as it so fit. In this context, pollution and the depletion of natural resources are two aspects of the same problem.

9. Marisa Manlex, "Products Liability: You're More Exposed Than You Think", Harvard Business Review, 65 (September-October, 1987), 28-29.

Both involve using up natural resources that are limited. Pollution uses up clean air and water, just as extraction uses up minerals or oil in the ground. The belief that both sort of resources are unlimited and free, promotes wasteful consumption of them.✓

Now, what is our moral duty here? - Our duty towards the environment? The answer is of course, save it! Much is being done today, to save our environment. Yet all that is being done now, is in self interest! All such measures as recycling and trying to ban cars from emitting black smoke, there is still a temptation to shrink individual responsibilities and be a "free rider". The individual person or company may rationalise that the little bit it adds to the total pollution.. Problem will not make any difference. The firm benefits from the efforts of others to avoid pollution but "rides for free" by not making the same effort itself.

What we really need is to look at the environment differently if we are to improve our quality of life and even to continue to exist, William T. Blackstone, the moral theorist argues, "each person has their right qua being human and because a liveable environment is essential for one to fulfill his human capacities."¹⁰

10. David L. Rados, "Product Liability: Tougher Ground Rules", Harvard Business Review, 47 (July-August 1969) 148.

The recognition of the right to a liveable environment would strengthen further the ethical reasons for business to respect the integrity of the natural world. In addition, recognition of this moral right would, Blackstone suggests, form a sound basis for establishing a legal right to a liveable environment through legislation and even, perhaps, through a constitutional amendment or an environmental bill of rights. An official recognition of such rights would enhance our ability to go after polluters and other abuses of the natural environment.

Recognition of this human right to a liveable environment, however, does not solve many of the problems facing us. In our effort to do so, we are faced with vital and difficult choice which has its economic and moral costs.

It is very easy to say and plan what should be done but to implement all plans into actions is what requires meticulous thought. The foremost important thing with regard to the environment is the quality of environment that we want - whether we want the environment in the exact state of its evolution or to one minimal improved over the current state. The next question is, what is necessary to bring into effect the kind of environment we want. In some cases we may not have the technological capacity to improve

the environment. Even if these problems are put aside, a cost effectiveness analysis still involves value judgements about non-monetary cost and benefits. Benefits can take even more numerous forms: health, convenience, comfort, enjoyment, leisure, self-fulfilment, freedom from odour, visibility and so on. Benefits are specially difficult to calculate in environmental matters because they often take an aesthetic form. Some environmentalists, for example, may campaign for the preservation of a remote forest visited annually by only a handful of stalwart backpackers, while developers wish to convert it into a mere accessible and frequently visited ski resort. Should the forest be preserved or should it be converted into a ski resort? Conflicting value judgements are at stake.

The important question here is "who should pay the prize?" This is one aspect of the environmental dilemma facing us today; for the protection and restoration of the environment. Two popular answers to this question currently circulate that those responsible for causing the pollution ought to pay and that those who stand to benefit from protection and restoration should pick up the tab.

The claim that those responsible for causing the pollution ought to pay the costs of pollution control seems eminently fair until one asks a simple question. Just who

is responsible for the pollution? Who are the polluters? Proponents of this claim observe that individuals and institutions with large income generally produce disproportionately more pollution than those with low income. Thus, big business is the chief polluter, and this alone, according to the argument, is enough to bear the lion's share of pollution control. But there is another reason. Shifting environment ^{improvement} cost to society or customers would only increase the economic disparity that already exist between polluters and those damaged by pollution. In ^{effect} fact, a policy of making polluters pick up the tab for environmental restoration would probably have the desirable social effect of shifting income from the richer to the poorer and thus providing for a more equitable distribution of wealth. In the minds of some persons, the question of who should pay this bill is connected with the fair and just distribution of wealth. To understand this let us take the case of simple and everyday pollution of our air, by smoke emitted by vehicles. The low-income groups are by no means capable of even owning a car, let alone drive one! It is the affluent who is causing this damaging pollution of our clean and free air by the monstrous cars that they drive! Then, would it not be fair and just to hold them (the richer group) responsible and let them be the payers. It is this group of society (rich businessman, capitalists,

industrialists so and so forth) has benefited financially more than any other group as a result of treating the environment as a free good, not at all of a firm's wealth or even most of it has resulted directly from doing so. Moreover, consumers themselves have benefited enormously by not having to pay higher costs for products.

Two cases can be cited here as example. The cement factory at Mawmluh Cherra situated in East Khasi Hills, Cherrapunji, Meghalaya, has brought about a disastrous effect in the climate, that is, rainfall has become very scanty as compared to the previous years. The result is people are facing acute scarcity of water in a place which is supposed to receive the world's highest rainfall. Besides this, the Mathura Oil Refinery situated in Mathura, U.P., has damaged the seventh wonder in the world - the Taj Mahal. It has been reported that the wondrous white Taj Mahal is turning black! This is due to the smoke coming from the refinery.

- Another very important cause of environmental problem is the rising pollution. As people get more money to spend, they buy and consume more tangible goods, discard them more quickly, and produce more waste, all of which hasten degradation of the environment. Though we in India have not yet reached this stage as yet, to discard goods

like richer countries of the West, but we are not lagging very far behind! Soon we will also be among those western countries with mountains of discarded goods. For example, over 180 million registered cars and trucks in the United States - far and away the world record - which only makes the problem of reducing air pollution less traceable.¹¹ Added to these causes our general tendency to value quantity over quality, our government's failure to demand an accounting of the social costs environmental pollution, and our ignorance of the interrelated nature of the global ecosystem. Thus, the enemy in the war against environmental decadence turns out to be all of us. No solution to the costs of pollution control, can ignore this fact.

Having talked about water, air and noise pollution, we cannot ignore the pollution of food that we take; the pollution and to be more precise the effort of human beings in playing with nature and this indirect 'playing God' takes its toll in everything. Adulteration of our environmental leads to the adulteration of the food we eat. The question is, how is this so? The simple answer is - agriculture is being affected by air and water. Pollutants from other sources, is responsible for several types of pollution most notably water pollution from farm animal wastes and eroded soil.

11. Ibid.

Farm animal wastes are particularly high in oxygen demand (BOD)¹² and in suspended solids. Although these wastes are valuable fertilizers when spread on the land, they can be undesirable pollutants if they find their way into water ways. Larger livestock can produce BOD and solid equivalent to several humans. Large concentrations of farm animals, such as those on cattle feed or turkey farm, can produce wastes equivalent to those of a large town. Aerobic and anaerobic lagoons can be designed to treat these wastes, or they can be applied to crop land.

So erosion by water or wind can transport soil and mineral particles into undesirable locations. Sediments in waterways have adverse effects on aquatic life and on the usefulness of the water to humans. Many pollutants that are not very soluble in water (for example, chlorinated hydrocarbons) can be transported into waterways by absorption on sediment particles. Soil conservation methods cannot only preserve topsoil for agricultural purposes but can also reduce water pollution.

Agricultural chemicals, whose use has increased dramatically since 1950, can cause eutrophication when they

12. Lawrence H. Tribe, "Federalism with Smoke and Mirrors", The Nation, June 7th, 1986, "Taking one Big Tobacco in Dixie", U.S. News and World Report, February 8th, 1988, and "of Mice and Men". The Economist, April 16, 1988. On recent legal developments, see John Grudels, "Profit and Loss", San Francisco Examiner, November 6th, 1988 D 2.

are carried into waterways. High nitrate levels in drinking water are also very dangerous to infants.

Other notable agricultural pollution problems in certain regions include plant residues and increased salinity in irrigated fields.

In the past, much of the concern about foods, has dealt with adulteration of the food supply. Today major concerns are the avoidance of food poisoning from infectious agents or their toxins and the safety of the food additives extensively used in purchased foods. Many such additives, both artificial and natural, are used for a wide variety of purposes, a great deal of which are of questionable value. Drugs that may be beneficial usually have adverse side effects, and some major tragedies (such as the one involving thalidomide) have occurred before these side effects were fully recognised. Over use of some antibiotics (particularly in animal feeds) has led to the development of resistant strains of organisms.

Cosmetics have occasionally produced injuries to health. Currently there is evidence that many hair dye components may be carcinogenic.

Several food, drug and cosmetic laws have been passed in the United States in the 20th Century. In 1906,

Wiley Act was directed against improperly labelled or adulterated foods, and in 1968, Food, Drug and Cosmetic Act was passed to enable the FDA to prosecute manufacturers of dangerous products and to prohibit false advertising. A 1958 amendment gave the FDA the responsibility of evaluating food additives before marketing; it included the Delaney Clause which forbade the presence of carcinogenic additives in foods. No similar clause directed against mutagenic or teratogenic substances has been passed.

Continuing with agriculture, the world all over now, there is a clear and a serious concern on various counts specially the consumer interests, says A.T. Dudani, on the continued use of pesticides which have entered our lives, on earth and infant^e beyond, if we remember that methylbromide, a common pesticide widely used as a fumigant has emerged as 13-20 times more destructive than the more notorious CFCS¹³ for the ozone layer. There is extensive damage to plant and animal life whether this be the bees which are so important in pollination or the fishes which apart from serving as food also in many cases worked as predators for the vectors of causative agent of malaria, filaria, Japanese encephalitis etc. There are now, reports

13. Fred Luthans and Richard M. Hodgetts, Social Issues in Business (New York: Macmillan, 1976), p. 362.

of widespread contamination of water - not only in our sacred river including the Ganga but recent reports from IARI New Delhi, show the same picture of the subsoil water reservoirs. In fact, Ganga Action Project results had earlier pointed a correlation to the drop in fish yields from highly contaminated portion of the rivers to the presence of pesticides.

Even a more worrisome aspect of the use of highly toxic chemical pesticides has been the destruction of non-target organism referred to above but also the natural enemies of the pests, called predators and parasitoids apart from seriously affecting not only the highly beneficial soil micro organisms which fix atmospheric nitrogen for the plants but also the earthworms which help convert the wastage into excellent nutrients for active plant growth.

A source of continued concern has been the involvement of pesticides in causing serious ailments and problems especially for woman and more importantly for children - our future generations. A recent report from Dr. S.G. Kobra and co-workers at the S.Ms Medical College, Jaipur,¹⁴ showing that of the 15,000 births in two maternity

14. A.T. Dudani, "Pesticides on the Rampage", Times of India Report, 15th November, 1994.

hospitals, 115 gross congenital defects were recorded in the newborns of which as many as 69 were born brainless, 71% of which were females, is alarming. The workers have ascribed this to the widespread use of highly toxic pesticides in Rajasthan, specially through consumption of contaminated foods and vegetables. Yet another disquieting report (1993) comes from the Environmental Working Group in Washington D.C. which confirms and reiterates the earlier findings of the 1989 report by the Natural Resources Defence Council, Washington, entitled "Intolerable Risk: Pesticides in Our Children's Food" - which had proverbially put the Potomac on fire!

What then are the alternatives? Simply put, go back to the era before chemical pesticides came into use? Soon after World War II triggered, as these were for possible use during the war, for destruction of disease, carrying vectors to save the troops or the preparedness for possible use as chemical warfare weapons.

There are now plenty and more examples of successful use of Biological Control agents, the plant pesticides, as also use of simple technologies such as crop rotations, intercropping, use of sex pheromone attractants for use as traps and lures for pests, development and use of pests resistant varieties of seeds as also diversifica-

tions of crops apart from any other indigenous knowledge and wisdom. Biological control has been successfully used in India in case of Sugarcane topborer, pyrilla and for citrus evaters fern salvina, water hyacinth, parthenium wood, control of blackheaded caterpillar, pest of coconut and suppression.

It may also be borne in mind that the worldwide annual spending on pesticides is around US \$23 billion (for India this is estimated at Rs. 1000 crores). Considering that the pesticides are becoming increasingly ineffective on account of pest resistance both for plant and vectors; the present situations is all the more unsatisfactory. Likewise, the progress on the front of plant-based pesticides such as Neem is equally deplorable as India has lost its advantages as the parents of Neem.

Having discussed about the unimaginable doom hanging over our heads, we should turn our attention to a possible solution, if not a restoration of our precious nature. Every damage can be restored partially or fully; so can our environment and for this each of us ought to make it our moral duty to try and find solutions.

Rita Ray, Times of India Reporter, says, that Marina algae when exposed to high temperature can produce

sulfur compounds that help form clouds and thus cool the earth, but though algae may be one answer, it is not the final solution to the threat of global warming.

✓ The potential threat of global warming and the consequent climate change is currently one of the biggest international issues. ✓ But while nations fight over technology transfer and their costs nature may have its own answers to the problem. Algae may be one of them.

Researchers in the U.S., U.K. and France who have recently been investigating marine algae, have theorised that algae, when exposed to high temperature, produces sulfur compound that gets converted to sulphate particles, around which cloud forms. The cloud cover thus produced, can lower the earth's temperature.

Sounds simple? Well, not quite, as researcher, Catherine Semor and John Mitchell of the Hadley Centre for climate Prediction and Research, U.K., Robert Charlson of the University of Washington, Peter Liss of the University of East Anglia and Keith Bigg and Greg Ayers of Australia, found.

It all began with the understanding that algae produce a sulphur compound, which seems not only to be a key link in the global sulphur cycle, but which also

influences the formation of clouds and therefore, the earth's temperature.

The link between algae and climate involves dimethyl sulphide or DMS, the gas that gives sea-air its bracing smell. It is created by the enzymatic breaking down of a salt, dimethyl sulphonio propionate (DMSP). Marine algae produce DMSP to keep their osmotic balance with sea water, without which water would leave the cell of the algae, killing them.

However, the processes by which DMSP is released into the sea is not clearly understood as yet. But most researchers think it occurs when algae die or are grazed by Zooplankton. In the sea, the DMSP breaks down to form DMS. A fraction of DMS, enters the atmosphere and reacts with the atmosphere to form three types of compound i.e., sulphur dioxide, sulphates, and methane sulphonio acid (MSA) water vapour can condense around the last two compounds to form clouds. Researcher Charlson's idea was that in the remote, open regions of oceans, most of the clouds form as a result of this process. Algae transfer between 20 to 50 million tonnes of sulphur from the oceans to the atmosphere every year.

Charlson's original idea was that water heated by

green house warming could encourage algae production, leading to more DMS and hence more clouds. This would mean more solar energy being reflected, which in turn would lower the earth's temperature.

This of course, set people thinking that algae could serve as some kind of global thermostat. The idea is appealing particularly to those who believe the increased amount of green house gases is nothing to worry about. But more report evidence as published in New Scientist,¹⁵ on DMS acting in this way is not convincing.

The finding, which put the theory in doubt involved the ice core from the Arctic and Antartic that provide a record of the atmosphere's chemical make-up, thousands of years ago. In 1991, Michel Legrand of the laboratory of Environment Glaciology and Geophysics in France, and colleagues from Russia and the US, used the Vestok ice cone, in the Antartica, to reconstruct the atmosphere of the cloud forming compound, MSA, over the past 160,000 years. Their results suggest that the concentration of sulphate aerosols derived from DMS and MSA are lower during interglacial phases and higher during ice ages. This is the opposite of what would be expected if DMS - derived aerosols were acting as a damper in climate change.

15. Rita Ray, "Can algae serve as a global thermostat?", Times of India, November 13th, 1994.

Several explanations were put forwarded as to why experiment did not fit theory. One is that the ecology of the southern oceans during a glacial phase may favour alga species that produce more DMS. Another is that, change in the atmospheric circulation could influence the amount of aerosol material deposited on the Antarctic land mass. Also, more during the ice age, increasing the salinity of the oceans - so perhaps algae produced more DMSP as a response to salt stress. Another factor is that no one knows if the Vostock ice core is representative of the entire earth.

Whatever the explanation, one thing is clear that in the current efforts to stabilise the climate, lowering the producing of carbon dioxide in the best bet.

✓ To counter act dramatic global warming, a corresponding doubling in number of cloud condensation nuclei is needed and as such algae may be used as part of an environmental management strategy). However, until the dynamics of algae are well understood, any attempt to predict their effect on climate, will, it seems, remain elusive. So the world must move towards reducing carbon dioxide emissions.

Charles Correa very rightly says, "Today our city centres are beginning to look like a collection of spare

parts, with no one having the slightest idea of nor responsibility for what the whole machine is about".¹⁶

Hence to make the 'part' work, you first get a grip on the 'whole'. Accordingly the author M.N. Buch (Chairman, National Centre for Human Settlements and Environment, Bhopal) advocates a top-down approach to urban planning: begin with the macro-regions and then plan the city.

If the region is not made the regulator and one begins with the city, then the city turns predator and devours the regions (as is happening now a days).

The author, an Ex-IAS Officer gives us much hope. He is very optimistic that the "pessimistic scenario now unfolding before us can be dealt with and altered through a suitable planning and administrative intervention". This can be brought about, into action, according to him, by adopting "an environmentally conscious urban development".

According to a very recent Zee T.V. report,¹⁷ the Himalayan forests are vanishing within the drop of an eyelid. According to Sir Edmund Hillary, as the forests are

16. H. Masud Taj, "The City as Predator", Times of India, Sunday Review Book section, 26th September, 1994.

17. Hum Zameen, Zee T.V. Report.

being cut down, soil erosion is on the increase; the top soil is being washed away and deposited into the water of Ganges, ultimately into the Indian ocean. The result of all this is devastating - floods every year in Bangladesh. 3.5 hectares of forest are disappearing every minute and these include the earth's richest, oldest and most complex ecosystem - the Tropical rain forest. They are homes of 40 to 50% of all types of living things - as many as 5 millions species of plants, animals and insects. Already half the globe's original rain forest has disappeared.¹⁸ Tropical forests are often cleared in an attempt to provide farms for growing population of poor people. But the affluent people in rich nations like the United States is responsible for much forest destruction. Central American forest are cleared in parts for pasture land to make pet food and convenience food slightly cheaper in the United States. In Papua, New Guinea, forests are destroyed to supply cardboard packaging for Japanese electronic products, thus an American living thousands of miles away can cause more tropical forest destruction than a poor person living within the forest itself.¹⁹

Why talk about other nations when our own country

18. See "Mea Culpa, sort of", Newsweek, September 27, 1971, p. 78.

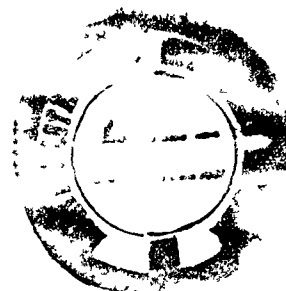
19. Business and Society Review, 67, (Fall, 1988), 27.

is busy promoting atom bomb^s? By this, I mean the various Projects and Action Plans. To take an example, the Narmada Dam Project - thousands of people are made homeless while forests, acres and acres of them are going sheer waste! (Maneka Gandhi - feels about this project: "It is like submerging Delhi to irrigate Bombay!").

Our bloated levels of consumption, our dependence of foreign resources to satisfy our needs, and the impact of both on the economy and environment of other nations raise a variety of moral and political issues. Are we respecting the needs and interests of both our present co-inhabitants on this planet and the future generations who will live on in this earth?

Do we owe anything to the future generations? - There is no doubt that all of us are now conscious that it is wrong to empty the globe of its resources and contaminate the environment that we pass on to the future generations. There is real danger that we will be doing just this! But a vital question here is that - "What moral obligations do we have to the future generations?" This question is very difficult to answer and is debated among philosophers, environmentalists and moralists with no result at all.

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Can we talk logically of those future generations having a right even before they come into existence? After all, our remote descendants are not yet alive and thus cannot claim a right to a liveable environment. In fact, since these generations do not yet exist, they cannot at present, it seems, be said to have any interest at all. How can they have any rights?

Joel Feinberg, Professor of Philosophy argues, however, that whatever future human beings turns out to be like, they will have interests that we can effect for better or worse, right now. Even though we do not know who the future people will be, we do know that they will have interests and what the general nature of these interests will be. This is enough, he contends, both to talk coherently about their having rights and to impose a duty, a duty on us not to leave ecological time bombs for them.

Feinberg further says that it does not make sense to talk about future people having a right to be born. The child, that, for instance, S_1 may be conceived tonight cannot intelligibly be said to have a right to be born, if S_1 felt like it. Thus, he says, that the right of future generations are "contingent". But this qualification does not affect his main contentions. The interests that (future people) are sure to have when they came into being... cry

out for protection from invasions that can take place now.²⁰

Granted that future generations have rights, but do we know exactly what those rights are or how they are to be balanced against the interest and rights of the present people. ✓ If we substantially injure future generations to gain some small benefit for ourselves, we are being as selfish and short sighted as we would be hurting other people today for some slight advantage for ourselves. Normally, however, if the benefits of some environmental policy outweigh the costs, then a strong case can be made for adopting the policy. But what if it is the present generation that receives the benefits and the future generations that pay the costs? Would it be unfair of us to adopt such a policy? Would doing so violate the rights of future people?

Perhaps it is a mistake to focus on the rights and interests of future people as individuals. Annette Baier argues, that the important thing is to "recognise our obligation to consider the good of the continuing human community".²¹ This instance suggests adopting a utilitarian

20. Paul Stevens, "Weasel Words: God's Little Helpers", in Paul A. Eschhel, Alfred A. Rosa and Virginia P. Clark (eds.), Language Awareness, (New York, St. Martins Press, 1974), 1956.

21. Consumer Reports: The Medicine Show, (Mt. Vernon, New York: Consumer's Union, 1972), 14.

prospective and seeking to maximum total human happiness through time. But a utilitarian approach is also not without problems. If our concern is with total happiness, we may be required to increase greatly earth's population. Even if individuals in an overcrowded earth do not have much happiness, there may still be more total happiness than there would be if we followed a population-control policy that resulted in fewer, but better off, people. This distasteful conclusion has led some utilitarians to modify their theory and maintain that with regard to population policy we should aim for the highest average happiness rather than the highest total happiness.

John Rawls has suggested another approach to the question of our obligations to future generations, an approach that reflects his general theory of justice. He suggests that the member of each generation put themselves in the "Original Position". Then, without knowing what generation they belong to, they could decide what would be just way of distributing resources between adjacent generations. They would have to balance how much they are willing to sacrifice for their descendants against how much they wish to inherit from their predecessors. In other words, the device of the original position and veil of ignorance might be used to determine our obligations to future

generations - in particular, how much each generation should save for use by those who inherit the earth from it.²²

✓ Environmental Ethics goes beyond the questions of our obligations to future generations. It challenges the human - centered approach adopted so far. Implicit in the discussion has been the assumption that preservation of the environment is good solely because it is good for human beings. This reflects a characteristic human attitude that nature has no intrinsic value. It only has value because people value it. If human nature were different and none of us cared about the beauty of, say, the Himalayas, then it would be without value.

William Boxter says that the use of DDT in food production is causing damages to the Penguin population. He writes:

My criteria are oriented to people, not penguins. Damage to penguins, or sugar pines, or geological marvels is, without more, simply irrelevant... Penguins are important because people enjoy seeing them walk about rocks... In short, my observations about environmental problems will be people-oriented... I have no interest in preserving penguins for their own sake....

22. Business and Society Review, 67 (Fall, 1988), 27.

I reject the propositions that we ought to respect the 'balance nature' or to 'preserve the environment' unless the reason for doing so, express or implied is the benefit of man.²³

Holmes Rolston III's what he calls the "Naturalistic Ethics" is in sharp contrast to Baxter. The view of Naturalistic Ethics is - some natural objects, such as whooping cranes, are morally considerable in their own right, apart from human interest, or that some ecosystems perhaps the great smokers, have intrinsic values, such as aesthetic beauty, from which we derive a duty to respect these landscapes.²⁴ Human beings may value a mountain for variety of reasons - because they can hike it, build ski lifts on it, mine the ore deep inside it - or simply because they like looking at it. According to naturalistic ethics, however, the value of the mountain is not simply a function of these human interests. Nature can have value in and of itself, apart from human beings.

There are many philosophers who doubt, however, that nature has intrinsic value or that we can be said to have moral duties to nature. Having interest is a precondition, they would contend, of something having rights or of

23. Ann Hagedorn, "FDA Cracks Down on Cosmetic Firms. Age Treatment Drugs", Wall Street Journal, April 27, 1987.

24. J.L. English, "Those Devious TV Ads", The Sun (Santa Cruze, California), August 11th, 1988, 16.

our having moral duties to that thing, Can a rock meaningfully be said to have an interest in not being eroded or in not being smashed into smaller pieces?

But trees and plants are not the same as rocks. They are alive, and we can talk intelligibly about what is good or bad for a tree, plant or vegetables. They can flourish or do poorly. Nonetheless, philosophers who discuss moral rights generally hold that this is not enough for plants to be said to have rights. To have rights, a thing must have genuine interest, and to have interests, most theorists contend, a thing must have belief and desires. Vegetative life, however, lacks any cognitive awareness. Claims to the contrary, are biologically unsupportable.

Even if the plant would lack rights, can it still have intrinsic value? Can we still have a moral obligation to respect that world and not abuse it? Or are the only morally relevant values the various interests human beings and other creatures? These are hard questions. Among philosophers there is no consensus on how to answer them.

Conclusion: This chapter consists of a philosophical approach to environment. Has philosophy got anything to do with environment, that too - ethics? Scientists and

environmentalists are busy predicting about environmental catastrophe - why not the normal philosophers?

My major problems in this chapter are:

- (i) Diminishing harmony each man shares with nature.
- (ii) Harmony of man's relations with himself (conscience).
- (iii) Harmony of man's relation with his Creator.
- (iv) Harmony of man's relation with his fellow men.
- (v) Lastly, harmony of man with fellow creatures.

I do not feel we need to think in the same level with the environmentalists, who speak of global warming, air pollution, deforestation, soil erosion, desertification and so on.

The above basic problems have come to the forefront because, man overcome by greed for material wealth and comfort has lost his inner 'true self'. The result in the destruction of forest and all our natural resources, at whose cost? - his fellowmen and nobody else! For whose benefit - his own! The same answer could be given for air

pollution, noise pollution and even water shortage today.

I also tried to make the world aware of the fate of civilisation as a whole, in the face of the ecological threat to the world.

What is environment? Popularly, it is known as 'Ecology', a comprehensive scientific and practical trend and also a certain general aspect of all the vital activity of modern civilization. Environmental ethics, in the present decade, falls within the realm of what is known as "Applied Ethics".

Next, I have also discussed the most important question - "Who should pay the prize?" This is one aspect of the environmental dilemma facing us today; for the protection and restoration.

I bring the chapter to an end by a discussion of the questions "Do we owe anything to the future generation?" and come up with the answer that it is definitely wrong on our part to contaminate the globe which we are to pass on to the future generation. But equally important is the question - what moral obligation do we have to the future generations whose existence is yet to be established? Our remote descendants are not yet alive and

thus cannot claim a right to a liveable world. In fact, since these generations do not yet exist they cannot at present, it seems, be said to have any interest at all. How can they have any rights?

CHAPTER IV

THE TAKING OF HUMAN LIFE:
SUICIDE, DEFENCE OF THE INNOCENT

THE TAKING OF HUMAN LIFE:
SUICIDE, DEFENCE OF THE INNOCENT

As the title of my fourth chapter suggests, I intend to discuss these questions involving suicide - what moral problems are involved when one takes one's own life voluntarily, defence of the innocent and also the ethical questions involved in mercy killing as well as allowing someone to die.

I would not and also cannot afford to ignore David Hume's essay "of suicide". Hume talks about this particular topic in his book, A Treatise of Human Nature. Before starting straight off with Hume's essay on suicide, let us first see what is meant by the literal meaning of the term.

The Chamber's Twentieth Century Dictionary defines suicide as - "One who kills himself intentionally: self murder".

Plato's view of suicide, is found in his dialogue, Phaedo. One may be submerged in a puzzle about suicide when one may observe the main theme of the dialogue - the immortality of the soul. To begin with, no one questions the immortality assumption, and the first point raised is how it could be reasonable to combine this with the usual and traditional prohibition on suicide.

As a matter of fact, one does not need to believe in immortality to find the ban on suicide puzzling. Even if you hold that death is the end, you may still find it difficult to say what is wrong with suicide. After all, there is nothing very surprising in the thought that some unfortunate people live such wretched lives that their life is not worth living, and they would, therefore, be better off dead. In that case, why should they not be permitted to do away with themselves?

It is clear that the problem comes from combining the two themes:

- (i) Some people are better off dead.
- (ii) No one should kill himself.

Plato seems to suggest that the consistency lies in holding both that some people would be better off dead and that no one ought ever to commit suicide, but in that case one cannot also hold that the sole basis of morality is self-interest. This again, goes against the principle of God's possessions. God has wishes about the behaviour of his possession (his flock) as a whole. This may not be the same as what is best for any member of it, considered individually (What is in my best interest may at the same time be against the interest of others). Indeed, is in an

improvement on a purely self-interested basis for morality, it still does not seem enough to justify the near-absolute prohibition of that is part of the traditional morality. We could continue this debate a little. It might be suggested that the gods do not want us to commit suicide either for some other reason which we do not know of, or perhaps for no reason at all.

Hume begins by pointing out the advantages of Philosophy over superstition and false religion. He says that good sense and practice of the world are utterly helpless when faced by these two vices - superstition and false religion. Historical facts and also our daily experiences bestow upon men his capacity for business and other worldly affairs, but all these turn to ashes once men come under the grip of grossest superstition. Even the sweetest temper and gaiety cannot withstand these poison and Hume observes that among the two sexes in the universe, the fairer sex is more of a victim. But when sound philosophy gains the upper hand in the human mind, then superstition is forced to retreat.

Emotions such as love, anger, ambition or avarice, have their roots in the temper and affections, which the soundest reason is scarcely able to correct in the perfect order. But then, it does not mean that humans are utter

slaves to these vices! True philosophy seems to be the only shield against either superstition or false religion.

Hume says:

The superstitious man, says Tully,¹ is miserable in every scene, in every incident of life; even sleep itself, which banishes all other cares of unhappy mortals, affords to him matter of new terror; while he examines his dreams, and finds in those visions of the night prognostications of future calamities. I may add, that tho' death alone can put a full period to his misery, he dares not fly to this refuge, but still prolongs a miserable existence from a vain fear lest he offends his maker by using the power, with which that beneficent being has endowed him. The presents of God and nature are ravished from us by this cruel enemy; and notwithstanding that one step would remove us from the regions of pain and sorrow, her menaces still chain us down to a hated being, which she herself chiefly contributes to render miserable.²

Death holds great terror for mankind. So, great is our terror of death that we prefer to lead a miserable existence, be overburdened by a life which has nothing to offer us except pain, misery and untold, unimaginable sufferings, we prefer to suffer rather than put an end to

1. De Divin. lib ii 72, 150.

2. MacIntyre, Alasdair, Hume's Ethical Writings Essays: Selection from David Hume, University of Natre Dame.

this life. So, great is our horror of death, that we carry on this burden on our shoulders, without a whimper! I cannot help but relate a brief incident about a human mortal's horror of death. So horrified was she of dying, that she preferred to carry behind her back, a play card which says, "mentally retarded!" This particular woman, branded by her in-laws, deserted by her husband, had nothing to live for. Life had lost all its charms for her, ostracized by society, yet she preferred to carry on her burden and live. Why? because, death with all its horrors would unveil itself before her eyes whenever for a moment, she contemplated the ultimate step, suicide, just a little step from her side, bringing her the supreme bliss - an extinction from a miserable existence.

David Hume's argument for suicide is somewhat as follows:

If suicide be considered criminal then it must be a transgression of our duty to God, our neighbour, or ourselves. Hume says that to show that suicide is not a transgression of our duty to God, let us turn our attention to the laws which govern this material world. The Almighty Creator has established general and immutable laws by which all bodies, from the greatest planet to the smallest particle of matter, are maintained in their proper sphere

and function. To govern the animal world, he has endowed all living creatures with bodily and mental; with senses, passions, appetites, memory and judgement, by which they are impelled or regulated in that course of life to which they are destined.

The two principles of the animal and material world govern each other, encroach each other's domain; yet enhance and uplift one another. What is man but a powerless puppet before the awesome nature. So helpless is he, that his feet will have to stop before a mighty river flowing over earth's surface. When the passions play, when the judgement dictates, when the limbs obey; this is all the operation of God, and upon these animate principles, as well as upon the inanimate, has he established the government of the universe. Every event, however minute, every second of time is important in the eye of that infinite being, whose one sweeping glance takes in the most distant regions of space and remotest periods of time. What is breath-taking is the uncanny accord and order in place of what should have been - discord and disorder; governing the universe.

Nature progresses with time and if its laws are broken or changed it is not entirely unnoticed by man but animals are unaffected, unconcerned. It is for this reason

alone, that almighty has empowered humans with the ability of judgement and discretion. This in turn endows them with ease, happiness, preservation. What then would be the explanation of this principle - a man, tired of life, hunted by pain and misery, overcomes all the natural terrors of death and makes his exit from this world; would or can we say that this man has incurred the indignation of his creator by going against the Divine Laws and disturbing the order of the universe? Or can we say that the lives of these men were destined by the almighty to end in this way and thus were alienated from the manner of common men's disposal. But Hume is of the opinion that it is false as the laws governing both the material and animal universe are the same. Any natural calamity sweeps away the lives of all good and also the unscrupulous. So is it then a crime to take away one's own life?

Same laws govern the animal kingdom yet we do not find any of them doing away with their life. Is it so because, animal's life is far better than man's? This aspect still remains untold and undiscovered. Animals are entrusted to their own prudence and skill, as far as their power extends, to alter all the operations of nature. Without the exercise of this authority they could not subsist a moment; every action, every motion of a man,

innovates on the order of some parts of matter, and diverts from their ordinary course the general laws of motion.

Hume here asks the question, if taking one's life is criminal - why is it so? Is man's life so precious and important "that" 'tis a presumption for human prudence to dispose of it? The answer is an emphatic. 'No'. Life of a man is of no greater importance to the universe than that of an oyster he says. If it was so, then the extinction of a single soul would amount to a total standstill of the entire universe. But life still goes on undisturbed and uninterrupted. Had the end of a life been criminal then even the prolongation of life is equally criminal. Hume says,

If I turn aside a stone which is falling upon my head, I disturb the course of nature, and I invade the peculiar province of the almighty by lengthening out my life beyond the period which by the general laws of matter and motion he had assigned it.³

According to Hume, every voluntary action of man is pre-destined by God; therefore even if a person dies a natural death, it must be predestined by the Almighty. So if and whenever pain or sorrow overcomes one's patience so as to make him or her tired of life, he or she may conclude

3. Hume, David, Of Suicide, Essays Hume's Ethical Writings by MacIntyre Alasdair.

that he or she is being recalled from his or her station in the clearest and most express terms.

'Tis Providence surely that has placed me at this present moment in this chamber: But may I not leave it when I think proper, without being liable to the imputation of having deserted my post or station? When I shall be dead the principles of which I am composed will still perform their part in the universe, and will be equally useful in the grand fabric, as when they composed this individual creature. The difference to the whole will be no greater than betwixt my being in a chamber and in the open air. The one change is of more importance to me than the other, but not more so to the universe.⁴

A man, who retires from life, does no harm to society: He only ceases to do good; all our obligation to do good to society seem to imply something reciprocal. Since we all receive benefits of society, we ought to promote its interest. But when one withdraws oneself from society, can one be bound any longer? But, allowing that our obligations to do good were perpetual, they have certainly some bounds; I am not duty bound to do a small good to society at the cost of a greater harm to myself;

4. Ibid.

why then should I prolong a miserable existence, because of some frivolous advantage which the public may perhaps receive me? When I am superannuated from office because I am no longer useful to the office; why can I not self retire myself and make an easy exit from the world itself? Again, suppose, instead of being good and useful to the society; I am a burden on the society, do I have a right to be so and prolong my existence? Suppose that my life hinders some person from being much more useful to society. In such cases Hume says, the resignation of life must not only be innocent but laudable.

Hume also quotes the example of Stozi of Florence as an instance of a man convicted for life as a social menace. Hume asks, can this condemned man save himself from a shameful death by a voluntarily death which is actually advantageous to society by riding it of a pernicious member.

Concluding his essay, Hume says that suicide should be considered with interest and it is our duty too, to think of suicide not as criminal but a means to an end to suffering. No Man, he believes throws away, a life, worth living and besides so great is our natural horror of death that a minute motive will never prompt us to end our lives unless we are compelled by the greatest misfortune.

"- If, suicide be supposed a crime, 'tis only cowardice can impel us to it. If it be no crime, both prudence and courage should engage us to rid ourselves at once of existence, when it becomes a burthen. 'Tis the only way that we can then be useful to society, by setting an example, which, if imitated, would preserve to every one his chance for happiness in life and would effectually free him from all danger or misery."

Emile Durkheim's view of suicide is to be found in his renowned book, Le Suicide. His view is the prototypes of systematic rigorous unrelenting attack on the subject with the data, technique and accumulated knowledge available at any given period.

For Durkheim also, suicide is a crime like any other crimes.) Suicide has no indication of immortality per se. In fact, a given number of suicides are to be expected in a given type of society. Suicide is result of the breakdown in the social fabric. Durkheim is of the view that individual can on no account be blamed if he or she commits suicide. It is the family first and then society, which is to be blamed. He relates currents of suicide to social concomitants.

Durkheim recognises three categories of suicides,

from a study of religious affiliations, marriage and the family, and political and national communities. They are:

1. Egoistic Suicide;
2. Altruistic Suicide;
3. Anomic Suicide.

The first category results from lack of integration of the individual into society. The stronger the forces throwing the individual onto his own resources, the greater the suicide-rate in the society in which this occurs. Egoistic suicide also can result from the slightest integration of the individual into family life. The greater density of the family the greater the immunity of the individual to suicide. The individual characteristic of the spouses is unimportant in explaining the suicide-rate; it is dependent upon the structure of the family and the roles played by its members. In political and national communities, Durkheim leads us to understand that in great crisis the suicide-rate falls because their society is more strongly integrated and the individual participates actively in social life. His egoism is restricted and his will to live, strengthened.

The second category of suicide in social groups results when there is comparatively great integration of

individual, as in lower societies. Here where the individual's life is rigorously governed by custom and habits, suicide is what he calls altruistic; that is, it results from the individual's taking his own life because of higher commandments, either those of religious sacrifice or unthinking political allegiance.

The last category of suicide is what he calls anomic suicide. This type of suicide results from lack of regulation of the individual by society and is on the rise in modern economy. The individual's needs and their satisfaction have been regulated by society; the common beliefs and practices he has learned make him the embodiment of what Durkheim calls the collective conscience. When this regulation of the individual is upset so that his horizon is broadened beyond what he can endure, or contrariwise contracted unduly, conditions for anomic suicide tend towards a maximum. Thus, Durkheim instances sudden wealth as stimulative of suicide on the ground that the newly enriched individual is unable to cope with the new opportunities afforded him. The upper and lower limits of his desires, his scale of life, all are upset. The same type of situations occur, according to Durkheim in what he terms conjugal among exemplified by divorce. Here marital society no longer exercises its regulative influence upon the

partners, and the suicide-rate for the divorced is comparatively high. This anomic situation is more severely reflected among divorced men than women. The reason is, man has profited more from the regulative influence of marriage, therefore, its failure cannot be faced by them.

Durkheim's view of suicide is an exact contradiction of David Hume. David Hume defends suicide to the extent of suicide being moral. He is of the view that an individual alone can have the right to commit suicide since suicide is never a criminal act. Thus he says:

A man, who retires from life, does no harm to society: he only ceases to do good; which, if it is an injury, is of the lowest kind - all our obligations to do good to society seem to imply something reciprocal. I receive the benefits of society and therefore ought to promote its interests, but when I withdraw myself altogether from society, can I be bound any longer? But, allowing that our obligations to do good were perpetual, they have certainly some bounds; I am not obliged to do a small good to society at the expense of a great harm to myself; why then should I prolong a miserable existence, because of some frivolous advantage which the public may perhaps receive from me? If upon account of age and infirmities I may lawfully resign any office, and employ my time altogether in fencing against these calamities, and alleviating as much as possible the miseries of my future life: why may I not cut short these miseries at once by an action which is no more prejudicial to society? -. But suppose that it is no longer in my power to promote the interest of society; suppose that I am a burthen to it;

suppose that my life hinders some person from being much more useful to society. In such cases my resignation of life must not only be innocent but laudable. And most people who lie under any temptation to abandon existence, are in some such situations; those, who have health, or power, or authority, have commonly better reason to be in humour with the world.⁵

Emile Durkheim, on the other hand, says that it is the society alone which can be held responsible for occurrence of suicide. The family also is equally responsible to a certain extent. All human beings are subject to the process of frustration and repression, of guilt and anxiety, to that extent suicide is a potential outlet under given kinds of emotional stress. whatever may be the reasons for suicide, it can on no account be support for it is no less than any other crime.

\Suicide, as we commonly know is voluntarily retiring from this world out of sheer despair. Across the world, more than two thousand people kill themselves everyday. The estimates suggest that by the turn of the century suicide rate could overshoot the one lakh mark.

What prompts an individual to end his life? The commonest causes for suicide are family disputes, unrequi-

5. Ibid.

ted love, failure in examination, unemployment, ill-treatment by inlaws, marital discords and financial insecurity.

There is no gainsaying that urbanisation, with its social disorganisation and breakdown of traditional support system, has played a significant role in reducing the individuals into isolated isotopes of loneliness. What makes matters worse is that in an era where equality, rise in educational level and economic necessity has forced both parents to work, parenting is often confused with providing material comforts.

Diverse societies have different attitudes towards suicide. The ancient Greeks and Romans attached no stigma to it. Leno and Demostheness took their own lives, as did Brutus. In Japan, a dishonoured warrior could save his reputation by committing hara-kiri. Among the aristocracy of old Europe, a gentleman caught in socially disgraceful behaviour would shoot himself.

"Dying is an art ... I guess you could say, I have a call", wrote Sylvia Plath. The list of those who confirmed to it are endless - Van Gogh, Jackson, Pollack, Virginia Woolf, Sylvia Plath, Mark Rothko, Ernest Hemingway, to name a few. In the Indian context we find suicide in the era of the Mahabharata. Bhishma, son of

river Ganga and Grandfather of Pandava is said to have committed 'suicide' "ECHHA MRITYU". Therefore, we find traces of 'suicide' even in those days.*

There is a controversy regarding the ethical status of suicide not only in the social standpoint but also from religious view point. Let us examine each of the views.

√ The Christian View: Christianity, born at a place and time in which suicide was commonly accepted as an honourable departure from life, early placed itself in opposition to the practice.

The commandment "Thou shalt not kill" was interpreted categorically. While exceptions were made for warfare and the administration of justice, both legitimate functions of duly ordained governments, none was made in the case of killing oneself. Suicide is homicide, murder. Nowhere in the Bible is there precept or permission to take one's own life. Just as Christians are to uphold and respect the life of others they are to uphold and respect their own⁶ although our life is "given" to us by God; we are God's creatures, and still belong to him. Hence

6. Thomas Aquinas says that "one owes the greatest love" to oneself. Summa Theologica, Secunda Secundae, Question 64, article 5. Translated by Father of the English Dominican Province (New York: Benziger Brothers, 1947), Vol. 2, p. 1469.

* I have defined suicide as voluntarily retiring from this world. Given this definition, we can find traces of suicide in Hindu literature.

whoever takes his own life sins against God, even as he who kills another's slave sins against that slave's master".⁷

There would seem to be some exceptions to the Christian stance against suicide: The Old Testament hero, Samson, pulled down the building, killing himself along with his enemies. But Samson, says Augustine, was justified on the ground "that the spirit who wrought wonders by him had given him secret instruction to do this".⁸

Abraham, when he set out to kill Isaac, was prepared to violate the injunctions against execution (moreover, of an innocent person), but he certainly was responding to a direct order from God. These cases, indeed, are very exceptional. "He, then, who knows that it is unlawful to kill himself, may nevertheless do so if ordered by Him whose commands we may not neglect. Only let him be very sure that the divine commands has been signified".⁹

Jesus consistently urged his followers to flee persecution to preserve their lives, never once advising them to "lay violent hands upon themselves". The members of the Jim Jones cult in Guyana who took their lives were

7. Ibid.

8. Augustine, City of God (Trans. Dods) 1, 21, p. 27.

9. Ibid., I, 26, p. 36. Emphasis added.

probably deceived - by their own feelings and by the monstrous man who gave the orders.

Saint Augustine is of the opinion that whatever dangers we have to face in this earthly life, we should not contemplate suicide. Christian women, violated by barbarians should never commit suicide, for the sin are not theirs. Even if they did sin by assenting in some sense, to the act, suicide would certainly be wrong. Suicide does not give the opportunity to repent our sins. Those who commit suicide out of the fear that they will commit some greater immorality, have foolishly chosen a certain sin over an uncertain sin.¹⁰

Advocates of Christianity upholds that we need to look at the misfortunes of others now and in times past - or read the account of Job in the Old Testament.¹¹ It is not for any Christians to take his or her life, but to call God for his help during the stressful period. God will never inflict anything on our lives that we cannot bear. In fact, 'Misery', the Christian's belief, brings us in a

10. The most fantastic form of this kind of thinking is to commit suicide immediately after forgiveness is received for past sins in order to depart life in a blessed condition!

11. The part where Job is restored to health, wealth & happiness may be ignored, for that was added by scribes who could not accept the truth that endless suffering is sometimes the lot on earth of good persons.

closer union with God. There is also the ultimate consolation of being members of a higher realm than the "earthly city". We, as Children of God, belong to the "City of God", where there is everlasting and unending peace. The Christian's greatest virtue is HOPE. Through the virtue of hope another virtue is sustained: Fortitude.

The knowledge of the existence of another should never tempt a Christian to escape to it by means of suicide. They can never adopt the path of the pagan who read Plato's Phaedo and committed suicide so that the soul could enjoy the blessing of immortality as early as possible. A Christian soul is perfected in this very world, depending on whether he or she obeys the will of God. If the will of God is obeyed and that too, in every phase of one's passing life, he or she merits and strengthen life gracefully. Part of God's will is that people utilise this world experience and cling to the life that makes it possible.

Islam View: Suicide is not once referred to in the Quran, but it is forbidden in the traditions, where Mohammad is related to have said, "who so ever shall kill himself shall suffer in the fire of hell",¹² and "shall be excluded from heaven forever".

12. At Budhari Arabic edu. p. 984.

It is also related that the prophet refused the funeral rites to a suicide,¹³ but it is usual in Muslim countries to perform the funeral service, although forbidden by the custom of the Prophet himself.

Hindu View: Cases of suicide ^{are} ~~is~~ found in the Hindu ^{Literature} ~~mythology~~, where it is found to be not only pardonable, but also meritorious. Cutting one's throat at one of the holiest spots of the Ganga where it joins the Yamuna near Allahabad below Delhi, formerly known as INDRAPRASTHA, is so highly esteemed, that a person dying in that place is certain of immediate MOKSHA or BEAUTITUDE, without risk of further transmigration. Widows who become SATI or PURE, by burning themselves with the bodies of their deceased husbands, which is generally done at the SANGAM, or confluence of rivers, perform an act of meritorious suicide. And all acts, in themselves good, are rendered vastly better if done on such a spot.

THE FIVE MODES OF SUICIDE It is said that suicide is sometimes meritorious; and there are five modes of performing it preferable to others: (1) Starving; (2) being covered with dry cowdung, and consumed by fire; (3) being buried in snow; (4) going into the sea at the mouth of the

13. Abu Davd Arabic edu., Vol. 2, p. 98.

Ganges, praying and confessing sins until the alligators devour the permitent; (5) cutting one's throat at Allahabad, at the junction of the Ganges and Jamuna.

We are informed by Mr. Cole Broke, that legal suicide was formerly common among the Hindus, and is now very rare: among men, drowning themselves in holy rivers it is often resorted to of late than burning. The blind father and mother of the young anchorite, whom DASARATHA slew by mistake, burnt themselves with the corpse of their son. Persons afflicted with loathsome and incurable disease have not unfrequently caused themselves to be buried alive. And among the lowest tribes of the inhabitants of Berar and Gandivana; suicide is occasionally vowed by such persons in return for boons solicited from idols, and is fulfilled by the successful voluntary throwing himself from a precipice, name KALA-BHAIRAVA, situated in the mountains between TAPTI and NARMADA rivers. The annual fair, held near that spot at the beginning of spring, usually witness eight or ten victims of this superstitious belief.

In the world of today, even though suicide is illegal and against the moral code, yet we still find cases of suicides in JAGATHNATH DHAM at PURI (ORISSA). In the days of RATHA JATRA, when the royal chariot of Lord Jagathnath, his sister Subhadra and the elder brother

BALARAMA, is taken out, people, in the belief that they will attain SALVATION, (MOKSA) fling themselves under the gigantic wheels of the chariot and commit suicide.

Now the question is even though these cases of suicide are not quite similar to the suicide that we are concerned here with, yet I cannot refrain from briefly bringing a few sketches since they are also voluntarily putting an end to one's own life. Are these suicides at all legal or moral? The answer would be - not at all! There are no proofs of attainments of Moksha by such persons. They are also against the moral codes because to live life given to us by whomever, ought to be lived to the brim. We should accept life with all its happiness and sadness interwoven and go through all the tragedies that come with life with dignity.

Buddhist View: The Buddhists view on suicide is somewhat obscure. We find references of suicide in the Hinayana school of Buddhism.

In the Theravāda we find traces of suicide in the theory of rebirth, to be more precise, in the theory of suffering.

Craving for destruction is the desire that something unpleasant may not come to pass - an attitude by

which the incident feared gains power over one's mind even before it becomes a reality. In its specific connotation craving for destruction is the reversal for craving for existence, namely the urge towards self annihilation. Suicide however does not lead to liberation¹⁴ as it destroys only the body but not the Karma; it merely causes a change in the form of existence. The unliberated suicide after rebirth will again encounter his old Karma until he has finally lived it down and exhausted its karmic effect. Liberation from the samsāric chain of rebirth is possible through extinction; that is, nibbāna. But nibbāna cannot be realised through craving: On the contrary, it is the result of the annihilation of craving.

A longing for a future life (bhavatrśnā) is universally prevalent. A happy person desires it, for he thinks, he will be happier there; an unhappy person wishes it, for he believes, he will have no suffering there. To be reborn here or elsewhere in order to enjoy more happiness is a type of longing. Many perform good deeds to obtain a happy life here or hereafter. Buddhism, while welcoming the

14. Except in the case of a saint who, after the annihilation of craving and ignorance which compel to rebirth, is not threatened by new becoming. His suicide is not motivated by craving for destruction, but is the result of wise reflection - of reason, such as incurable illness.

idea of good deeds, warns that one should not long for, for every longing is a bond of suffering. The longing for worldly pleasure and possession is not very different from longing for similar things in heaven. Both are remediable by practising chastity and non-possession.

The human longing for the satisfaction of desires, here and hereafter, is very strong. On account of dissatisfaction and frustration in life, sometimes one wishes not only to destroy oneself, but others also. This is also a type of longing, a longing for annihilation *vibhavaṭṛṣṃā*, one can remove it by practising non-violence; for a Buddhist, both the self destruction and the destruction of others are two forms of the same idea, that is, violence.

On the foundation of these principles, a Buddhist builds himself up and his society, causing them to develop ultimately into an order of universal community. In this society, he lives a life free from suffering caused by narrow outlook on life which is determined by the ideas of nations, tribes, religions, castes or colours.

At the time of initiation a lay member of the Buddhist community learns five precepts viz.:

- (1) Abstinance from taking life.
- (2) Abstinance from theft.

- (3) Abstinence from adultery.
- (4) Abstinence from telling lies.
- (5) Abstinence from intoxication.

These are called the 'five precepts'. The first precept inculcates the virtue of non-violence, the second non-possession and third chastity, last two stress the speaking of truth and abstinence from intoxicant.

The Dhammapada says:

Yo Paṇam ati pāṭeti, musāvādam ca bhāsati
 Loke adinnaṃ ādi yati, paradāram ca gacchāti
 Surā-meraya-pānaṃ ca ya nara anuyaṅ jati
 Idh, evaṃ eso Lokasmiṃ mūlaṃ Khanati attano.

"Whoever in the world takes life, speaks untruth, takes that is not given to him, and commits adultery, and a man who is addicted to intoxicating drinks, digs up his own roots in this very world. Gāthās (246-247)".

The Madhyama Sūtra (the Satyair̥ bhaṅga Sutra) on the four truths also advocates some elucidations which includes Right work or action means abstaining from taking life.

According to Buddha himself, if a man or a woman takes life, be it his own, he will be reborn in misery, an

evil destiny, ruin, purgatory or failing that, if he or she is again born as a human being, it will be as a short lived one.

In concluding this view, I would like to bring to the forefront the two Buddhist attitudes towards suicide: (1) CHANNOVĀDA SUTRA, (2) SUTTAVIBHANGA. The former advocates suicide while the latter refrains from taking life.

Channōvada Sutra narrates the story of the elder Channa, who when sick was instructed by Sāriputra, to commit suicide and actually did so.

The latter consists of a classification of offences in eight groups, beginning with the four Paṛājika rules on offences that involve exclusions from the order. These are incontinence, theft, taking life or persuading to suicide¹⁵ and false boasting of supernatural attainments.

Jainist view
Jain: The profound belief of the Indians in the law of Karma or result of action that it ties man to the cycle of rebirth, and that it, through the cessation of life, action and its resultant Karma could be ended, resulting in

15. This shows the Buddhists attitude towards suicide. There are, however, several legends of monks committing suicides at the moment of attaining 'Arahatship'. Naturally in such a case no rebirth is possible.

the less danger of rebirth. This was what encouraged suicide as a form of prudential insurance. The recorded death by suicide are those of Mahāvīra's parents, who, according to the svetāmbara belief, died of voluntary starvation: "On a bed of kuṛsa grass they rejected all food, and their bodies dried up by the last mortification of the flesh which is to end in death."¹⁶

To fast unto death is a view taken by the Jains reduce the sum of our Karmas. This again can be performed in two ways: exterior or bodily (Bāhya) and interior or spiritual (Abhyantara). The first bodily austerity is fasting (ANASĀNA). One may take a vow to fast for a fixed period (ITVARA) such as for a day or for thirty days, or one may take a voew to fast for the rest of one's life (Yāvatkathika). Of course, the latter vow is more beneficial and destroy far more accumulated karmas, so when a monk is very ill, and knows that he is going to die, he takes this vow. If he has taken the first vow, he may eat nothing but may drink water. But the second view excludes water or any liquid as well as all food. This, of course, amounts very often to suicide by starvations.

16. Āiārānga Sūtra, S.B.E. xxii, p. 194.

UTSARGA, according to Jainism, consists in showing and feeling absolute indifference to the body and its needs. Only ascetics as a rule practice this in its furthest development (PĀDOPAGAMANA SANTHĀRO) which leads to death. The Sadhu climbs some sacred hill such as Pārasnātha, Gṛnār, ⁱ ⁱ ⁱ or ^{at} Satruñjaya; and there, in order to do nothing that may lead to Karma, he does absolutely nothing at all, but awaits death. Without moving hand or foot, head or body. The influence of a negative religion is then worked out to its irresistible conclusions, and with all the sorrows and ills of the world waiting to be relieved, the soldier deserts his posts in order to free his own soul from suffering.

From the above it may be concluded that death by voluntary starvation seems to be religiously accepted form of suicide in the Jaina ethics. But in the present world, it is a case of suicide. It cannot in any way be considered as legal and ethical. It violates the ethical codes and is against the Principle of value of life. Jainas seem to opt for suicide so as to put an end to the accumulations of Karmas leading to rebirth. To prevent rebirth, we can do good deeds and try to lead our lives in the right way. In no way can suicide be upheld and an answer to put a stop to sum total of Karmas.

Tribal View : (Khasi) A Khasi believes that God made him, which means that he made him a full-fledged man to inhabit this world. A man belongs to God during his life time as well as when he has left this world. After he leaves this world he goes to "God's house" to spend his time chewing betel (bam kwai ha iing U Blei). The body will decay and perish but the soul belongs to God and to him shall it return.

The Khasi thinks that man is a special creature of God. Therefore, being a special creature and incomparably higher than any other creature, he cannot ever commit suicide. Suicide is a gross sin for the Khasi. Those who commit suicide, their souls wander for ever and never gain peace. This is because God has forsaken him or her for this sin.

View of Stoicism: The Stoics do not favour end of one's life voluntarily at all. According to their philosophy, one is not encouraged to lament the loss of friends, honours or the end of life's drama. They believe in two ideals: (1) Nothing is evil in itself, and (2) life requires a lot of fortitude. Yet neither goes well with suicide. Since they believe that nothing is evil in itself, the evil must be so grievous that the individual escapes through suicide.

It is the strength of will that makes an individual grow in power and however unendurable the calamity might be, one should do one's best as long as life and limb lasts. If we can uphold this in our lives, believes the Stoics, we could provide a definite case against suicide.

Suicide is definitely against ethics. One cannot do away with one's life when he or she feels over burdened with life's misery. I cannot but disagree (reasons shall be given in the conclusion) whole heartedly with the Stoics that suicide proves nothing, but cowardice in facing physical pain or dishonour, weakness is not being willing to make the best out of a bad situation; loss of integrity in declining to carry out one's duty in uncomfortable circumstances; irresponsibility in not being willing to accept the consequences of one's own action; selfishness in seeking peace for oneself while leaving problems to one's survivors.

Rationalist^{view}: The rationalists are totally against suicide. According to them; suicide is an act of madness, temporary insanity. When one is in an unstable condition, one is able to commit suicide, they say. When the mind is troubled then reason is lost and our senses are clouded. It is at those turbulent moment a person thinks and act in an abnormal way. This happens when she/he is unable to cope up

with life's stresses and gives in. Cases such as broken home often leads children to this drastic step.

According to the rationalists, suicide is always immoral and an act of the irrational mind. For them, when one tries to attempt suicide (if possible) he or she should at once be taken in for counselling. When the mind is put to rest, reason takes the supreme reign and it is then that we realise how stupid our rash actions were! Life is always worth all its misfortunes, they reason. All troubles come to an end; we can always start afresh. It is true that every cloud has a silver lining. Life too, has always something to offer.

Kantian View

Kant: Kant is of the view that it is a duty to preserve one's life and moreover everyone has a direct inclination to do so. The over anxious care which most of us take of our lives has no intrinsic worth and the maxim of doing so has no more importance. Kant says, that such people preserve their lives not from a sense of duty, not according to duty. But a man who preserves his life from his sense of duty in spite of being in all adversities and hopeless sorrow then, says, Kant, his maxim has a moral importance.¹⁷

17. Kant, Foundations of Metaphysics of Morals (Trans. Beck), p. 59.

Suppose, for instance, a man is dying a painful death, and also he is not a religious man, he takes relief in suicide. He feeds himself with an overdose of his own medicine and bids adieu to his miseries once and for all. Would it be moral for him to do so? It would be unethical for him to do so. Man is born to die one day. Therefore, it is against nature to try and put an end to one's life even if one is in extreme pain; for death is bound to come one day to give him supreme bliss and relief. So why not bear this pain and wait patiently with joy for the inevitable day.

"Do not commit suicide", is a categorical imperative, and like all such imperatives it offers no rewards beyond morality itself. One might next question, "what does one accomplish by being moral?" One achieves, "Good will". This development is open to the wretched man. By committing suicide he corrupts it. By adhering to the moral laws and living, he enhances it. He therefore makes himself worthy of happiness. Next important question worthy of an explanation is "what may I hope?" It is hope which prompts us to live and it is hope again which prevents us from committing suicide. Kant says that certain "Moral postulates are the answers to this questions: Two of these are the (1) existence of God, and (2) Immortality of the

soul. If a person is worthy of happiness then he or she may hope that a supernatural power exists that will provide the rewards so lacking in this life. If a good will has been achieved, one may hope that it will not be terminated by death and will have an endless duration for its continued development. There are more hopes and have no bearing on the ethical decisions themselves. But one who feels that the moral enterprise is real and who has any sense of a just and reasonable universe, may, to that extent indulge his or her hopes."

What ethical factors are relevant to the decisions of suicide? There are positive as well as negative factors. The positive factors are: the belief that continued life will be a crushing burden on one's loved one's; a prisoner's expectation of breaking under torture and betraying comrades; the belief that death will spare one's family and friends the misery of an exposure of one's secret crimes. It is said that Fredrick the Great carried a little vile of poison during the Seven Years War, intending to use it, if captured, so that his country would not have to pay a ransom. Now, would we dare to call this suicide, can we reproach him for this, who can tell what else he ought to have done?¹⁸

18. Fredrick Pauken, A System of Ethics (New York: Charles Scribner's Sen, 1899), p. 588.

The negative factors are the knowledge that one's loved one will experience great misery from one's untimely demise; knowledge that the insurance company will not pay off in cases of suicide; recognition that one will have broken a promise or placed oneself in a position of being unable to keep a promise. When the interests of others are seriously harmed (not simply inconvenienced) the individual is immoral to commit suicide. Where they are not, the individual is not immoral in that action.

Contemplating on suicide, I have been wondering about problem of 'Self sacrifice'. Whether people who sacrifice themselves for the sake of others commit suicide; whether they are obligated to commit suicide? and whether such acts are immoral?

We do praise the person who does an act known to be fatal in order to save others. But do they have a right to his or her sacrifice? Probably not. Am I obliged to give up my only and last kidney to save the life of my twin brother? To speak the truth, I don't think I or anyone for that matter is obligated to such self sacrifices better known as super-erogation - they are admirable, but go beyond the requirements of duty.

is view

Schopenhauer: Another Schopenhauer, one of the greatest pessimists and a truly great philosopher, says that the cause of our misery is the blind and insatiable will at the heart of human nature. We all feel ourselves to be the centre of the world and desire everything for ourselves, destroying everything in our way. There is no relief no satisfaction. "Unrest is the mark of human existence. We are like a man running down hill who cannot keep on his legs unless he runs on".¹⁹

Schopenhauer believes that human life is some kind of a mistake and yet advocates against suicide. He says that suicide is only a means of escape, the greatest piece of cowardice, that only a mad man could be guilty of.

View

The Ancient .: . had a mere reasonable view of suicide. They believe that when one reaches that point, where one can no longer lead one's life with dignity, one should depart. Death will come one day or the other; it is inevitable. If it is so, why should not an individual choose the best time for it. It is not unethical to choose one's own death and die in a cheerful and dignified way.

19. Schopenhauer, quoted in Alburey Castell, An Introduction to Modern Philosophy (New York, Macmillan Co., 1943), p. 146.

In this section, I will concentrate on the following:

- (1) Definition and distinction among the following terms Euthanasia, allowing someone to die, mercy killing, and mercy death.
- (2) Critically analyze and evaluate mercy killing in the light of the "hospice approach"²⁰ to care for the dying.
- (3) Explain why allowing someone to die has become an issue in the light of advanced medical technology and discuss a dying person's right to refuse treatment.
- (4) Deal with this particular question, "Is mercy death morally justified?"
- (5) Show how the five basic principles apply to mercy killing, mercy death, and allowing someone to die.

The all important question is 'can someone sentence you to death? Would you decide to hold on or let go?' Each

20. Hospice Approach to Care for the Dying: Hospice literally means a place of rest and refuge for strangers or pilgrims, the hospice approach to care for the dying was initiated at St. Christopher's Hospice in London by Dr. Cicely Saunders.

day newspapers carry gory accounts of women being beaten and burned or murdered in unimaginative ways; the latest being the 'Tandoor' murder case in Delhi. Female foeticide is an all too, common occurrence in India and other parts of world where males are illogically revered. People kill themselves and each other for money, status, business, love or sex. We read about all these stomach churning happenings in the morning, over a cup of tea, with only a momentary feeling of revulsion and horror. It even becomes a conversation topic at a cocktail party the same evening. How easy it is to pass judgements when you are not personally involved.

At the same time most people have mastered the art of closing their minds to a number of topics which make them uncomfortable. Their ostrich-like behaviours become all the more pronounced when asked to give their opinions on mercy killing or euthanasia.

To many a lay person the subject is too volatile and uncomfortable. The thought which probably occurred to most people was, "will I ever be in a position where I might be totally helpless?" The natural optimism takes over and they say, "of course not. I will never have to think about it. Mercy killing is only for other people".

According to Fishbein's Medical and Health Encyclopedia, "Euthanasia is a method or act which brings about a painless death by someone who has undergone prolonged suffering and pain, attendant on a terminal disease. Euthanasia is also referred to as mercy killing". The word is originally derived from a Greek word which means "good or happy death".

There is no doubt that only God has the right to take away life. But with modern medicine and mechanical devices, people with incurable diseases, are forced to linger on, waiting indefinitely for the welcomed death as it waits in the shadows. Nature is no longer allowed to run its natural course. Along with the patients, the relatives undergo their own emotional and financial trauma with disrupted lifestyles, even though they feel immense love and sympathise with their sick relative. We seldom are able to face certain unpalatable truths. Not everyone can afford round-the-clock professional nursing care at home and when you have to personally nurse a terminally ill patient day after day, months after months, year after endless year, you begin to think thoughts which would in normal circumstances horrify you. Euthanasia needs public discussions not necessarily with the intention of implementing it on a regular basis, but to give us a deeper

emotional, social, medical and legal understanding of the subject. At the same time euthanasia must not be used as a perfect murder weapon by unscrupulous relations. Here, the law can help by insisting on certain legalities, and of course the MORALISTS!

Fortunately (or unfortunately) humans are gifted with emotions and it is difficult to be practical when faced by the sufferings of a loved one. No one wants to take a decision for fear of appearing to be merciless and unemotional, or not wanting to add to their own "Karmas".

But I would like to give the following examples of serious considerations, even though hopefully, you will never have to face the option of choosing between a wretched life or a welcomed death.

Should a severely retarded baby be allowed to exist like a vegetable? Who will look after her once the mother is no more?

A patient with severe brain damage is in coma. Should such patients be kept alive on life supporters?

There are repeated pleas from a loved one, to be put out of his misery and be allowed to die. You cannot bear to see him suffer too. What would you do?

Ideally, love should be kind and compassionate. In what way you decide to put it into practice is, of course, your choice.

Euthanasia can be divided into two groups.

- (1) Direct, positive or active.
- (2) Indirect, negative or passive.

In the former, shooting a person, injecting poison or air into his veins or purposely administering a massive dosage of narcotics would amount to direct euthanasia. In the latter, life supporting systems such as respirators, intravenous, feeding or heart pumps are either not started or stopped in order to allow a person to die.

Since "euthanasia", is such a two edged sword cutting both towards killing someone and allowing some one to die, it might be better to talk in terms of "mercy killing", on the one hand, and "allowing someone to die", on the other.

Many people particularly medical practitioners would disagree with this division of the meaning of the term euthanasia and state that it merely stands for good medical practice, in other words, allowing people to die of natural causes, without using any extraordinary or heroic measures to keep them alive!

I am concerned with the all important question of "morality" - whether euthanasia is ethically justified? Well, it is really difficult to question the validity of the motives behind the desire to end the misery and pain of others. With the limited knowledge that I have, I will try my best to justify these motives. Since we reverse life and yet accept death; since we can bring happiness and eliminate pain, both for the patient and their families, creating harmony where there was disharmony, and ending lives lacking excellence while enhancing other lives with excellence, since we can be just and fair not only to patients and their families but also to the rest of the society on whom sick and dying patients are often a "burden", and as we can at least give the dying patients the option to die and also the exact time and mode of death it seems that euthanasia in its voluntary form (patients and family request is morally justified).

For instance, suppose a person has met with a serious accident and there is no hope for him to recover, even if he does recover with medical aids he is confined to his bed and dependent for his slightest needs on others. Would it not be better to allow the patient to die a glorious death rather than try and prolong a vegetative life? In such a case, I personally support euthanasia for I

do not think it unethical or a "murder". When there is no proof for the existence of our creator how can we ever go against his wishes? and wait stupidly for a death that seems to be far behind the horizon! If ever I be in such a situation, I would request my doctors to put me out of a miserable existence.

I would like to quote the views of some reliable people to help us understand the ethical question that euthanasia would give rise to.

Swami Vagenshanand the Head of the Ram Krishna Mission Khar, says, "Mercy killing is to be assessed in individual cases sympathetically. If you see that there is terrible pain and there is no hope for life, life can be terminated with the consent of the guardians and the guardians should cooperate in this matter.

And again, new borns in an advanced state of mental retardation, or those who have met with an accident and have no hope of recovery, their guardians should take immediate action, otherwise medical science will prolong the life and the treatment will be needlessly expensive. In such cases, it is better to opt for mercy killing.

When a person's illness begins to take a heavy toll on his threshold of bearing pain and his family's reserves

of coping with it, mercy killing could be considered".

Sudhir Shah, a renowned advocate and proprietor says that "if you believe in euthanasia, you should write a letter to your family physician or to the family lawyer, stating that in case you go into a coma or unable to say anything or decide your fate, they should relieve your pain with mercy killing".

He further adds that he does not see anything illegal in this, particularly, in view of the Supreme Court and Bombay High Court in deciding that an attempt to commit suicide is not an offence. He also thinks that a law should be created on his subject taking into account the necessity of such things and also to make sure people do not take advantage of mercy killing because some one may want to deliberately eliminate somebody under the guise of mercy killing.

According to a well known doctor, "Euthanasia is the individual's ultimate right to decide his own fate. To be allowed to die with grace and dignity. To be released from physical pain and agony, and finally the degradation of dependence and helplessness. Theologicians and legal exponents stand firm in their convictions that God is the Creator and Giver of life and is the sole factor in the question of death...."

Euthanasia is worth considering whenever we are faced with the following three situations:

(1) At the birth of a physically and mentally handicapped child, when infant is unable to even grow to an adult who can make his own decisions, the question rests on the parents and the doctor. What is the quality of life that the child can expect and its consequent impact on the parents and society? The blessing of an early painless death is to be balanced or weighed against the purposeless life, the prolonged suffering and humiliation of the child and its impact on the people around. In addition, the case of such a child after the death of its parents is also to be considered.

(2) The second important occasion is after an accident or unforeseen mishap leading to brain damage. Brain damage being an irreversible damage, no amount of medication can cure it. In such a case, euthanasia is a blessing since medical treatment has nothing to offer and the patient is then allowed to die in comfort and dignity. Any treatment offered just to prolong the suffering that precedes death.

(3) Finally, at the terminal stage of an illness like cancer. If the patient is conscious, he can make his

own decision and refuse to consent to any more treatment. Good terminal care can reduce the pain to some extent, but the patient is bound to suffer. Euthanasia is a relief and end to agony. With the changing times, when suicide should no longer be punishable, mercy killing or euthanasia, in certain cases, will be a step forward in the right direction.

Finally Reverend Jeffery Bande, (Presbyter-in-Charge of St. Stephen's Church, Bandra), is of the opinion that the church is against euthanasia. He says, "I feel that God has created man to enjoy life, and he has not empowered man with the authority to take it away. As far as possible, man must make every effort to restore life, even in the face of suffering. We are to enhance this creations duly and compassionately, till such a time as the end comes... There is the moral angle of euthanasia. The moral angle is that each man is a caretaker of life and he is accountable and answerable to God..."

The phrase "mercy killing" implies that a person is to be killed because his or her life is one of pain, suffering or misery, or is, by some human standard, meaningless. Those who advocate mercy killing state that

the difference between this type of killing and killing for revenge out of hate, in aggression, or in self defence is that the motive is one of beneficence, that is, the killer intends to do something "good" for someone else, usually, to "put him out of his misery or end his suffering." One of the more common arguments for mercy killing is that when our dogs, cats and other animals are too old, in pain, or irremediably ill, we put them out of their misery, so we should at least do as much for our old, sick miserable, suffering fellow human beings. In other words, what we do in kindness for less important beings, we should also extend to more important 'human beings'. How and where did such a position come into being, and what caused it to be so freely and strongly advocated?

Another serious moral issue - is allowing someone to die; when, how or under what conditions should one be allowed to die. Do we have any right whatsoever to allow someone to die or to prolong his/her life? Should we prolong life of a dying patient with life supporters, knowing very well its uselessness or should we cut short his life - is the moral dilemma.

For the normal and sound, option is always to refuse medical treatment so as to put a speedy end to his or her prolong illness; but for the unsound mind, we can do

nothing, for unstable mind cannot and do not think for himself or herself. What do the medical branch have to say to this! I am of the opinion that a person who is of unstable mind is next to being a vegetable and therefore a burden to himself as well as the society. It is not morally wrong to put an end to such miserable and worthless lives! Same is the stand for the old and dying patients (such as cancer and aids). If such a patient has a cardiac arrest, it would be sheer foolishness to try and resuscitate him or her with heroic procedures such as radical heart surgery or open heart message. Therefore, allowing someone to die at the appropriate time is justified and dignified death too! This step according to me is also moral and medically sound.

The most serious moral problems in these areas arises when the consent of the person concerned cannot be taken. This would then amount to killing rather than mercy killing for it would be ending a person's life against his will or without his will being exercised.

For instance, if a person has an irreversible brain damage due to an accident and is in 'a coma'; what good would it do to him by keeping whatever is left of him with aid of life supporters. He or she already has departed from this earthly life, for it is almost next to impossible to

make him or her conscious again; thus would it not be best for us to allow that person to die?

A still larger problem exists, when one has to make a decision for someone else. Cases of unborn fetuses, newly born deformed babies, older people or mentally insane people.

For moral question in cases of the unborn fetuses is (1) are we ethically right in taking away the life of the unborn child? (2) Does the unborn child have any right to life at all? (3) Can we or are we authorised to determine the quality of life of the unborn child such that it should not be allowed to continue?

The answer of these questions are: (1) We can let nature take its own course allowing a deformed or senile person to live, but not preventing and disease (for example, cancer) that may come along so that life is not prolonged by any medical means; (2) We can let each person's representative (usually next of kin, such as wife, husband, parents) decide for him; (3) We can let the doctor's involved or a panel of doctors decide; (4) We can let the state, through the legal process decide; (5) We can let some combination of any or all the above decide.

Let us take each of these cases. In the case of the

unborn child, in my opinion, if the fetus is deformed or is a carrier of hereditary abnormalities, or is a case of genetic defaults, then abortion should be recommended. The fetus ought and should be aborted. What purpose would it serve the society? Would it not be a burden to itself and its next kin? In such cases it is for the parents to decide the fate of their unborn child. Though we are in a way playing 'God' by manipulating nature's course, yet there seems to be no justification in bringing such a child into this world and making him or her lead a vegetative life. Speaking of ethical rights of the fetus, yes, the fetus already becomes a human person well before birth. Indeed, it comes as a surprise when one first learns how early in its life it begins to acquire human characteristics. Therefore, since every person has a right to life, the unborn life, right from the time of conception, too, has a right to life. But what about the mother having a right to decide what shall happen in and to her body; I think everybody would grant that much to her. Even though it is the woman who decides; yet the decision may or may not be a moral one, involving as it does the life and the quality of life of both the woman and her prospective child. Here as much assistance as possible should be given to the woman to make this very crucial decision. Of course, she really has only two ultimate alternatives: to abort or not to abort

but there are many important consideration that will affect both of which she chooses. Again, this counselling and information must be fair, full and objective on both sides of the issue so that the woman has enough correct information from which to make a rational moral decision.

The advancement of Science and Technology has made it possible for us to know (after sixteen weeks) whether a conceptus will be born with certain incurable disease or deformities. Such a method is called amniocentesis. When such a case is found, then the question of abortion arises, thereby avoiding both the difficult mercy killing and also the kind of life that the prospective child and its family would have to live given its limitation. But the difficult decision to commit a mercy killing is replaced by the difficult decision to perform an abortion which ends a human life as much as in the mercy killing case except that in the abortion situation, the human life would be less developed.

Can abortion be morally justified when it is discovered that the conceptus, when, born will be defective or deformed in some serious way? Even though the woman's decision is final in my opinion, the father's view should also be taken into consideration (in legitimate case). The ideal decision would of course be - to terminate or

eliminate the defect or deformity prior to the child's birth. If this was possible we would not be in the moral dilemma - 'abort or not to abort?' But as we are yet to advance in this field, the best solution in such a case would be to abort for we have no right to let the child live a fruitless life.

The woman who is to abort her unborn child has first to realise that abortion would amount to the taking of a human life and therefore, a violation of the Value of Life Principle. She should next ask herself if an exception to this principle in her situation is morally justified and if so, how? She would need appropriate information and counselling on what her prospective child's limitations would be, and then she would need to determine whether, despite these limitations, she and her family would be able and willing to raise such a child; so that their lives and its life would be as meaningful as possible. If the family is unable or unwilling to raise the child, then she would need to consider whether a good adoption could be a certainty and whether such an adoption would bring a meaningful life to the child. She should also determine what help would be available to her if she and her family decided to raise the child, what institutional accommodations could be made, and whether such accommodations would

be meaningful and enriching for the prospective child.

The question here is how many institutions are available for such children especially in a country like India, where millions of people can barely feed themselves and a single child. Further retarded children would be almost a miracle compared to the number of such children available for adoption. All these facts put together seems to give a green signal for the prospective mother to go for an abortion! In my view, yes, abortion is very much a crime, murder of an unborn child! Thus instead of killing a life and going against a moral code, we should all go for a genetic screening (if possible) and a counselling before bringing lives into this world. What right do we have in doing away with a life which cannot assert its own basic right to life!

Infanticide is surprisingly found even in the early days as the Vedas. This practice was found among the tribes of RAJAKUMARA and RAJAVANSA, who inhabited the districts in the neighbourhood of Benaras. But recent researches of the British period, shows the existence of infanticide in the five provinces of Gujrat also.

To bring this chapter on 'suicide', to a close, I would like to add the new dimension of the Supreme Court to

the term secularism by which it no more connotes mere respect for all religions.

Keeping a debate on secularism alive, the court has ruled that suicide was neither against secularism nor against any religion.

"Suicide knows no barrier of race, religion, caste, age or sex"²¹ declared Mr. Justice B.L. Hansaria and Mr. Justice R.M. Sahai while upholding one's right to commit suicide.

Whether suicide is against religion? No, declared the court while relying on article 25 of the Constitution, which guarantees right to practise religions of one's choice for all.

The court further added that one who takes his or her own life may not really be taken to have put an end to his whole life. There is thus nothing against religion in what he does.

Speaking on Indian mythology, the judges said that Lord Rama and his brothers took JALASAMADHI in river Sarayu, near Ayodha. According to ancient history, Buddha and Mahavira achieved death by seeking it.

21. Vatnagar Rakesh, "Supreme Court uphold right to commit suicide", Times of India, News Service, April 29th, 1994.

So, there is 'non-religiosity' in the act of suicide so far as our social ethos were concerned, added the court in its judgement which may evoke widespread debate on the reasoning it had given to support the act of suicide and this exactly was what happened for which the Supreme Court had to issue a contradictory judgement on March 25th, 1996, which says that "No person shall be deprived of his life or personal liberty except according to procedure established by law".²² (Article 21 of the Constitution). Therefore, the state is constitutionally bound to protect a citizen's life howsoever miserable it may be.

In the conclusion, I would like to state that, I had started the chapter with Hume's classical essay, Of Suicide. I then have discussed the following:

1. What moral problems are involved when one voluntarily takes one's life?
2. What is meant by "defence of innocent: assisted suicide?"
3. Ethics of mercy killing.
4. Lastly allowing someone to die.

22. Vatnagar Rakesh, "Suicide attempt is punishable by law", Times of India.

Hume says suicide is not criminal but a means to an end to suffering. A person is able to end his life voluntarily when his life is devalued.. He is no longer a person to himself or to his fellow men. He is but a vegetation. Yet moral question arises; question such as, are we justified morally in taking our own lives? This question has a religious connotation. We have been taught that only our creator alone can give and take.

The second question would mean that no person's life is taken away involuntarily. Since every person's life is a value his/her life cannot come to an end without a purpose. However, there is a slight reservation here, that is, one's life could be ended when his/her life ceases to be of any value. Euthanasia ought to be permissible in those cases where there is absolutely no hope of a revival. This is what I have also meant by mercy-killing and assisted suicide. There is a slight difference between the two. In assisted suicide the patient appeals to the practitioners to help him/her to bring about an happy end. Whereas in mercy killing sometimes the patient does not even have the knowledge of his speedy death. Then certainly the ethics of such death would amount to taking away of a life, murder.

What is meant by allowing someone to die? Here, I mean those that are terminally ill. Knowing that they would die anyhow, we allow them to die earlier only bring an end to their untold sufferings of the conscious life.

CHAPTER V

LIFE AND DEATH

LIFE AND DEATH

Questions about the meaning of life, not always troubled people as they do today. Their prominence now may be attributed to a number of related developments. There is the widespread loss of religious belief, of a kind that gave - or was thought to give - a meaning to life. Even those who continue to believe are likely to have a more critical attitude to religious answers than was previously the case. Then there is the more general questioning of accepted practices and traditions, whether religious or otherwise. The question "why?" obtrudes itself everywhere, and answers are not always available.

In this chapter, I will probe some questions of life and death. There is not more important to human hearts than the question of life and death. Does the soul die? Do we cease to exist with the body? After death, what happens to this life of which we are now conscious?

The profound change in man's conception of himself are due to modern scientific ideas. Our planet, we learn, is an insignificant entity compared to the vastness of the universe, and there is no reason to think that life and

intelligence are peculiar to it. The origin of life, it appears, was due to some accidental combination of chemicals in a 'primeval soup', and the human species developed like all others, by a mechanical process of natural selection. The very concept of explanations has changed, into a less 'meaningful' one. It was thought, prior to the age of modern science, the explanations must be in terms of purpose; an object or phenomena was to be explained by saying what it was for, what purpose it serves for man or beast or God. But modern laws of nature are not, by and large, couched in these terms; they are not about ends or purposes, but about observed regularities. Such an explanation says in effect no more than that a given phenomenon occurred because things always happened like that, referring one brute fact (a particular one) to another (a general regularity). Hence it is sometimes said that modern science is 'merely descriptive'; it tells us how things happen, but not why.

There are some of the ways in which there is, or appears to be, less meaning in ourselves and the world in which we live than was once the case. It would be a mistake, however, to think that question about the meaning or purpose of life did not occur to anyone before modern times. Aristotle, for example, raised the question why one

'would choose to be born rather than not', and in reply quoted the view of a still earlier thinker, Anaxagoras. The purpose of life was, indeed, one of the main themes of Aristotle's ethics. He held that this purpose was to be found in the essential nature of homo sapiens. Human beings, he argued, have a special 'function', to do with rationality; and fulfilment was to be found by living in accordance with that function.

Many modern philosophers have treated questions about the meaning or purpose of life with suspicion, and there are good reasons for this. A question 'what is the meaning of life?' may itself be without meaning. Such questions sound highly important, and it may be thought that a philosopher who does not address himself to them is hardly worthy of this discipline. But this question, like others, ought not to be pursued before establishing what - if anything - it means. In this matter, as elsewhere in philosophy, it is advisable to follow Wittgenstein's recommendations.

'To bring words back from their metaphysical to their everyday use' - in this case the word 'meaning' itself.¹

1. Wittgenstein, Philosophical Investigations.

If the questions like 'what is the meaning (or purpose) of life?' have no clear meaning, they may still serve to express some kind of unease about the human condition - a feeling that there is (to put it vaguely) something wrong with life.

Perhaps some of you will have felt that I have been shrinking the real problem. To many people the crux of the seems - How can there be any meaning in our life if it ends in death? What meaning can there be in it that our inevitable death does not destroy? How can our existence be meaningful if there is no after-life in which perfect justice is metted out? How can life have any meaning if all it holds out to us are a few miserable earthly pleasures and even those to be enjoyed only rarely for such a piteously short time?

The moment we are made to realise that there is no God, we discover that there is no paradise. Then it becomes impossible for us to carry on like Kirilou in Dostoevsky's novel, The Possessed, committed suicide as soon as realisation of the non-existence of God or paradise drew on him.

What is the significance of death in our lives? Is death an evil? Does it make life meaningless? Would life without death be meaningless? According to Epicurus (342-

270 BC), death - 'is of no concern for us; for while we exist death is not present, and when death is present we no longer exist'.

If the future holds travail and anguish in store, the self must be in existence, when that time comes, in order to experience it. But from this fate we are redeemed by death, which denies existence to the self that might have suffered these tribulations. Rest assured, therefore, that we have nothing to fear in death. One who no longer is, cannot suffer, or differ in any way from one who has never been born, when once this mortal life has been usurped by death, the immortal.

There are many areas in which one must make some very important decisions concerning the lives of others and oneself. The very existence of life, as well as its biological quality and continuation, is well within human control. Here again it is obvious that a responsible ethical judgement can best be made in the light of knowledge of relevant facts and sensitivity to ethical standards. Often the decisions are not easy. The questions are not momentous, however, that we should be willing to give them the careful study and deep thought that they require.

The study in the area of what is known as 'GENETIC ENGINEERING', will help us to understand the problems such as existence of life, its biological and its continuation as well as its extinction. Biologists have discovered many of the genetic principles that determine our physical characteristic. What one is at birth is increasingly subject to prediction and control. To what extent should this knowledge be used to prevent undesirable traits and to produce desirable traits? Should individuals who intend to have children subject themselves to genetic counselling and screening? Should a consented effort be made to improve the human race or to prevent its deterioration?

Before answering any of these questions, my first task would be to explain the term "Genetic Engineering". We have often come across this term, yet many of us are totally vague about its actual meaning. Genetic Engineering is based upon the pure science of biology, especially called 'genetics'. It seeks to apply this knowledge in at least two ways:

1. In the detection, treatment, and elimination of genetic diseases.
2. In the artificial production of various forms of life. The definition of Laurance E. Karp covers

both: 'We might consider Genetic Engineering to represent any attempt to modify the structure, transmission, expression or effects of the genes the ultimate directors of heredity'.²

Genes are composed of DNA (Deoxyri Bonucleic Acid) and subsist on chromosomes as beads on a chain. One can only estimate the number of genes carried by human beings between (50,000 and 10,00,000) but the number of chromosomes is fixed at forty-six. Half of our genes (and chromosomes) comes from each parent. Each cell of the human body normally contains a full compliment of genes and chromosomes. What do the genes do? They direct the production of particular proteins or parts thereof "some of these proteins order embryonic development; other are enzymes (catalysts which control cellular metabolic reactions); still others become part of the body structure"³ some genes will direct the formation of one organ, others the formation of another.

Genes and chromosomes occur in pairs, a member of each pair inherited from each parent. Members of a pair of

2. Karp, Genetic Engineering: Threat or Promise? p. xii. This section and the next are deeply indebted to Dr. Karp's excellent book.

3. Ibid., p. 3.

genes are called ALLELES. If both members are the same, the person is said to be HETEROZYGONS for that gene: one must prevail (dominant gene) and the other "remain silent" (recessive gene).⁴ Presumably all genes are either dominant or recessive, so the only way a recessive gene can direct matters is when the same recessive gene is inherited from both parents. Most observable manifestations of genetic actions (traits or characters) are the results of several different genes and are called POLYGENIC: A few traits however, are linked to one gene or a single allelic pair and are called MONOGENIC - since the gene supply for any individual is large and the number of possible combination for polygenic traits is vast, offsprings can differ substantially from their parents, despite the fact that all their genes are inherited. The only way that novelty can be introduced is by MUTATION of an inherited gene. This involves a structural alteration of the DNA and is nearly always unfavourable.

GENETIC DISEASES: The first great concern of genetic engineering is how to deal with genetic diseases.

4. There are a few genes that are co-dominant. A person may inherit that gene from blood type A from one parent and the gene for blood type B from the other. Instead of one prevailing, they both operate & the person has blood type AB.

Karp has classified genetic diseases under three heads:

1. Chromosomal Abnormalities: One subclass is that errors of chromosome number. Instead of having a pair of particular chromosome, an individual may have three (trisomy or one monosomy). Most of the victim die by miscarriage Down's Syndrome (mongolism) is an example of trisomy and is one of the few diseases of this subclass that is not necessarily fatal. The other subclass is that error of chromosomal abnormality and advanced age of the mother perhaps because the eggs (all of which were formed when the mother was fetus) become defective in time. But nothing is yet known about the ultimate cause of chromosomal aberration.

2. Single Gene Defects: One subclass consists of those disease caused by the mutation of a dominant gene. A mutant gene directs the production of a somewhat different protein; almost none is favourable. A parent carrying a mutant dominant gene stands a fifty per cent chance of passing on the trait to each offspring. Among the common diseases caused by single mutant genes are ACHONDROPLASTIC DWAFISM, HUNTINGTON'S DISEASE, POLYEYSTIC KIDNEY'S, AND RETINO BLASTOMA. A second subclass consists of those diseases caused by mutant recessive genes. Unlike the former subclass, these are negative in result, for the

normal compensates the absence of its partner.⁵ Disease results, only when the offspring inherits a malfunctioning recessive gene from both parents.⁶ When one parent is a carrier and one is not, there is no risk. But when both parents are carriers probability indicates that one in four offsprings will have the disease and two in four will be carriers. The probability that their offspring will have the disease is much smaller since the incidence of mutant gene in the general population is very low. While we all carry mutant recessive genes (estimated at three to seven) the chances of mating with some one who has the same ones are low. One common recessive disorder is sickle cell anemia. Most recessive diseases are caused by errors of metabolism-faulty or absent enzymes. Examples are phenylketonuria, Tay-sachs disease, and Cystic fibrosis. The third subclass consists of diseases commonly called "sex-linked" but more accurately "x-linked" since males possess only one x chromosome, they have no normal allele to compensate for a negative, mutant gene carried on their x chromosome. Females who receive the normal x chromosome will not be diseased, but will be carriers. They will carry the disease

5. Ibid., p. 27.

6. It is important to remember that not all recessive genes are bad - only those that have experienced mutation and not all mutations are harmful, although most are.

to male offspring who are unfortunate enough to get the mother's abnormal x (along with the normal y from the father). A son's chances of having the disease are thus fifty-fifty. The afflicted man cannot pass on the disease to his children. His sons will receive the normal x from their mother (along with the father's normal y). His daughters, however, having inherited his abnormal x along with their mother's normal x, will all be unaffected carriers. Common x-linked recessive diseases are colour blindness, hemophilia and muscular dystrophy.

3. MULTIFACTORIAL DISEASE: Unlike disease of the previous types, these are the results of the interaction of several pairs. They are thus polygenically determined. Among the human traits that are polygenically determined is intelligence, so congenital mental retardation is a multifactorial disease. Many common birth defects are thought to be caused by a polygenically determined heightened sensibility of some individuals to a particular environmental factor that tends to interfere with normal fetal developments.⁷ For some reasons, the recurrence risk for multifactorial diseases, increases progressively with the birth of each afflicted child.⁸ This, of course, is not

7. Ibid., p. 31.

8. Ibid., p. 32.

the case for the monogenic disease, discussed above. Examples of common multifactorial disease are CLIFT-LIP & PALATE, CLUB FOOT, CONGENITAL HEART DISEASE, DIABETES, MELLITUS & EPILEPSY.

What can be done to prevent these diseases and people afflicted or likely to be affected by such diseases? To find ways for the prevention of such diseases than the cure, to my knowledge is more beneficial than a moral grievance! The only ways open to us is by:

1. Genetic counselling, and
2. Genetic screening.

The former is advice to families that have reasons to believe that there is a risk of genetic disease in their projected offspring. There are already several hundred counselling centers in the United States. There should be more: and they should be more aggressive in bringing individuals for counselling. At present, most counsels are people who have already had genetic tragedy in their immediate families and want to know how likely it is to happen again. Had they come in earlier they might have spared themselves and society a great burden.

Accurate knowledge (including diagnosis where possible) of all genetic diseases in the family tree is

helpful, as well as of all miscarriages in the immediate family. Counsellors will also be interested in childhood deaths, many of which could have been caused by a genetic disorder. They will want to know about geographic and racial backgrounds, for many diseases are more common in particular ethnic groups. They will want to know the ages of the prospective parents for that of the mother is relevant to multifactorial disease and that of the father is relevant to some disease of dominant gene mutation. It is hoped that great data banks containing extensive genetic information about the whole population will be established so that the counsellor will have at his finger-tips, information, about the family his counsellees may not be able to provide. It is also hoped that genetic science will continue to advance, so that it will be possible to state the genetic inheritance of each individual especially with respect to deleterious genes. The greater the knowledge (and its availability) to more accurate will be the indication of risk that prospective parents face.

In cases where a deleterious recessive gene is known to be possessed by both parents, it is already possible to predict that the next child stands a one-in-four chance of being inflicted. If one parent is found to possess a deleterious dominant gene, the child has a one-

in-two chance of being afflicted. In these cases, as well as x-linked diseases, simple mathematical probability operates. For multifactorial disease and those caused by chromosomal abnormalities, empirical probabilities can sometimes be cited. Parents may well decide not to conceive a child if the probability is 0.25 or better that he or she will have a serious or untreatable genetic disease.

The second option is genetic screening. It is a procedure which would greatly contribute to genetic health. Genetic screening means the systematic examination of population, the purpose of which is to detect persons who carry hereditary abnormalities capable of producing disease in those persons themselves or their descendants.⁹ The population may be general or selective that is, a specific subpopulation known to be at high risk. Such a programme would be feasible only if tests were available which were simple, inexpensive, and reliable. The programme may be directed towards adults, children, newborn infants or fetuses. The nature of the programme would depend on the particular disease screened for, as well as the state of genetic science.

If examination of the genetic facts indicates high risk for a couple, birth control may be recommended. If an egg has been fertilised in the case of a high risk couple,

9. Ibid., p. 65.

the presence of the diseases in the fetus can sometimes be checked by the process of amniocentesis.¹⁰ If the fetus is found to be afflicted, abortion should be considered seriously. All newborn babies should be examined, for some genetic diseases can be treated if detected early - if that is the wish of the parents. This kind of genetic screening thus makes possible a more intelligent decision by parents and prospective parents.

When a process as amniocentesis can detect such terrible diseases as PHENYLKETONURIA (PKU), tay-sachs (TSD) and many more, is it ethically justifiable to recommend genetic screening to prevent such diseases. Screening is not only useful in anticipating the future but also for suggesting early treatment and relief for such disease as

10. This procedure involves withdrawing a sample of the amniotic fluid surrounding the fetus by means of a needle. The cells of the fetus can then be examined. It is not a completely safe procedure, however, so it should be employed only when there is some reason to suspect the occurrence of the disease. Over 50 diseases can be identified by this method. Moreover, if the child later becomes a mother, an additional precaution is in order. Since she discontinued her special diet designed to keep down her level of phenylamine after her brain was formed (around age 6) the chemical began to accumulate again. Although it is harmless to the adult, it can pass into the fetus causing irreparable injury to the brain. A woman who realises that she has PKU should resume the special diet (which is unpalatable) from the very moment of known pregnancy.

KLINEFELTERS SYNDROME (XXY) and TURNERS SYNDROME (XD) the symptoms of which are not manifested until the late teens.

Screening has been objected to because it is expensive and so far deals only with "rare" diseases. But rare diseases add up.¹¹

And it is assuredly more expensive to take care of the unfortunate individual who are afflicted than to prevent. Where screening can assist in the making of informed choices or whether to conceive or, once having conceived, to abort, it would be foolish not to employ it. As techniques are improved, more diseases can be brought under scrutiny and expenses will go down.

When screening programmes are planned for the population or a subpopulation, should they be compulsory or voluntary? Those who argue for the latter say that most people who have been educated to the need will take part voluntarily. But this is dubious. The rationale for some programmes is difficult to convey. Moreover, some groups resent being singled out and 'stigmatized'. Public health

11. By the mid-seventies around 2,300 genetically related disorders had been identified. "It has been estimated that more than 25 per cent of the hospitalization of children are for illnesses with a major genetic component." Theodore-Friedman, "Prenatal Diagnosis of Genetic Diseases," in Beauchamp and Walters (eds.), Contemporary Issues in Bioethics 9572.

official should make recommendation to legislatures and request compulsory screening programmes when they are indicated. As Francis Crick said, "If we can get across to people the idea that their children are not entirely their own business and that it is not a private matter, it would be an enormous step forward".

Besides these two major ways, there are other means offered to us by Genetic Engineering to enhance the quality and possibility of life. These are EUGENICS, ARTIFICIAL INSEMINATION and RECOMBINANT DNA. By Eugenics is meant the production of fine human offsprings which also means the production of only the best. Eugenics is of two types. (1) Positive, and (2) Negative. The positive Eugenics is not only to avoid defective specimens but to foster increasingly better ones in future whereas the negative Eugenics is the total avoidance of the birth of defective offspring. The moral questions raised here is - should negative eugenics be compulsory and what should be the status of positive eugenics?

Negative eugenics should be compulsory for some genetic diseases. But which ones? Those that require institutionalizing for their victims e.g., PKU and multifactorial disease.

Positive eugenics is in a somewhat different situation. For instance, should we try to produce more blue-eyed blonds, rock stars, athletes or philosophers? While we can agree that some gene are bad and legitimately take steps to prevent their occurrence, we cannot certify those that are 'good' and properly require mating that reproduce them. Finally, there is a serious practical problem. Most of the 'good' traits, such as strength and intelligence, are multifactorial. They are thus much more difficult to create than diseased traits are to prevent. So positive eugenics should be left to the individuals who want to practise it. While there is nothing wrong in seeking an egg or sperm that will tend to produce the kind of offspring desired, it should not be a matter of public policy required by law.

ARTIFICIAL REPRODUCTION are of many types. Artificial insemination is one of the many and is considered to be a boon by couples who for some reason are unable to bear offsprings. One cause may be, blocked fallopian tubes; in such cases "surrogate parenting" is adopted. The surrogate bears the child and turns him or her over to the natural father and adoptive mother. One major plus point of artificial insemination is that genetic diseases are easily and at very early stage, detected.

Ectogenesis is another type which is more controver-

sial. This method involves the process of what is popularly known as "TEST TUBE BABIES".

A third type is CLONING. This is yet to be done on humans. It has been carried out on lower forms of life who deprived of speech can offer NO PROTEST!! It is simply a matter of time before cloning of humans can be done. When this is a reality, scientists will be able to produce genetic duplicates of people with very precious genetic endowments. When people have made great contributions to society, they can be cloned and some will be expected to distinguish themselves. Why should a one-in-a-million genetic complement be lost for all time? In saying that a member of a clone will be genetically identical to the cell or embryo from which he or she was derived, we are not saying that the person will be identical to the original. The environment will shape the person in a different way. Indeed, a chance will be similar to the original in the same way that identical twins are similar to one another. Such twins rightly insist upon their own uniqueness. Genes are not everything!

Lastly, we have what is known as RECOMBINANT DNA. In this genes are taken from one simple organism and planted in another. The DNA of the former is cut and the removed pieces are inserted into a plasmid (ring of DNA) of

ECOLI. The ring of DNA is closed with an annealing enzyme, and the plasmid is then placed back into the bacterium. A hybrid has resulted and it reproduces itself quickly, passing the new genetic inheritance to all its descendants.

If all human genes could be identified and transplanted at will, all genetic disease could be eliminated, for the germ cell itself is altered.¹² This slow workings of natural selection can be replaced by the "overnight" operations of deliberate selection. Humanity at last will be in control of its own evolutionary destiny.

John Stuart Mill, in his profound essay Nature, demonstrated that the natural is not always good and that the "unnatural is not always bad". "The undeniable fact", according to Mill is, "that the order of nature, in so far as unmodified by man", conflicts with all his concepts of justice and benevolence.¹³

Progress in improving the human conditions has always consisted of AMENDING nature, not by violating its

12. This would be more satisfactory than what Karp calls "second-level genetic therapy" which consists of administering to the patient "normal gene products designed to do the work of the non-existent or defective substances coded by the patient's own genes" (p. 96). These products (usually enzymes) are introduced into the body cell and are neither inherited nor permanent.

13. Mill, Nature, in George Nakhnikian, (ed.), Nature and Utility of Religion, p. 18.

law (which is impossible, but by utilizing them to create a better world). We are not still living in caves, and we have advanced beyond the food gathering stage. Joseph Fletcher echoes Mill, when he writes: "to be civilized is to be artificial, and to object that something is artificial only condemns it in the eyes of subnational nature lovers or natural law mystics".¹⁴ To those who would call artificial methods for the purpose of euteleogenesis "inhuman", Fletcher would point out that the "willed, chosen, purposed, and controlled" engendering of life is more human than the emotional or accidental way so often associated with sexual intercourse.¹⁵

Just as there are two sides of a coin, so also all forms of genetic advances has its positive as well as negative points. Knowledge is good and we should be grateful to scientists, yet sometimes values are produced at too high a price. Knowledge acquired by means of certain kinds of experimentation on human beings, for example, may not be worth the prize. One side expresses confidence, the other concern.

14. Fletcher, The Ethics of Genetic Control (Garden City, NY: Anchor Books, 1979), p. 15.

15. Fletcher, Ethical Aspects of Genetic Control.

The positive side favours genetic screening as a means to prevent the conception or birth of children with serious genetic defects, as well as to ensure the prompt recognition and treatments of afflicted infants. For some diseases and for some population, screening should be compulsory. The negative side asks, whether such concern with rare diseases is worth the financial expenditure, whether racial programmes would be a legitimate infringement on the rights of freedom and privacy.

Having seen the various diseases of defective genes, I now will try to connect the problems of death with that of life. 'What is death?' There are two main sorts of answer given to the question. The first style of answer, exemplified by Robert Veatch, takes death to be a moral not a biological question. Veatch argues that what we want to know is 'when it is appropriate to treat some one as dead?' And the answer Veatch gives to this question is, that this is when the moral standing of the individual change(s) so radically that the same rights claims attributed to living persons are no longer attributed.¹⁶ Veatch thinks that moral standing disappears when a person comes irreversibly

16. See Ronald Dworkin, Taking Rights Seriously, (Duckworth, London, 1977), especially Chapter 7.

to lack 'an embodied capacity for consciousness or social interaction.'¹⁷ The oddity of Veatch's definition as a definition of death is brought out when he has to remind us that 'when a person is dead, by definition that person loses the right not to be killed'. The necessity of reminding us that the dead have no right not to be killed, arises from Veatch not sufficiently clearly emphasising that he is distinguishing the death of the person from the death of the human being, and allowing that the person might die while his human body still lives on.

The most important fact that we are interested in, is, the care of each individual 'person' and also when an individual permanently loses the characteristics of personhood there is nothing left for us to care for, and nothing left that has wishes we must respect. Its drawback is of course, that it is not really a definition of death, and when personality is absent, we can go ahead and kill the dead.

We are equally interested in the meaning of life. We are constantly asking - when does life leave someone? Put it another way, when does someone cease to be a person?

17. H.W. Jones, "The Ethics of In Vitro Fertilisation", in Edwards & Prudy (eds.), Human Conception In Vitro (Academic Press, London, 1981), p. 353.

A person is someone whom the law protects, to whom duties are owed both legal and ethical; and who may make claims on others. What we are concerned with is the identification of that which is crucial to being a person.¹⁸

The identification of these features, Ian Kennedy says is 'clearly a philosophical and spiritual issue ... (which) calls for the selection of a point beyond which we are prepared to say someone is no longer a person.'¹⁹ However, Kennedy has absolutely nothing to say about the meaning of life or about what it is that makes someone a person. The definition of death he chooses is essentially 'that point at which the vital functions of breathing, heartbeat and capacity for consciousness have ceased forever.'²⁰ In arguing for the importance of all three elements Kennedy notes that 'if were to regard permanent loss of consciousness as death, it would mean that someone would be dead who was breathing of his own accord. Clearly this is unacceptable'.²¹

Kennedy does not say why this is unacceptable, nor does he argue for any of the three essential elements of

18. Ian Kennedy, The Unmasking of Medicine, (Paladian, London, 1983), p. 200.

19. Ibid.

20. Ibid., p. 201.

21. Ibid.

personhood. This is because he has conflated life with personhood. What he is really interested is in the definition of death. And the unacceptability of regarding someone as dead who is spontaneously breathing. This is unacceptable in a way that regarding an individual (as dog) as not a person despite spontaneous breathing is not.

If we question the moral aspects of life and death, than we cannot really be interested in a scientific or biological life and death. All that we can be interested in is a philosophical and spiritual account of life and death. Brain-stem death, can be the criterion for biological death. But not a spiritual death. For brain-stem may put an end to all bodily functions. But what about the soul the very spirit of every individual. We cannot say that with the ending of the functions of the body, the soul also ceases to be! Biologically speaking, if the brainstem 'is destroyed nothing can function. There can be no breathing, no hearbeat, no thought. Thus, what is crucial to personality is the brain-stem, not the total brain ... Death on this basis therefore, is the total and irreversible loss of all brain-stem function.'²² But this is because the brain-stem is necessary because nothing can function

22. Ibid., p. 200.

without it, not because it is necessary for personality rather than say, for life without personality'.

The crucial problem one would face in connecting personality with that of the definitions of death. There is something irredeemably odd about saying that a person is dead and then going on to argue the justification of being killed (person). (Here I am talking of the individual as a whole not only his body and its functions). There is fairly wide agreement about the very commonsense definition of death as "the permanent cessation of the functioning of the organism as a whole".²³ The problem arises when it is asked what is the criterion that this has occurred? Here there are two main accounts: one argues that death has occurred when the entire brain has ceased to function. This is the view which predominates in the United States as a partial consequence of the view taken by the President's commission for the study of Ethical Problems in Medicine and Biomedical and Behavioural Research in its report on Defining Death published in July 1981. The other main view is that death occurs when the brain-stem has ceased to function. This is the view taken by Kennedy and many others

23. Charles M. Culver and Bernard Gert, Philosophy in Medicine, (Oxford University Press, New York, 1982), p. 182.

and which predominates in the United Kingdom.²⁴

I shall not be concerned here to adjudicate between these two criteria of death. Both concentrate on the role that the brain plays in the functioning of the organism as a whole; both rely on the fact that when the whole brain or the brain-stem is dead, the so called vital functions, the parts of the organism whose functioning is necessary for the continued functioning of the organism as a whole, can no longer be mentioned. Advocates of brain-stem deaths argue that any remaining electrical activity in the upper brain, that persists after brain-stem death is not evidence of consciousness, but is rather like the continued growth of fingernail or hair - the spontaneous turning of a few remaining cogs that are no longer connected to the machinery, and though they turn nothing turns with them. Advocates of whole - brain death are not so sure about this and would prefer to wait until the cog of electrical activity in the upper brain also ceases to turn just in case something important turns with it.

I am not concerned to adjudicate between these criteria for the death of the organism because it seems to

24. See Kennedy, op.cit., and also D. Lambe, "Diagnosing Death", Philosophy and Public Affairs, Vol. 7, No. 2, 1978, and Christopher Pallis, ABC of Brain-stem Death, British Medical Association, 1983.

me relatively important what matters is whether or not the organism is still a person, not whether or not it is dead.

Questions of life and death brings to focus, the meaning of 'life', meaning of 'death' and thereby the questions of 'Value of life'. This is the ultimate question for any ethics, is also in a sense the very first question that arises when we begin to grapple with moral problems. The question is simply: what makes it more valuable than other forms of life? There is of course no doubt that we do value human life supremely, we think it important to save a person rather than an animal where we cannot save both, and we think it right to do so. We do not regard a preference for human life as a mere prejudice in favour of our own species. But what is the basis of this belief, what justifies it and what, if anything, makes it more than mere prejudice in favour of ourselves and our own kind?

This question - what makes human life valuable - may seem excessively abstract, a purely philosophical questions, interesting perhaps, but too difficult and controversial to be of help in solving the practical problems that health care professionals, everyday face. Ironically, many of the day-to-day decisions taken in medical practice presuppose particular answers to this question (what makes human life valuable?)

Continuing with the value of human life, we cannot but take up the highly debatable question of 'abortion'. Abortion could be permissible, only in cases where there is no danger to the mother and where the fetus is normal on the assumption that it is somehow less valuable than adults, and so lacks the protections and rights that adults have. Most people would not, I suppose, think that mentally or physically handicapped individuals are somehow less valuable than others, and yet anyone who thinks that the detection of handicap in the fetus is a good reason for abortion, must accept that such an individual is, or will become, less valuable than without such handicap, less valuable because less worth saving or less entitled to life. The same issue of value arises at the other end of the continuum, where questions are raised as to whether we should continue to devote resources to the rescue and resuscitation of the aged or the terminally ill, or those in permanent coma and so on. If we decide against resuscitation, or divert resources to more 'worth-while' cases, or types of cases. We are treating these lives as less valuable, less worthy of preservation than the others whom we choose to help.

The new techniques of invitro embryology, which makes possible the growing of embryos to provide tailor-

made human tissue,²⁵ give us further reasons for being clear about the relative value of the embryo and the adult. Many people think the answer to the question could be settled if we could be sure about the answers to the related questions. 'When does life begin?' and, returning to the other end of the continuum, that our problems about the management of those in a persistent vegetative state would be resolved if we had an adequate definition of death. I shall argue that both these questions are misconceived even if they could be given determinate answers, that what we need to know is not when life begins, but rather when life begins to matter morally. And the co-related question is not 'when does life end?' but rather 'when life cease to matter morally?' In short, when does life begin to have that special value we believe attaches to human life and when does it cease to have that value?

When we ask ourselves 'what makes human life valuable?' We are not concerned with what might make for differences in value between individuals, but with what makes individuals of a particular kind more valuable than others. So, we are not concerned with any of the sorts of

25. J. Haris, Violence and Responsibility (Routledge and Kegan Paul, 1980), pp.1-2; where this argument is elaborated but with rather different emphasis and concerns.

considerations that might figure in a balloon debate, when reasons are given why each person in the balloon is more worthy and valuable than the others and so should be the last person to be thrown out to prevent a crash.²⁶ Rather we are interested in why and whether people have a particular significance and value simply because they are people and have whatever it takes to be a person, and are not quite different sorts of beings, animals or plants perhaps, which do not have what it takes.

To put this point another way, to believe that people are valuable in this sense is to accept that they should be treated as equals, that is, as if they had equal value, quite irrespective of any reasons we might have for showing preferences between them for particular purposes. This is sometimes expressed as the view that these are basic human rights possessed by all people in virtue of their humanity or as a belief in equal rights, or as the view that all people should be treated as equals.²⁷ It is

26. For example, Jonathan Glover, Causing Death and Saving Lives (Pelican, Harmondsworth, 1977), Bonnie Steinböck (ed), Killing and Letting Die (Prentice Hall, Englewood Cliffs, 1980), and also the author's Violence and Responsibility.

27. This is of course the same for positive actions where I perform an action genuinely unaware of a particularly unfortunate consequence - say I persuade you to try a mushroom unaware that it is poisonous or shoot you while hunting reasonably and sincerely mistaking your fur coat for a bear - then in each case I am responsible for your death, you would not have died but for what I did, but I may not be blamed. Legal excuses such as insanity and diminished responsibility make use of related ideas.

the assumption behind a belief in equality before the law, and it underlines the view that all are equally entitled to the care and protection of the state, including its medical care and protection. So, to hold that life is valuable in this sense is to believe that the individual whose life is valuable is entitled to the same concern, respect and protection as that accorded to any other individual.

When we ask what makes human life valuable we are trying to identify those features, whatever they are, which both incline us and entitle us to value ourselves and one another and which license our belief that we are more valuable (and not just ourselves) than animals, fish or plants. We are looking for the basis of the belief that it is more morally right to choose to save the life of a person rather than that of a dog where both cannot be saved, and our belief that this is not merely a form of prejudice in favour of our own species but is capable of justification. So the features we are looking for, although they will be possessed by normal adult human beings will not simply catalogue the differences between such beings and other creatures. Rather they will point to features which have moral relevance, which justify our preference for ourselves and our belief that it is right to treat people as the equals of one another and as the superiors of other creatures.

Related to this problem of life and death is another question, we cannot afford to overlook - when does life begin? Many people have supposed that the answer to the question 'when does life begin to matter morally?' is the same as the answer to the question 'when does human life begin?' The moment of conception may seem to be the obvious answer to the question of when life begins. Over any rival candidates it seems to have the decided edge that it is an identifiable event from which point the egg begins the continuous process that leads to maturity. But of course the egg is alive well before conception and indeed it undergoes a process of development and maturation without which conception is impossible. The sperm, too, is alive and wriggling. Life is a continuous process that proceeds uninterrupted from generation to generation continuously (or at least sporadically) evolving. It is not, then, life that begins at conception. But if not life, is it not at least the new individual that begins at conception?

A number of things may begin at conception. Fertilisation can result not in embryo but in a tumour which can threaten the mother's life. This tumour, called a hydatidiform mole, would not presumably be invested with all the rights and protections that many believe spring fully armed into existence at fertilisation.

Even when fertilisation is, so to speak, on the right tracks, it does not result in an individual, even of any kind. The fertilised egg becomes a cell mass which eventually divides into two major components.

By now it will be clear that I believe that we can be equally responsible for what happens because of our actions and what happens because of our inactive or non-action. I also accept that if the occurrence of a particular event or state of affairs would be a disaster it makes no moral difference whether our responsibility for that disaster is positive or negative.

Some people deny absolutely that we can ever be negatively responsible for anything. Others take a marginally milder view and deny only that positive and negative responsibility are either equally strong or equally morally serious.

To conclude the chapter, I would like to add a few religious views of death in particular.

Christian Meaning: Death is the supremely decisive event in man's earthly history. It is a summons to a decision that is irrevocable.

We naturally shrink from death, since it means

(temporary) dissolution and break from our earthly attachments. The Bible takes this aspect of death seriously. It describes with heart rending realism the anguish that man experience in the presence of death. The Bible understands and shares the natural horror of the prospect of death and does not condemn it. The Book of Job calls Death 'the king of terror' (18.14). Paul calls it the last enemy to be destroyed (1.Cor.15,26). So fear of death is not necessarily lack of faith. To have faith does not mean to be superhuman, to imagine that one is not subject of fear; it means rather admitting one's weakness and receiving spiritual strength to overcome it.

The fear of Death is present in all men. It was Pascal who said that we spend all our lives trying to take our minds off it. Some manage more or less to repress it. But psychoanalysts like Jung tell us that it is there lurking in our subconscious. (3,4) Man by sinning cut himself off from God, disturbs the order of creation, and the inevitable consequences - Death.

"Death came into the world through sin" (Rom. 5,12)
"the wages of sin is death" (123).

It would be a mistake to think that the death spoken of by the Bible is only "spiritual" Death. It

includes physical death as well, the concrete death against which the doctors are fighting everyday, the death which he tries to ward off in a case of heart failure, the death against which the psychiatrists tries to protect a melancholic opposed with the idea of suicide.

Though in the present state result from the Fall, the end of earthly life is experience as a painful separation, still, Death is really a call to a higher life. The limitations of the present mortal life become tolerable only because of the hope of true immortality. Freedom enters into the dominions of becoming and of openness to further development only in order to achieve its fulfilment. In order to arrive at its final perfection, it must will Death as that which ends the mere prolongation of temporal existence. So, as Karl Rohner puts it,... in our depths we crave for that which is imperfect in us to be brought to an end.²⁸

The Bible gives the true explanation of Death. God had warned Adam and Eve that "eating of the tree of knowledge of Good and Evil", that is, declaring a proud autonomy from the source of their being would surely result in Death (Genesis 2,17). But the serpent came and said "you shall not surely die".

28. Theological Investigation, (London, Darton Longman and Tood), vii, pp. 285ft.

Christ, by undergoing Death as an act of loving obedience to the Father, in contrast to Adam's rebellion, has overcome the sting of Death. He has transformed the curse of Death into the greatest manifestation of trust in the Father, and solidarity and love for all men. By sharing in his sacrificial Death, a Christian experiences Christ's victory over Death. Saint John says that "he who believes in me though he die, yet shall live, and whoever lives and believes in me shall never die" (J.N. 11:25-26). Faith in Jesus does not protect from physical death but it gives assurance that he shall not undergo everlasting death, that his Death will be redeemed.

For the Materialist, Death signifies the meaninglessness of life. For the harden sinner Death becomes the final event of alienation from God and fellowmen. But for the dedicated person, Death is only the final fulfilment of love.

The ultimate act in which a man decides his destiny totally and irrevocably is the act in which he either accepts his creaturely dependence on God or rebels against his utter importance. Either he yields up everything voluntarily or it is snatched away from him.

Hindu View: The birth of every human is but one of the eternal stream of life. In its continuity the stream

of life rushes through many avenues and finally meets the ocean. Coming out of one avenue is called death and going through another avenue is called birth. So is the case of human life. After many rounds of births and deaths, when the human being liberates itself from the self created bondage of Karma, he finally attains emancipation and perfection.

The Bhagvad Gita, defines Death as - when the body, senses, conscious mind and the two breath guards (inhalation and exhalation) separate from the unconscious mind and the individual soul, this separation is called death. Therefore Death is but a separation, not complete annihilation. Death is a habit of the body not of the soul. Death is not painful; the fear of death is painful. Death is but a momentary disappearance which is revived again in another form.

Dying in the personal sense does not occur only at the time of clinical death. We are dying all the time; every moment of life is a state towards the ultimate goal. Life is paradoxically a process of dying and death the culmination of this life long process. Each decision in life prepares for the ultimate one. On the death bed, there is either definitive acceptance of God's loving design or despairing last rebellion.

The attitude of the doctor and nurse to death is of crucial importance. It is their duty to fight off death with all their skill and diligence unto the last because of the inestimable value of bodily life. They will, till the end, uphold the patient's hope and strengthen his will to live. But a moment comes when they realise that medical science can do no more.... If then they have a positive attitude towards the event of death, they will still be able to bring comfort to the patient and his family. Otherwise, they will tend to shrink away from the painful reality of death. This can lead to various direct and indirect forms of avoiding the 'condemned patient'.

One of the reasons for not telling the dying patient about his condition may well be that one has not yet come to terms with one's own dying. "I am quite certain that by our imposition of silence, denial, deception and isolation upon the dying person, we cause suffering and help to bring about a state of pre-mortem bereavement - loneliness and a sense of abandonment."²⁹

The doctor or nurse can have three ways of looking at death:³⁰ (1) Impersonal - I - its relationship. The

29. W.A. Cramond, "The Psychological Care of the Patients, with terminal illness", Nursing Times, 69 (1973), p.340.

30. Ibid., p. 339.

patient who was 'the carcinoma of the living, third bed down on the left as you enter becomes an interesting autopsy problem'; (ii) Interpersonal - objectifies the death of the other one. It is still someone else's death. The reaction may be of grief or a sort of jubilation at survival; (iii) Intrapersonal being able to face the prospect of one's own death. Then the doctor or nurse would be able to empathise with the patient. If the patient has already cultivated this attitude with regard to other people, he will be able to accept his own death more easily.

Medical personal should not think of medical or nursing 'Problems' but of people dying. It would be useful to note the normal sequence of the patient's reaction at the knowledge of oncoming death.³¹

In the conclusion I would like to make the following observations which would also include my findings and my suggestions. In this chapter, I have tried to find some central answers to such questions as:

- (i) What is life and what is death?
- (ii) Does the soul also die along?
- (iii) Is there any life after death. What happens to our conscious life?

31. Cf. M.A. Simpson, "What is Dying?" Nursing Times, 69 (1973), 405-406.

The above questions have also made me realize that there are certain areas regarding life and death where we are up against an invisible wall; such as whether we have 'another life' so to say after our earthly existence?

Proper adjustment among mental waves, physical waves and the Pranah is 'life'. The loss of this prallelism of psychic and physical waves is 'death'. My main realisation is that life is a value and death is the end of our conscious life. As soon as realisation draws on us of the non-existence of God, we discover that there is no paradise. Then it becomes impossible for us to remain alive. We seek refuge in death. We find supreme solace in death. Death is no longer a necessary evil, but rather a grave necessity just as life is a value.

Now, all lives are not of the same value. Some lives are much more valuable than others. Why? Indian philosophers contribute this to the 'Law of Karmā'. But I would contribute it to the capabilities of an individual. The more capable a person is, more valuable is his life. As a whole, in spite of this difference, it is morally right to choose to save the life of a person rather than any other lives faced by the dilemma of saving a life; human versus animal!

CHAPTER VI

MEDICAL ETHICS

MEDICAL ETHICS

When I first tried to write 'philosophically', on this chapter, I had all the hesitations natural to a layman in the fact of matter on which experts of the highest competence have had their say and still carry on their dialogue. As I became more and more well-acquainted with the topic "Medical ethics", any feeling of moral rectitude that might have facilitated my task quickly dissipated before the awesome complexity of the problem, and a state of great humility took its place. Nevertheless, because the subject is obscure by its nature and involves fundamental, trans-technical issues, any attempt at clarification can be of use even without novelty. Even if the philosophical reflections should in the end achieve no more than the realizations, that in the dialectics of this area, we must sin and fall into guilt. This insight may not be without its own gain.

The term 'medical ethics', introduced by Thomas Percival is really a misnomer. It is a Greek word which means "good taste". Percival, however, refers to the term as a "Code". For the average physician, medical ethics, means only 'medical etiquette'. Medical etiquette is

concerned with the conduct of physicians towards each other, and embodies the tenets of professional courtesy. Medical ethics should be concerned with the ultimate consequences of the conduct of physicians towards their individual patients and towards society as a whole, and it should include a consideration of the will and motive behind this conduct.

To find an answer to the question - what ethical codes lie behind medical practices, we have clearly to understand the two chief ethical positions - (i) Idealism, and (ii) Hedonism.

I^edealism stresses the interest of humanity as a whole whereas hedonism, the interest of individual selves. Hedonism is usually concerned with personal pleasure, idealism, with the furtherance of the welfare of the society. Therefore we could say that medical ethics is idealistic in nature.

All professional system has an ethical basis, a code of conduct so to say. The business professionals' code would be "honest selling of his products". The ethical code of legal professionals would be "honest dealings with his clients", to find what is the actual truth. Similarly, medical practitioners are also bounded by an all important

ethical code - "to render the best possible service to the sick and the public". Had there been no such code what would have happened to every professions is unthinkable. Business community would have no qualms about robbing the public of their hard earned money. The dream merchants of the advertising world would have committed day-light robbery (not that now they do not!) without any accusing fingers of the conscience! All professions need an ethical code and this code alone keeps alive morality and what we understand as humanity.

In my opinion, of all ethical codes, the most important is that of the medical professional. These men deal with matter of life and death. It is well-known as the "oath of Hippocrates". In brief, the oath is the promise of all medical men, witness by gods and goddesses, that he or she shall carry out this oath and this indenture. The teacher of this profession shall be upheld as his or her own parent and shall stand by the teacher and his family in all times. The practitioner, of this art shall never, in any time, misuse this oath or cause any harm knowingly or unknowingly.

In this chapter, I would discuss a hoard of moral problems that one would encounter. Among all these problems, the more important are as follows:

- (i) Delicate relations of patients with the practitioner.
- (ii) Physicians of yesteryear and the modern physicians.
- (iii) Who shall be the physicians?
- (iv) The axiom of "Do no harm".
- (v) Experimentations with human subjects.
- (vi) Lastly, organ transplantation and drug therapy.

I will try to discuss each problem in successions and in details as far as possible. I shall begin with the first problem. Now we can think, what ethical problems can and ought to be there, in the doctor-patient relationship. There is a problem in this very delicate relations, the problems of dedication of not the patient but the practitioner. We shall see how this problem arises, as I proceed with the discussion.

Professional men have more specific moral issues confronting them than the mass experience of humanity has evolved rules to cover. This is especially true for the physician, whose daily professional activity may often

involve a choice between acting in the ideal interests of humanity, or in the practical interest of the 'self'. Physicians have extremely vital relations with their patients, a relation of extreme delicacy and generally, authoritative relations with the public. This complexity of responsibility, honour and prestige, tending as it does to exaggerate both the idealism and the egoism of the practitioner, makes it difficult for him clearly to see one path of righteousness and to follow it alone. As a result, it is convenient for the doctor to find refuge in utilitarianism, the greatest good for the greatest number.¹ The delicacy of the doctor patient relations comes out clearly after this. The practitioner being over burdened with the sole responsibility of his patient tends to opt for an escapist route - utilitarianism. Here he would be responsible for the benefit of mankind. This is an ineffectual compromise, for as Fite² has shown, it is really a calculated hedonism.

When one goes deeper into the moral responsibilities of medical practitioners, one realises that medical

1. Robertson, W.G.A., Medical Conduct and Practice: A Guide to the Ethics of Medicine (London, 1921). The whole scope of medicine in relation to the public health is based on this aspect of ethics.

2. Fite, Warner, An Introductory Study of Ethics (New York, 1916). To Professor Fite's delightfully informal preceptorial at Princeton, I am indebted for my interest in this whole subject. I do hope this present effort may at least not make him regret the patience he had with my academic trails during the turbulent months of early 1917.

ethics is not based upon utilitarianism but based upon Idealism. The Oath taken by them seems to be a mockery of the oath itself. Even though committed to morality by the oath, these men organise themselves and they practise in such a way that they harm not their 'self' but their patients! As for example, a surgeon demands some fat amount to be paid on the operation table, while his patient fights for life! This is what I mean by the second ethical problem. To be more precise; practitioner of yesteryear were rooted in Idealism. They were committed to morality, thus to their oaths and organise in a manner that harmed neither their patients nor their own selves. Idealism seems clearly felt by most physicians of the present day, to be on a higher moral plane than hedonism, but as is sadly recognised, true idealism is quite impossible in medical practice under existing conditions of human nature. The physician must live. He owes a debt to himself and to his family, as well as to society!

But why is this problem so evident today? The answer would be - the basic problem met by the formulating standards of medical etiquette is the financial success, of the individual physician, and, incidentally, the prestige of the profession! Morally this ought to be jeopardised when the common dictates of decency are violated, so far as

conduct towards society is concerned. Actually unless such a violation is grossly vicious and apparent to anyone (that is, officers of the law) medical etiquette requires that those in a position best qualified to expose the wrong must preserve silence, in order that one practitioner may not bring the profession into disrepute, examples of which are given by Norman Barnesby.³

The moral code in medicine ought to be high among the young and upcoming practitioners who are yet to set a field for themselves. They can easily jeopardize their career by putting their self interest in the upper shelf than the care and cure of their patients, by greed. This was not so in the case of older or influential practitioners. But in the present world, the picture is sadly very different! What seems to be the basic code of medical men, these days, is 'fees' not cure of the sick and the needy. Today the so-called qualified medical professionals are more concerned of the money they earn. They treat their patients like old cars! They prescribe such medicines that these "old cars" with never-ending diseases, are only made to run for the moment! The result, these old cars run a

3. Barnesby Norman, Medical Chaos and Crime (London and New York, 1910). A well documented indictment by a physician of some of the major evils of contemporary medical practice. It is vehement in places, but justly so.

mile and are out off the 'show' in seconds! The broken cars have to be pushed again, back to the repairing workshops. This is done very cleverly because where the doctor would get a certain amount as his visiting fee for once, he would get it again and again, each time his patients visit him.

I now, come to my third problem - who shall be the physician? By this I mean what sort of person (rather character) ought to be deemed fit to receive this degree of responsibility, of saving mankind? With regard to transgressions against society, it seems that the machinery is somewhere at fault. Society has perhaps, wisely abandoned the statutory regulations of medical morals, satisfying itself with prescribing standards of technical training.⁴ As an adjunct to these standards; the law license requires that the candidate for a medical license "shall be of good moral character". What does this mean? Who is to judge? Society has left physicians to regulate for themselves their standards of morality. Formerly sever restrictions were placed upon physicians by social forces regarding fees, technical conduct, and moral department. These are now left to the mass honour of physician to decide for

4. Ketty, Howard Eugene, "Regulations of Physician by Laws", American Medical Association Bulletin, Vol. 19, No. 6, Part II, June, 1924. Valuable analysis of the present legal situations in the U.S. advocates uniform national regulations for all professing to treat the sick.

themselves. If asked for a personal opinion I would say, that he who shall be a medical practitioner ought to be an honest, upright person, of naturally a good moral character and most of all dedicated to his professions - one who does not treat this art as a bargaining business, as a profession catering to individual ambition but as an art which cures as well as prevents ailments.

My next problem is with the axiom DO NO HARM. To put it in better words, it would stand as, 'to practice about disease: to help or at least not to harm'. The physicians foremost duty, thus would be: Declare the past, diagnose the present, foretell the future... help or do not harm... The art has three factors, the disease, the patient, and the physician. The physician is the servant of the art. The patient must cooperate with the physician in battling with the disease.

The physician is the servant of the art - that is, he must follow or, as the Greek literally say, 'pull his oar along with'. (The evidence and logic of clinical judgement). The literal text then says, 'The patient must be with the physician in fighting the disease' - that is, the signs that symptoms of the illness is the patient and the evident effects of interventions provide the matter for clinical judgement. In this context, our maxim is more a

scientific statement than a moral platitude: to be of benefit and not to harm. It is widely accepted that doctors and other health care professionals should 'above all do no harm' to their patients or clients. In order for someone to follow even this apparently unexceptionable directives, it is important to have a lively sense of the ways in which his or her conduct may affect others. Although in many circumstances the scope of our individual or collective impact on the world is entirely unproblematic, there is an important dimension of conduct where there is not so. The problem is precisely whether or not we have two equally effective 'ways of determining the state of any world in which we are able to intervene. One is to intervene and to change the state of the world, the other is to refrain from intervention and leave everything as it is'.⁵ This is the problem that is at the centre of the recent debate about killing and letting die, about acts of omissions.

Are we responsible for the consequences of our omissions? Indeed, do omissions have consequences? If so, to what extent are we responsible for them? Is letting - die as bad, morally speaking, as killing? These questions are particularly important in medical context and the

5. The embryo might well be grown for its tissues and organs.

problem is at its most acute when we consider whether there is a moral difference between active and passive euthanasia. But the same issues arise whenever decisions are taken about whether or not to treat an individual or about where to allocate resources. This problem is one of the most frequently and fervently debated issues in contemporary moral philosophy.

Briefly, I shall try to do two things. The first is to show how far our conduct affects the world, and so far, how are we responsible for, how the world stands at any particular moment; and of course, how, in particular, are we responsible for what happens in medical care and research. The second is to say something about, how far, we are morally accountable for our part in the way of the world and so also about whether or not there is a moral difference between active or passive, positive or negative ways of influencing events.

Positive and Negative: The distinction between positive and negative ways of influencing the world can be drawn in many ways, and in each case the apparent force of the distinction and the meaning of the terms may be, slightly different. We can act or we can fail or omit or decline to act. We can do things, or we can forbear or neglect to do things; or we can refrain from doing them. We

sometimes make things happen, and sometimes we allow or permit or let them occur. We can set trains of events in motion, or we can fail to stop them or derail them. To emphasize just one example of the difference of meaning here, a simple omission to act may bear a different construction than an emphatic neglect of an action. To make things more complicated it is always possible (albeit with some labour and loss of elegance) to reformulate any action description or any omission description so that each becomes the other. I can, for example, shoot you or fail to omit to shoot you!

For our purpose I think the best way of drawing the distinction is in terms of positive and negative responsibility, and I will try to make clear exactly what is meant by these terms and the importance of drawing the distinction in this way. Quite simply, where something happens, or a state of affairs obtains because someone did something, I will say, that the agent is positively responsible for its occurrence; and where a particular state of affairs obtains or something happens because an agent did not do something, I will say that the agent is negatively responsible for its occurrence. For example, a piece of apparatus, a respirator - maybe, off and the patient connected to it dies, because someone switched it off

(positive responsibility) or because someone did not switch it on (negative responsibility) of course, for someone to be negatively responsible for the machine's being off it must have been possible for one to switch it on - one could not possibly be responsible for the occurrence of something, the prevention of which would have been impossible.

So, someone will be responsible for an event or state of affairs when that event or state of affairs obtains and the agents could have so conducted themselves that event or state of affairs did not obtain. When their conduct is positive the responsibility is positive, and when the conduct is negative the responsibility is negative.

I must make two further features of this account of the difference between positive and negative responsibilities clear now, although these features will become more obvious when we turn in a moment, to some examples. The first is that we can be negatively responsible for something even though it is not the case that we ought to have prevented its occurrence, or where we had no duty or contractual obligation to prevent it. I will be negatively responsible for the occurrence of something I could have prevented, simply because I could have prevented it, not

because I should have prevented it. The second, related qualification is that, this will be the case, even where I did not know that I could have prevented the event. So when I am negatively responsible for something that I genuinely did not realise I could prevent. I may well not be blamed for its occurrence, but I am still responsible for it.⁶

The point of drawing the distinction in this way is to reveal what I take to be a truth about our ability to affect the world and it is simply this: that where we are able to intervene decisively, whether or not we ought to intervene, whether or not we have a duty to intervene and even whether or not we know we can intervene, our conduct is crucial. It makes the whole difference between the occurrence or non-occurrence of an event and where the probabilities will be lessened in direct proportion.

To bring out the clarity of the distinction between negative and positive ways of influencing the world (individual responsibility), I would like to cite an example of a surgeon in an operation theatre, in a place where power cuts is a frequent occurrence. Whether it is the moral responsibility of the surgeon concerned, to suggest for

6. See Ronald Dworkin, Taking Rights Seriously (Duckworth, London, 1977) especially Chapter 7.

providing a generator in the operation theatre to avoid mishaps in the operation. This is what I mean by positive responsibility. On the other hand, if the surgeon concerned, neglects to examine, prior to the operation, whether all instruments are in working conditions, regular power supply is ensured, carried on the operation as a routine manner. This would amount to negative ways of influencing the world.

Experimentations with Human Subjects is another area of medical research which brings along with it many ethical questions which in my view cannot be ignored. Many would claim that such experiments are, rather for the betterment of research and advancement of medical science. Experimentation with Human subjects falls with the jurisdiction of medical ethics, and could also be referred to, many different psychological, behavioural or medical practice in which risks are encountered and personal rights are relinquished by the subject. Here, we focus primarily on biomedical experimentation in which the subject surrenders his personal autonomy, encounters some discomfort or pain, risks some emotional or physical injury but is not expected to benefit directly from the experiment.

One might wonder why a patient would submit to

possibly dangerous non-therapy and why a physician would ask him to submit himself to such a therapy? To understand the psychological and social coerciveness of experimental situations is to appreciate why wide concern about the ethics of experimentation exist? Upon whom is such research experimentations, performed? It is usually upon patients receiving medical treatment in a hospital, upon prisoners or soldiers. Such subjects are chosen very cleverly because their movements are already restricted and are very susceptible to persuasions and coercion by medical and other authorities he cannot avoid. How ironical such thing exist side by side in spite of us enjoying the basic fundamental rights! This is what I would call extreme violation of the right to respect a person and also his autonomy! It would be a grave mistake for anyone to think that we had such basic right in the earlier days and now we have none! The truth is such rights are immortal. They are bound to be there in the days yet to come. They are sometimes termed as "moral principles" or "basic norms" and are found from the days of Mill and Kant. These basic rights could be understood as a source from which there could be other derivations. They also constitute the foundation of forthcoming actions and from this source (whatever it maybe) can be derived certain conclusion. In short, these fundamental basic rights, which I would like

to call 'moral principles' are prescriptive⁷ particularly the right involved here, that is, "all persons ought to be respected".

There are a number of appropriate "indicated course of action" which could preserve the moral force of these principles. But there are also certain actions which would violate the principles, action such as subjugating a person to another's will. These actions are then prescribed by a prescriptive principle.

However, such implications may be not as direct nor as linear as some moral theorists have suggested. An immediacy of concrete obligations or imperative is assumed by W.H. Matson in his attempt to analyse Kant as a casuist.⁸

To continue with the discussion of experimentations, it hardly comes as a surprise to many of us as these patients have surrendered their autonomy to the care of the medical world; as such dictators play God! The conditions often lead to violation of patients right and to moral uneasiness.

7. R.S. Downie, Elizabeth Tefler, Respect for Person (New York, Schockem Books, 1970).

8. David C. Thomsma, "The basis of Medicine and Religion: Respect for Persons", Linacre Quarterly, 47, (May, 1980), 142-150.

The 'subject' of experiments are very often undertaken for experiments without the concerned person's knowledge and often, the end result, is injury or even death! Are doctors morally justified in treating their patients as "guinea pigs?" Clearly this is against ethics. Every human life is precious and cannot be used for any purpose besides the care and prevention of diseases. Then why ethical codes are broken? Clearly contention has developed between those who fear the deteriorations of medical ethics and those who fear the halt of medical advance because of "emotional squeamishness" (modesty). Surely this is not just a question of emotions but morality - the basic right to a healthy life and so the only way out is to perform research not on any living being even that of the lowest animal.

Research oriented doctors would disagree to the above code of morality saying that investigations for the betterment and advance of medical sciences can and ought to be performed only on living creatures; be it animals or humans. The argument for this would imply that no research should coerce patients but only invite any persons, preferably healthy ones, to offer themselves; that only the most well educated and highly motivated persons, one best able to understand the techniques and significance of

research and one completely dedicated to its advancement, be allowed to be subject in it. This would further imply that subjects would not longer be selected from the poor, the misfit and the incompetent (including children) but only from that group of altruistic person who share with the researches a dedication to scientific advance. This would stop the current practice that so offends freedom and dignity, and still permit research to continue, although probably in a reduced way.

Changes in medical education, in the enforcement of safeguards, and in medical awareness that the values of scientific advance are neither supreme nor sufficient for medicine, could perhaps create a research environment that would attract many willing subjects.

In spite of the above fact, utmost care ought to be taken for human experimentation, for whatever the purpose is always also a responsible, non-experimental definitive dealing with the subject himself. And not even the noblest purpose abrogates the obligations, this involves.

Can both the purpose and this obligation be satisfied? If not what would be a just compromise? Which side should give way to the other? The question is inherently philosophical as it concerns not merely pragmatic

difficulties and their arbitration, but a genuine conflict of values involving principles of a high order. On principal, it is felt, human beings ought not to be dealt with in that way (the 'guinea pig' protest); on the other hand, such dealings are increasingly urged on us by considerations, in turn appealing to principle, that claim to override those obligations. Such a claim must be carefully assessed especially when it is swept along by a mighty tide.

Talking of values we are reminded of the social contract of Thomas Hobbs which involves the common good over the individual good. In terms of right we always let some of the basic right of the individual be overruled by the acknowledged right of society - as a matter of right and moral justness and not of mere force or dire necessity (much as such necessity may be adduced in defence of that right). But in making that concession, we require a careful clarification of what the needs, interests, and rights of society are, for society - as distinct from any plurality of individuals - is an abstract and as such is subject to our definition; while the individual is the primary concrete, prior to all.

Medical experimentation of human subjects falls somewhere between the normal transactions of the social

contract. On the one hand, no comparable extreme issue of social survival is (by and large) at stake. And no comparable extreme sacrifice or foreseeable risk is (by and large) asked. On the other hand, what it is otherwise deemed fair to let the individual sign over of his person to the benefit of the "common good". Indeed, our sensitivity to the kind of intrusion and use involved is such that only an end of transcendent value or overriding urgency can make it arguable and possibly acceptable in our eyes.

Medical research is melioristic in nature. To the physician it is not gratuitous; he is committed to caring and thus to cure. How can this be social and not individual apart from disasters? When it is carried on with the help of a willing individual, it is not within the radius of 'social' contract because we are not committed to any repayment for what we get from past experiments. We are indeed indebted to the past "martyrs" not to society! Society itself is indebted and has no right to call in ones personal debt by way of adding new to its own. Moreover, gratitude is not an enforceable social obligations; it anyway does emulate the deed. Most of all, if it was wrong to enact such sacrifice in the first place, it does not become right to enact it again with the plea of the profit

it has brought one. If, however, it was not exacted, but entirely free, as it ought to have been, then it should remain so, and its precedence must not be used as a social pressure on others for doing the same under the sign of duty.

What about moral law? Does it transcend motivation of conduct? It goes considerably beyond the public law of the social contract, which itself is founded on mere self-interest: I give so that I be given to. But the individual conscience asks more. Reciprocity, essential to the social law, is not a condition of the moral law.

Speaking so much of voluntary service of one's self for medical research, a question which arises in my mind is - can I, then, be called upon to offer myself for medical experimentation in the name of moral law? Would I offer or would I not? My answer to this, would be an emphatic "no". The only reason I would offer myself for experimentation is when I would know that I am ailing and have only a short life ahead of me.

We must, in other words, distinguish between moral obligation and the much larger sphere of moral value (This, incidentally shows up the error in the widely held view of value theory that the higher a value, the stronger its

claim and the greater the duty to realize. The highest are in a region beyond duty and claim). The ethical dimension far exceeds that of the moral law and reaches into the sublime solitude of dedication and ultimate commitment, away from all reckoning and rule - in short, into the sphere of the holy. From there alone can the offer of self sacrifice genuinely spring, and this - its - source must be honoured religiously. How? The first duty here falling on the research community, when it enlists and uses this source, is the safeguarding of true authenticity and spontaneity.

The mere issuing of appeal, calling for volunteers would not solve the problem. Rather I feel that if the medical practitioner is religiously honest towards his patient in revealing the fact, that chances of his survival are interwoven in the success of such experiments whose results are of dual benefits: (1) Towards himself, (2) Towards humanity. If we adopt this appeal then it would amount to conscripting as a great amount of moral and social pressures would be involved. And some soliciting is necessarily involved. This may be the reason that sin and guilt in this area cannot be totally avoided. We are likely to commit sin and be guilty of some crime or the other in spite of the utmost care we take in this area. And this is

why "consent", surely is a non-negotiable minimum requirement, is not the full answer to the problem. Granting then, that soliciting and therefore some degree of conscripting, are part of the situation, who may conscript and who may be conscripted? Or less harshly expressed! Who should issue appeals and to whom?

The best although not the ideal solution would be to keep the issue of human experimentations within the research community itself. Neither in number nor in variety of material would its potentials suffice for the many - prolonged, systematic, continual attack on disease into which the lonely exploits of the early investigators have grown.

In making a human being a subject of experimentation is not so wrong, in the sense, that we are making him "a means to something", as a means to an end rather. We are making him a thing - a passive thing merely to be acted on, and passive not even for real action, but for "token" action, whose token-object he is. His being is reduced to that of a mere token or "sample". This is different from even the most exploitative situations of social life; there the business is real, not fictitious. The subject, however, much abused, remains an agent and thus, not fictitious but a "subject" in other sense of the

word. The soldier's case, refer to earlier, is instructive: subject to most unilateral discipline, forced to risk mutilations and death, conscripted without, perhaps against, his will - he is still conscripted with his capacities to act, to hold his own or fail in situations, to meet real challenges for real stakes. Though a mere "number" to the High Command, he is not a token, not a thing. It is rather hard to imagine what he would do or say if it turned out the war was a game staged to sample observation on his endurance, courage or cowardice.

These compensations of personhood are denied to the subject of experimentation, who is acted upon for an extraneous end without being engaged in a real relation where he would be the counterpoint to the other or to circumstances. Mere 'consent' (mostly amounting to no more than permission) does not seem to be 'right'. The 'wrong' of it can only be made 'right' by such authentic identification with the cause that it is the subject's as well as the researcher's cause - whereby his role in its service is not just permitted by him, but willed. That sovereign will of his, which embraces the end as his own restores his personhood to the otherwise depersonalizing context. To be valid it must be autonomous and informed. The latter condition can, outside the research community, only be

fulfilled by degrees; but the higher the degree of the understanding regarding the purpose and the technique, the more valid the endorsement of the will. A margin of mere trust inevitably remains. Ultimately, the appeal for volunteers should seek this and generous endorsement, the appropriation of the research purpose into the person's own scheme of ends. Thus, the appeal is in truth addressed to the one mysterious, and sacred source of any such generosity of the will - 'devotion', whose forms and objects of commitment are various and may invest different motivations in different individuals.

so far the discussion has been on experimentation and its subjects, later, it has been on willingness and the consent of subjects. Now I shall focus my attention on whom shall the medical men take as subjects for experiments, 'To the question - who is conscriptable?' the spontaneous answer is: least and last of all, the sick. This seems to be the general response of every intelligent person. But my answer would differ. Since the sick are the most available source, as they are under treatment and observation, they would be the best possible source of research. The vital caution that the researchers should also bear in his mind is that - they are the physicians particular trust; the ~~society's~~ special trust and therefore they are our

elementary moral responsibility. For a disease to be overcome forever, a sufferer has to be subject to experimentations and if we do just this, than the trial and precise verification, finally total exemption is possible. In acknowledging this in escapable necessity, we enter the most sensitive area of the whole complex relation (which I have already discussed earlier) doctor-patient relationship, putting its most solemn obligation to the test.

In the course of treatment, the physician is obligated to the patient and to no one else. He is not the agent of society, nor of the interest of medical sciences, the patient's family, the patient's co-sufferers, or further sufferer from the same disease. The patient alone counts when he is under the physician's care. By the simple law of bilateral contact (analogous, for example, to the relations of the lawyer to client and its conflict of interest 'rule'), he is bound not to let any other interest interfere with that of the patient in being cured. But manifestly more sublime norms than contractual ones are involved. We may speak of a sacred trust; strictly by its terms, the doctor is, as it were, alone with his patient and God!

There is one normal exception to this -that is, to the doctor's not being the agent of society vis-a-vis the

patient, but the trustee of his interest alone - the quarantining of the contagious sick. This is plainly not for the patient's interest, but for that of others threatened by him. For example, in the case of vaccination, we have a conjunction of both - the quarantining of the individual and also others. But preventing the patient from causing harm to others is not the same as exploiting him for the advantage of others.

Let us now consider different philosophical positions concerning the use of special subjects: prisoner's and children in human experimentations. It is the difficulty of obtaining informed consent which presents the problem for these categories of subjects. In the case of prisoners, the issue is usually whether itself and/or any possible threats or rewards could be coercive and thus limit the prisoner's freedom to consent or participate. In case of children, the difficult issue is usually presented in terms of proxy consent. Since the child himself cannot consent, the questions asked is in what situations should proxy consent be permissible. Here, I am reminded of an incident as retold by my friend and colleague, of this proxy consent or whatever could be termed, a child of six years was damaged mentally beyond repair. This child though a survivor of such malpractice, is now a case of near

mental retardation - she has retained her brain growth up to the age of six and not beyond, though physically she is now well beyond the age of fourteen.

In medical experimentation, prisoners and children are not the most important. There are a horde of other areas of ethical issues such as women offering their eggs for sale and even renting out their wombs for someone else's baby which raises several ethical questions the world all over, including India.⁹ But I think prisoners and children are treated as 'special' because of the requirement of consent which may or may not involve the danger of threats. By consent is meant that the subject be informed of all relevant information and also consequences, necessary for making his/her decision. This decision ought to be 'free' of influences and threats, whatsoever and issue from the person himself. There should be no coerciveness and limitation (specially in case of prisoners) attached to the choices regarding the subjects' ability to refuse to participate in such experiments. This dispute revolve around two points:

(i) Whether or not offers are coercive, and

9. Hinduja (Producer of first test tube baby), "Human eggs for Sale", The Hindustan Times, New Delhi, Sunday, October 29th, 1995.

- (ii) What are the criteria for the distinction between threats and offers. Even if it were granted that the offers were not coercive but threats were, the problem would still remain as to when an individual is confronted with a threat and when he is confronted with an offer.

One possible approach to this question is presented by Virginia Held in her article, Coercion and Coercive Offers as suggested by this title, Professor Held argues that the relevant distinction to be made is not that between threats and offers but rather between what she calls 'initial' versus 'final' coercion. 'Initial' coercion occurs in a situation in which there is at least the possibility of resistance. For example, I can sign a loyalty oath and take a government job or I can refuse the oath and not take the job. Even though the pressure may be great, I can literally refuse the oath. In situation of 'final' coercion, on the other hand, resistance is not even possible. As example, she gives of 'final' coercion is the existence of a high fence preventing entrance to a government building. Here, it would not be possible to overcome the resistance.

The degree of coercion involved is, however, different from this distinction between kinds. The degree of coercion is a 'function of the undesirability of the outcome and the probability of its occurring'. Held argues that when the degree of coercion remains constant, 'initial' coercion, in which there is at least the possibility of resistance, is preferable to 'final' coercion. Our ordinary distinction is then between different degrees of coercion not different kinds. Some so-called offers and threats we can resist and some we cannot. Therefore, some offers and some threats would fall under what she calls, 'initial' coercion. Although, as Held admits, it is probably true most offers present instances of 'initial' coercion, whereas most threats present instances of final 'coercion'.

In the prisoner's situation, therefore, in order to determine whether or not the prisoner has been coerced, the important question is not strictly whether the prisoner has been offered a reward or threatened, but rather whether or not he could have resisted (initial versus final coercion) and how undesirable and probable the alternatives were (degree of coercion).

There seems to be a serious difficulty, however, with this interpretation. If initial coercion is defined as

that which one literally could resist or that kind of coercion 'in which the person coerced could in some sense have supplied the deficiency of will whereas 'final' coercion could not be resisted, one would have to have this information first that is, one would have to know which alternative could be resisted before a situation could be properly classified as either one of the 'initial' or 'final' coercion. But it is just this information which is missing in most morally troublesome cases of possible coercion. Unless one limits discussions only to cases in which some physical restriction is operative, the problem is always at what point does a threat or an offer actually restrict or limit an individual's freedom, such that he could not choose the other alternative, even though not physically coerced. Unless one begs this question and assumes that all non-physical coercion could be resisted simply by supplying the deficiency of will, the important difficulty of determining in which situation people could and could not resist still remains'.

The following statement Held is definitely true:

There are forms of coercion ... where the person coerced did what he did against his will, but might himself have supplied the deficiency of will, and there are forms of coercion where the persons coerced did what

he did against his will, but might in no way himself have summoned the courage to resist?¹⁰

However, the distinction between these two kinds of situations cannot be made simply by appealing to external circumstances, such as 'high fences'. Further more, and more importantly, Held considers a situation one of 'initial' coercion even if the only way the person could have resisted is 'if his character had been different'. To repeat an argument usually presented in connection with the free will dispute, the significant question is not whether the person could have chosen differently if he had, had a different personality or set of desires, but whether the person, as he was in that same situation, could have chosen otherwise. It is this question which must be answered before a situation can be identified as one of 'initial' or 'final' coercion.

Held's analysis, therefore, does not seem to provide much guidance in the prisoner's situation. Assuming no one is arguing for physical coercion as a means of obtaining subjects for experimentations, all likely forms of coercion in the prisoner's situation would fall into the

10. Held, Virginia, "Coercion Coercive Offers" in Pennock and Chapman (eds.), Coercion (Aldine Atherton, New York, 1972), pp. 58-59.

category of 'initial' coercion, the least objectionable variety, and yet, one still cannot know whether or not the alternatives as presented to the prisoner's do in fact, overcome their wills to the extent that they could not supply any deficiency.

Recently, a current moral problem of medical ethics which seems to have made a spectacular progress is in the sphere of organ transplants and also drug therapy. I have also regarded these two developments as a serious moral threat to society. Organ transplant poses some threats when performed under compulsion; so also drug therapy. In the name of providing relief, we are now faced with the most gripping problem of addiction! Warning of these threats were issued several years ago (the religious and moral implications).

'It cannot be said that every transplantation of tissue that is biologically possible is not forbidden or is not objectionable'.¹¹

In other words, it is not merely a question of technical expertise but of the true welfare of the human person.

11. Pius XII - Address to Eye Specialists, May 14th, 1956, A.A.S. 48 (1956) 460.

Organ Transplant, as the word indicates implies replacement of any and every organs or tissues from either a living donor or dead.

In organ transplant, we hear of such terms as auto-graft, hetero-graft and homo-graft. Now, what do we mean by these coined terms? We have an auto-graft, when the tissue is taken from the body of the receiver itself. This is done in cosmetic surgery. The morality of auto-graft examples of the skin is simply to be judged from the total welfare of the person concerned. Homo-graft is that, when the tissue is taken from a different subject, but of the human species (from the medical stand point) such transplant are sometimes performed on identical twins. Such transplant would indeed give rise to ethical issues as it would amount to tampering with the donor's autonomy be it his/her twin! Lastly, hetero graft is the operation, when the tissues or organs are obtained from lesser species, animal! Here I have included organs, as not only tissues but even organs as sexual, are transplanted! In hetero-graft, moral problems would not rise, if the subject, from which the tissue is obtained, is to the good of man. As far as the receiver is concerned, there must be the solid hope of an advantage proportionate to the gravity of the operation and the risks involved. By risk, here, I am referring to organs not

tissue. In the former case, the life of the person may be unduly shortened. It would be a case of improper experiment on human beings. Preliminary experiments on animals and adequate precaution must be adopted before proceeding with such transplantation. The question of possible 'brutalisation', that is, the fear of the receiver losing human characteristic has been raised, but in the operation so far carried out such fears have not yet been realised.

Though such fear have not yet gained ground, yet transplantation of such organs as sexual glands from animals would definitely pose serious ethical problems. Just how can this not be immoral¹² is beyond my capacity to judge! As sex hormones have a very strong influence on the whole organism and personality, the animal glands are likely to produce undersirable change of personality. This is apart from the possibility of cross-fertilisation which, however, has not yet been demonstrated.

Blood transfusion would be another area of homograft, that too, from living donor. Here, the only problem that can arise is, concerning the freedom of weak persons induced to donate blood for momentary consideration. Blood donation (safe transfusion) has always been approved in Catholic Circles¹³ for charity. Financial recompensation

12. Cf. Pius XII, Ibid.

13. Discorsi and Radio Messaggi, XP. 253.

may be received provided the spirit of solidarity and brotherly love are not lost sight of. 'It is creditable for the donor to refuse recompensation, it is not necessarily a fault to accept it'.¹⁴

There is world wide condemnation in the transplantation and donation of such organs as kidneys, heart and liver. The question of corneal 'eye' transplant has also involved the sacrifice of a healthy eye by a living donor as well as of a kidney from a living donor. Only recently in Bangalore (South India) a group of doctors were doing a flourish business in kidney transplant including illegal sales! The Papal statements on such matter were cited to prove that the Church authority had condemned such transplant. Not only the Church, all other organisations and even every individual conscious soul would condemn such evil actions.

Speaking of transplant I cannot forget another delicate area - the area of ovarian tissue transplants, from one woman to another, in order to cure sterility. Some of us would compare the procedure to artificial insemination from a donor. The analogy does not seem to be fully

14. Pius XII, Address to Eye Specialist, May 14th, 1956, A.A.S. 48 (1956) 465.

valid since in donor insemination, procreation is attempted outside, the context of marriage. Still, the grave problem of heredity remains. Moral theologians on the whole tend to consider the transplant illicit (for the moment, the technical problems involved, have not yet been fully resolved).

Removal of the heart (Heart Transplant) is a fatal procedure and hence the operation may never be performed on a living person. In order to be viable in the new host organism, the heart has to be removed immediately after death. Hence the main difficulty is in determining the exact moment of death. In this matter probabilism does not apply since it is a question of a 'doubt of fact' that cannot be reduced to a 'doubt of law'. In other words, the certain rights of person to life is not affected merely by a doubt about the fact whether he is alive. Hence the importance of definite criteria for determining the moment of death.

Now, it is well known, that death is not an instantaneous event but a gradual process. Rigor Mortis¹⁵ and

15. Rigor Mortis, Stiffening of Muscles after Death.

such signs are not of much use here, since they appear at a time when it is too late to remove the heart for transplantation. On the other hand, stoppage of blood circulation is not a certain sign of death since the process can in many cases be reversed artificially.¹⁶

From the receiver's standpoint, heart transplantation should offer to the patient a distinct hope of success namely, a fairly normal life for several years, or in the case of one condemned to die shortly, an appreciable prolongation of life. The risk is greater in the case of the heart than in the case of the kidney. If a transplanted kidney fails, there is the possibility of putting the patient back on a kidney machine. But if the new heart fails, the patient dies unless the extremely hazardous procedure of another transplant can be at once attempted.

If such hope is not verified, it would be a case of illegitimate experimentation on human beings! Still more serious difficulty arising from the transplant is the tendency of the body to reject. The immono-suppressive drugs used to counter act this reaction also tends to severely hamper the resitance of the organism to infection.

16. Cf. M. Arthurs, 'La Reanimation Respiratoire Caniers, Laennec,' 22 (1962) n, L 25.34.

Post-operative infections, has so far been responsible for limiting the success of the transplants. Many experts feel that the first transplants were attempted too early before the immunological problems were sufficiently solved.¹⁷ The tendency to rejection give rise to the urgency of the need for immuno-suppressive therapy which could bring about the better selection of the organs to be transplanted. For this, is needed, more advance and more careful; 'tissue-typing'.

At the present times, the surgeon would certainly be justified in replacing the heart of a patient who faces death due to heart disease. But for patients who are not terminal cases, but whose heart are weak and make their lives difficult, more caution and greater progress in immunological therapy seems to be called for.

The sensational propaganda that accompanied the first heart transplant, while it may have had some undesirable effect on the judgement of the surgeon, has had also the advantages of focussing the attentions of all educated people on the ethical implications of the operation. It is encouraging to note the greater number of those who have commented on the subject, have shown great

17. Cf. Herder Korrespondenz, art cit. 183.

moral discernment. Such transplants also has another disadvantage - that of expenses. As such it benefits only a small number of people and thereby raise the question whether, from the point of view of the human family as a whole, the interest of countless poor patients, sufferings from milder ailments, but fatal, because of the poor treatments available to them, have not been unduly neglected.

Above all, the most important question of the 'day' ought to be the use of drugs in therapy. Many of the new drugs like antibiotics have powerful pharmacological and therapeutic effects; but most of them also have side effects which may in some circumstances be undersirable or even dangerous. Hence the age old ethical principles, governing the use of drugs gain new importance and relevance.

The most general principle for the prescription of drugs is that the most effective and appropriate remedy must be used. Because of the toxicity of many drugs on their liability to produce harmful side effects a balance must be struck between the efficacy of the treatment, the risks entailed in its use and the severity of the condition which is being treated.

There is need to guard against the tendency to utilise a drug just because it is new, when older remedies of proven merit are equally effective and less likely to give rise to side-effects. Thus if aspirin can provide as much symptomatic relief as cortisone in some types of rheumatic arthritis, the hazards of the latter would not be justified. This comparison is not to be understood as a generalised preference for the use of aspirins. But the most appropriate remedy for the particular patient in the circumstances is to be adopted.

The quickest acting drug and route of administering is not necessarily the best. Undesirable consequences of a particular way of treatment must also be taken into account. Many drugs are potentially toxic if taken in large doses. The toxicity may result from the primary action of the drug itself, as for example, the depression of the respiratory centers by morphine, or from a side effects. This may rise in all persons or in a few persons who have an allergy to the drugs. In all such cases, there must be due proportion between the good to be achieved, and the risks involved.

Such drugs are barbarous, are habit-forming. Here lies the grave danger. A few like morphine, pethedine and heroin lead to ADDICTION: (this is what I am trying to say

here) in which case, there is not only a craving for the drug, but withdrawal is followed by severe physical and psychological effects. Hence when prescribing such drugs, the reason for its use and the personality of the patient must be carefully considered. The use of morphine would be justified when the condition requiring treatment is serious and the use would be of short duration, insufficient to lead to addiction, example as pre and post operative drugs. The prescription of morphine and the like for migraine, on the other hand, would not in general be justified. The character of the patient is of importance because certain people, for example, those who cannot cope with their life-problems, are more liable to become addicts.

Finally, the cost of drugs and whether the patient himself is paying for them, or the state or other agency is bearing the cost, must be taken into account. Other things being equal, the cheapest drugs must be used.

I would like to add here, another problem which ought to be brought to the notice of all educated people. This being the exploitation of the people by the drug industry artificially boosting the prices of basic medicines often some common drugs. I agree, this problem ought to have been discussed earlier in my first chapter, but since it is concerned directly with drug therapy, I

cannot, but discuss briefly. Often common drugs are marketed under high sounding trade names of exorbitated prices. The entire medical profession must rise against this crying abuse and fight, to get rid of it. While citizens have equal right to obtain the drugs necessary to preserve life and health. One must guard against the tendency to lament that the governments of poor countries are at times not prompt in allowing the import of very expensive 'life-saving' drugs that are still of doubtful efficacy or whose side effects have not yet been fully evaluated.

There is also the evil of large scale adulteration of medicine either depriving the patient of genuine benefits or even causing positive damage. Every effort should be made to combat this crime!

Conclusion

In the conclusion, I would like to make the following observations which would also include my findings and my suggestions. In this chapter, I have highlighted six major problems of medical ethics, namely:

1. Doctor-patient relation.
2. The problems of the present generation of the practitioners of medical sciences.

3. The answer to the vexing question "who is the doctors?"
4. The axiom of DO NO HARM.
5. The problem of experimentation on human subjects, and
6. The problem of transplantation of tissues and organs.

However, this is not to say that these are the only problems of medical ethics. There are other important problems as well, such as assisted suicide, prolongation of life, euthanasia, infanticide, foeticide, abortion etc. I may note here that I have already discussed these problems in the earlier chapter..

The doctor-patient relation is one of the delicate trust. The doctor can gain the trust and confidence, only when he/she is dedicated to the care and cure of his/her patient. He has to treat his patient as a 'person' not as an end to any means. The term 'person' is a value-loaded term. There is a vast difference between a layman's understanding of the concept 'person' and the actual term 'person'. When we talk of a 'person', we mean not only the value attached to this singular term, but also the value of life.

To bring back the physicians of yesteryear is only possible, when the physician 'does not forget his basic oath'. Only suggestion I can think of is not to let his conscience 'go to sleep'. The hypocratic oath talks of service to mankind in whatever way possible, and least of all to do any harm. To bring harm to the patient in any form would be the greatest sin a physician could ever commit. It is true, that for the betterment of medical sciences, researcher has to perform experiments. But caution ought to be taken that no living being is injured or tampered with under any circumstances. Lastly, I would suggest that rather than utilising the transplant of organs and tissues with a commercial view which has lead to flogging of health in the market place, it should be done consensually for the real benefit of mankind. Similarly, the utilization of drugs in therapy should not bring into existence 'addicts' but cure diseases.

Medical ethics is necessary today as it was since the 1960s. What can be the purpose of medical ethical reasoning? Is it to lead to actions or principles? Is it rather to lead to consensus thinking at the bedside? Yet Alasdair Mac Intyre is of the opinion that philosophy can make no real contribution to medicine. This is because, there are no moral principles upon which a universal

consensus about issues could be based. But John Dewey has a different opinion to this view.

The practical problem arising in clinical setting must guide, not only medical ethical theory but also public policy decisions. Hence I conclude, that a new unitary theory of medical ethics is required. One that draws upon the practical nature of the clinical settings and clinical judgements. Let us remember that a slower progress in the conquest of diseases would not threaten society. But that society would indeed be threatened by the erosion of those moral values, whose loss possibly caused by, too ruthless, a pursuit of scientific progress, would make its most dazzling triumphs not worth-living. Let us finally remember that it cannot be the aim of progress to push morality to an insignificant background. In my opinion, morality forms the core of medical practices.

CHAPTER VII

THEORIES OF PUNISHMENT

THEORIES OF PUNISHMENT

In this final chapter, I consider the theories of punishment, both the Retributivist and Utilitarian, considering carefully their merits and demerits; most important of all whether they pose any ethical questions at all. I will bring into the main stream also, the current modern view of punishment. Lastly, I will highlight the question, "Is capital punishment a necessity today?"

This chapter will also include discussions on the following question:

1. What is Punishment?
2. Can punishment be morally justified?
3. What good does punishment serve? Does it really help in reformation?
4. Basic distinctions between (a) Law and morality, (b) Justice and morality.
5. Ought we to punish the deserving and protect the innocent?
6. Criminal law and its necessity.

7. Lastly, is Capital punishment a necessity?

As Confucius said:

If language is not used rightly, then what is said
is not what is meant.

If what is said is not what is meant, then that
which ought to be done is left undone;

If it remains undone, morals and art will be
corrupted:

If morals and art are corrupted, justice will go
awry;

And if justice goes awry, the people will stand
about

In helpless confusion.

(Lois De Bakey, "Literacy: Mirror Society",
Journal of Technical Writing and Communica-
tion)

The word 'punishment' is used in various contexts. The punishment meted out by the state to a criminal or by a parent to his children is not the same as the punishment boxes gives or receives. The latter, however, is punishment only in a metaphorical sense, for it lacks several of the features necessary to standard case of punishment. Characteristically, punishment is unpleasant. It is inflicted on an offender because of an offence he has committed; it is deliberately imposed, not just the natural consequences of a person's action (like a hang-over), and the unpleasantness is essential to it, not an accidental accompaniment to some other treatment (like the pain of the dentists drill). It is imposed by an agent authorized by the system of rules

against which an offence has been committed; a lynching is not a standard case of punishment. Philosophers who have written on punishment have usually had in mind, punishment in the standard sense rather than in any extended or metaphorical sense.

The philosopher's interest in punishment is mainly concerned with the 'Question of Justifications'. It is, prima facie, wrong to deliberately inflict suffering or deprivation on another person, yet punishment consists in doing precisely this! What conditions, the philosophers ask, would justify it? Or more generally, what kind of consideration would count towards a justification? For instance, if a person had already committed a crime, that would clearly be relevant to the question of whether he ought to be punished (although it might not be conclusive) what if he were only expected to commit a crime in the future? Or, again, is it relevant to the question of whether this man should be punished to say that punishing him would deter others? And assuming that criminals ought to be punished, how should we set about deciding appropriate penalties?

It is not the primary task of either moral or social philosophers to say that a certain act or a system of punishment is justified or even the institution of

punishment in general. The only interest of these philosophers is in the procedure of punishment, whether the punishment inflicted on the offender are morally justified and within the framework of our fundamental conception of morality.

It would be wrong on our part to look up to a philosopher to provide justification of punishment. Philosophers, often, work on the understanding that a philosophical argument could be seriously shaken by showing that it leads to conclusions inconsistent with some widely approved institutions or moral rule. Moreover, for many philosophers, if such a rule or institution seemed to imply a principle inconsistent with other moral principles accepted by the society, there must necessarily be some broader principle, which a philosopher could discover and by which the conflict could be resolved. Applied to the case of punishment, this would mean that a philosopher must reconcile the apparently conflicting principle that wrong doers should be punished and that it is wrong to deliberately make another man suffer.

The authenticity of justification can be achieved in two ways. One is the ordinary way of punishing the wrong doer simply because he is a wrong doer. Here the only concern of the philosopher is to see whether the particular

act of punishment was justified. Here he is involved in a general system of punishment. Another way is where one question the very institution of justice or the system of rules. Corresponding to these two ways are two broad approaches to justification:

1. The Retributivist, and 2. The Utilitarian. The retributivist stresses on the guilt and desert, looking back to the crime to justify punishment and denying that the consequences of punishment beneficial or otherwise, have any relevance to justification.

The utilitarian, on the other hand, is mainly concerned with the justification of punishment and insists that an act of punishment is justified only when it outweighs the intrinsic evils of inflicting sufferings on human beings and has untold benefits.

Among the firm believers of the Retributivists, Kant holds that punishment of crime requires no justification at all. He firmly believes that all crimes in whatever sense 'ought' to be punished. So that, moral order is maintained, we should punish the guilty. When Kant talks of good-in-itself, he means that the question of justification is automatically dropped. There is no need to search for the intensity of goodness itself. If something is good or

right, it needs no clarification. The same applies to justice. Its intrinsic value is appreciated immediately or intuitively. But since, there is still an area of doubt left behind in most people's mind, the need for institution of justice arises. These sections of the mass feel that an appeal to intuition is necessarily unsatisfactory. Again, to say "it is fitting" or "justice demands" that the guilty should suffer is only to reaffirm that punishment is right, not to give grounds for thinking so.

There are some retributivists, who agree that punishment, is on the whole evil, yet are of the view that the wicked should be punished and under no circumstances 'ought' to go scotfree. It is always wise that the wicked should be punished least they should prosper more than the virtuous and also perhaps, at their expense! In this view, the function of criminal law is to punish wickedness or immorality in order to maintain a kind of cosmic distributive justice. However, it is not self evident that wickedness should be punished any more than it is self-evident that legal guilt should be. Archbishop Temple, himself, a Retributivist, declared that he had no "intuition that it is good that the wicked should suffer". Nor is it clear that virtue must be rewarded or that universal justice requires the kind of human rectification

that this sort of Retributivism prospered, there might be no incentive to virtue, but this is essentially a utilitarian mode of argument. This may be the ways of retributivists thinking. But personally, I do not think all of us would agree to this view. Most of us would definitely want the guilty to be punished. He or she deserves to be punished. By meting out punishment, we indirectly make the guilty aware of his wrong doings he or she has committed. Thus he or she stands a chance to repent for his crimes and rectify himself. If not, how is he or she to understand the basic difference between right and wrong? The simple question "What I ought to do and what I ought not to do", remains meaningless and obscure.

Again, evil motives and a bad character are necessary conditions of wickedness but not of legal guilt and criminal liability. The state's function is to punish breaches of those rules which in the public interest ought to be upheld; it is a matter of indifference in law (but not in morals) that some men who observe the rules do so from the unworthy motive of fear and others break them from laudable motives of principle. Conversely, it is at least doubtful whether the criminal law should provide penalties for offences against morality except where the public interest is at stake for instance, whether it should extend

to cases of lying other than, say false pretenses and perjury.

I now come to my third problem, that is, distinction between Law and morality. Law and morality are very closely related to each other. Both exist side by side. It is only for morality that law exists and without a code, no morality can survive. It is fear of punishment, that keeps crimes at bay and this punishment is only possible by law. What is punishment, to law, blame is to morality. Both regulate social intercourse, and in any given society the aims and ideals upheld by the law will usually correspond, more or less, with those upheld by the dominant morality. Moreover, in the family and the school punishment is often used to reinforce moral condemnation as part of the process of moral education. Some writers who regard punishment as moral retribution couple this idea with the argument that the point of punishment is to be found in what Lord Justice Denning has called, "the emphatic denunciation by the community of a crime". In this view, punishment reinforces the community's respect for its legal and moral standards, which criminal acts would tend to undermine if they were not solemnly denounced. There is, however, no intrinsic reason why denunciation should take precisely the form of inflicting suffering on criminals,

unless, perhaps, one accepts Ewing's view that punishment has the advantage of impressing both on the criminal and on everyone else that a breach of law and moral is so serious that society must do something to prevent it.

The distinction between justice and morality is not very sharp. Yet, justice would imply fairness of actions whatsoever, and morality would mean the performance of fair actions. Moral reciprocity - doing to others as one would have them do to oneself and giving an equal return for benefits received is closely linked to impartiality. From this follows the idea of such as fair wage, a just price, and a fair exchange (what Aristotle called "Cumulative Justice") as opposed to exploitation and profiteering.

Hegel is of the view that all criminals must be punished and ought to be punished under all circumstances. For him, by committing a crime, one upsets the basic moral order and this order can be restored by the offender being made to suffer. In terms of the dialectic, crime is a negation of right and as such a nullity; punishment negates the negation; thus reaffirming the right. But in what sense can punishment be said to restore the balance or annul the wrong, unless it is taken for granted the criminals deserve to be punished?

Bentham, the exponent of utilitarianism, is of the view that, "all punishment is mischief - if it ought at all to be admitted, it ought only to be admitted in as far as it promises to exclude some greater evil." The good that is restored by punishing the offender in what ever way - by life imprisonment, deportation or even execution, far outweighs the intrinsic evils of sufferings deliberately inflicted. Without such effects, or if the sufferings inflicted exceeded the suffering avoided, the institution would be unjustified.

Utilitarian seems to be misguided as regards meting out punishment. According to them, even an innocent man ought to be punished! This punishment would serve as a warning to other offenders and society in general. He, would, they say, be just as useful as a genuine offenders. But if this is so, isn't justice the most cruel form of reformation? Again, offenders might be deterred by threatening to punish their wives and children, particularly, as is so often the case with political terrorists. Again if punishment could be justified as a way of reforming criminals, it would be better to punish them before rather than after, they committed their crimes. But, here the utilitarian seems to overlook the question - how can we know the criminals before a crime is even committed?

Retributivists claim that utilitarian are in danger of losing sight of two conditions which are necessary to the very idea of punishment - namely, that an offence should have been committed and that punishment shall be of the offender himself, who alone can be said to deserve it.

"Punishment is Punishment", wrote F.H. Bradely, "only when it is deserved", punishment for any other reason is "a crying injustice".

The utilitarians cannot argue themselves out of the dilemma of punishing the innocent to bring about less suffering or to avert crime itself. But this has an adverse effect on society itself. Such methods serve as wholly unsatisfactory because they depend on assumptions of purely contingent consequences. Our revulsion of punishing the innocent seems to go deeper than that. To fail to punish an offender is, in effect, to abandon those moral ideals that society and its laws should uphold. The philosopher, most associated with this view is Emmanuel Kant. "The exercise of my freedom, he argued, is limited by the rights of others. When I violate their rights, I deserve to be punished - whether the punishment does me (or anyone else) any good or not I have earned a punishment that it is the duty of society to provide, for its has taken a stand on behalf of certain rights and cannot forsake them." "If

legal justice perishes," says Kant, "then it is no longer worthwhile for man to remain this earth".¹ Kant, further defines Justice as "the aggregate of those conditions under which the will of one person can be conjoined with the will of another in accordance with a universal law".² Just as moral laws and moral rights are universal in scope and hold irrespective of utilitarian consequences, so too does the propriety of punishment. There is the moral imperative to punish wrong doings, just as there is the moral imperative to tell the truth. It is true that a world of virtue and happiness perfectly conjoined are, next to impossible but as we can we must deprive evil doers of happiness. They must not be allowed to profit from their deeds. This would be unfair to the innocent.

It can be argued that punishment of the innocent or of hostages is an abuse not because it necessarily makes for more unhappiness than it prevents but because it treats innocent men in a way that is appropriate only for the guilty and makes an arbitrary difference in treatment between them and other innocent men. Moreover, a legal

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1. Kant, The Metaphysical Elements of Justice (Translated by John Ladd), p. 100.
 2. Kant recognized that legal statutes may not always be in accordance to genuine moral rights, but he believed that we owe them obedience while trying to change them.

system is designed to guide conduct by laying down rules and attaching penalties to those who choose to break them. It is acceptable, in the words of J.D. Mabbott, only because "the criminal makes the essential choices; he brings it on himself". Otherwise punishment would not be consistent with the principle of respect for persons. The hostage, on the other hand, has no chance to settle his own fate; he is used as a mere lever for manipulating other people's conduct, and his own interest is subordinate to that of the other members of society. Punishment of the innocent ignores, in short, fundamental procedural rules of justice and morality without which utilitarianism would make little sense, for unless everyone is worthy of, equal consideration as a source of claims, whose interest is to count in assessing the utility of a course of action? Whom are we entitled to treat as simply a tool for advancing other men's interest - as Aristotle's "slave by nature" - and what would count as a reason for considering other men before him?

Punishing offenders when an offence has been committed under coercion unavoidable accident or ignorance of fact is also extremely unjust. Bentham argued that to punish anyone under such conditions would be pointless and, therefore, mischievous, because the threat of penalties

could not possibly deter anyone in the future who is similarly placed. It would not be unethical on the part of anyone, if such a person is left alone. (But they can be refrained from punishment provided they could be distinguished from cheats trying to take advantage of such excuses and provided enough offenders without such excuses could be detached to furnish examples for others). The principle of 'strict liability', which exists in some legal systems for certain offences has been defended on the utilitarian ground that it is impossible to tell a genuine excuse from a pretense. It is questionable, however, whether a person who would otherwise be treated as innocent ought to be treated as guilty because someone else might otherwise escape merited penalty. It is extremely difficult to find the authentic guilty in such cases and its equally difficult to give genuine punishment. What ought to be the deciding factor is the crucial question here, for it is very like punishing the innocent as a warning to the guilty. The utilitarian case for these excuses is unsatisfactory in as much as it makes them subject to such qualifications.

For such excuses, punishment is morally acceptable only if it is the consequence of an act freely chosen by the criminal, which it would not be under these conditions.

A man acting in ignorance or by accident cannot be said to bring his punishment on himself - Punishment, seen as a way of influencing conduct, cannot be justified if there has been no real possibility of choice. Moreover, the punishment of involuntary offences introduces into men's lives the possibility of disasters which they can be neither foreseen nor averted.

Utilitarianism, then, must be supplemented by principles of justice if it is not to clash with other moral principles that are usually considered fundamental. It has, however, the merit, as an approach to the justifications of punishment, that it provides a clear procedure for determining whether the institution is acceptable in general terms. This the retributivists approach cannot do because it denies the relevance of weighing advantages and disadvantages, which is what we ultimately must do in moral criticism of rules and institutions. Consequently, a retributivist's justification of punishment as an institution, usually turns out to be a denial of the necessity for justification, a veiled reference to the beneficial result of punishment (a utilitarianism in disguise) or an appeal to religious authority.

It is in the question of justification of punishment that the utilitarian fail miserably and the

retributivists occupy the stronger position. A general rule to consider the advantages in a particular case to decide whether it ought or ought not to be punished is highly impractical. If there is one but one and only deciding general rule, then there can be no judging factor at all as deterrent would be quite lost and guilty men would not be punished at all. Assuming, then, that a penal system can be justified in utilitarian terms, any offence, is at least prima facie an occasion for a penalty. Equally, without an offence there is no question of a penalty. The retributivists contention that punishment is justified if, and only if, it is deserved is really applicable. Therefore, to the justification of particular instances of punishment, the institution as such is being taken for granted.

Certain other criticism can be made of the retributive theory.³

(i) It is impossible to determine on objective grounds, the degree of guilt and culpability in an offence and its corresponding degree of punishment.

(ii) If immoral action requires punishment, it would be required also for deeds in which no one but the agent is harmed.

3. See the excellent discussions in Bowie and Simon, The Individual and the Social Order, pp. 224-231; and Golding, Philosophy of Law, Chapter 5.

(iii) Since punishment for all instances of the same crime is to be the same, a first offender would have to receive the same penalty as a habitual criminal.

(iv) If the principal that we should balance virtue and happiness, as well as evil and unhappiness, is sound, we would be tempted to excuse a criminal who has already suffered a lot.

(v) There may be cases in which it would be wise not to punish at all; retributivists deny this possibility.

(vi) Under such a rigid system no concern can be taken for the innocent family of the offender who may be injured by the punishment.

(vii) If the legal system does not impose a proper punishment, individuals may feel it is "up to them" to do it.

(viii) There might be cases in which it is wrong to punish violation of law - when a law, for example, is unjust. Retributivist deny this possibility.

(ix) Offenders might argue this, it is not wrong to commit a crime - say, kill someone - if they are willing to pay the price.

I now turn to my fourth problem - What good can punishment serve? Is there a general duty to act justly? All these questions are critical to the principle of punishment which seems to be closely related to Kant's Categorical Imperative. Deciding issues according to law means taking account only of those features of a case to which the law attaches significance. But considering the questions more generally, the very idea of moral justification implies impartiality and references to law. To ask a man why he allows more to A than to B is usually to ask for precisely the kind of justification implied in Aristotle's definition which is explained like this - "Justice, he said, consist in treating equals equally and unequals unequally but in proportion to their relevant differences. This involves, first, the idea of impartiality; the honest judge considers only the features of the case that are relevant in law. Justice is no respecter of persons; wealth or status will influence judgement only if it makes a difference in law (for example, in taxation cases or the privilege of a member of parliament in libel action). Impartiality implies a kind of equality-not that all cases should be treated alike but that on us rests whoever would treat them differently to distinguish them in relevant ways. It is not for a judge to decide the respects in which they are unequal, are relevant to the issues in the case.

That is, what is really meant by the right to equal consideration - to be treated alike unless relevant differences have been proved".

Jeremy Bentham is the philosopher who first made this utilitarian approach to punishment plausible. He held that punishment, which is always some form of pain, is in itself an evil; it can thus justifiably be enjoined only in order to prevent a great evil or produce a greater good. Since people are not oblivious to the prospect or experience of evil, they can be constrained to obey the law by means of the threat and experience of punishment. The "expense" (in both the literal and the figurative sense) of punishment as borne by its recipient and dispenser must be kept as low as is consistent with its function to deter.

Bentham specified four cases in which punishment should not be inflicted.⁴

(1) Where it is Groundless - Acts that do not harm others and are done with their consent are in this category - also acts for which "adequate compensation" has been made. This consideration would exempt intoxication, sexual acts between consenting adults, and compensated injury from punishment.

4. See Bentham, An Introduction to the Principles of Morals and Legislation, Chapter 13 ("Cases unmet for punishment").

(2) Where it is Inefficacious - Examples here are actions that were not crimes when committed, cases where the penal provisions were not conveyed to the agents, and cases where, for reason of infancy, insanity, or intoxication, the law could produce no effect on the agent.

(3) Where it is Unprofitable - Many factors have to be weighed to determine profitability: the sense of coercion the individual feels in the presence of a law with stiff punishment, the sense of apprehension suffered by the offender as well as the actual punishment, the pain experienced by the family and friends of the offender, the displeasure of other people and foreign powers, the expenses that would have to be borne by society in carrying out the punishment, and so forth. A ten-year prison sentence for "illegal parking" would indeed deter, but would be more than necessary and thus "unprofitable". It is in the spirit of Bentham also to add that class of actions which are so pervasive that the cost to the community in enforcement and custodial care would exceed the mischief of the actions themselves. Marijuana smoking might be an example. The strategy of demonstrators who defy orders to desist is often based on the belief that the police will find it too "expensive" to lock them all up.

(4) Where it is needless. There may be other means

at hand that will deal more easily with mischief: education, instruction, persuasion. One can deter the reading (if not the writing of "Pernicious principles" - by the threat of legal punishment, but "the pen is the proper weapon to combat error with, not the sword").

In spite of Bentham's adamant grounds for avoidance of punishment, the retributivists however, argue that certain punishment are mandatory because there are some ways in which the prisoners deserve the sentences and any alternation in the punishment would be inappropriate. There is also the issue here of whether the punishment is simply the deprivation of liberty or must also involve other deprivation as well, e.g., in terms of money, self respect, loneliness. Should conditions be made as nice as possible for the prisoners while he is being punished (i.e., not free) or, are, other indignities also part of his punishment? On the deterrent theory, a criminal is incarcerated in order to prevent him or others from committing the crime in the future. If benefits such as early parole counteract the deterrent effect, they might have to be prevented. On the reformative or rehabilitative theory, a criminal is deprived of his liberty and treated in such a way as to alter his character for the future.

In a chapter entitled "of the proportion between punishments and offences", Bentham states several rules:

1. "The value (amount) of the punishment must not be less in any case than which is sufficient to outweigh that of the profit of the offences".⁵

2. "The greater the mischief of the offence, greater is the expense, which it may be worthwhile to be at, in the way of punishment".⁶

3. "Where two offences come in competition, the punishment for the greater offence must be sufficient to induce a man to prefer the less"⁷ armed robbery, then, should have greater punishment than unarmed robber.⁸

4. "The punishment should be adjusted in such a manner to each particular offence, that for the every part of the mischief there may be a motive to restrain the offender from giving birth to it. Theft of a small amount of money should have a milder punishment than of a large amount. Murder since it often occurs after rape, should have a mere severe punishment than a rape.

5. Ibid., p. 177.

6. Ibid., p. 181.

7. Ibid.

8. Ibid.

5. "To enable the value of the punishment to outweigh that of the profit of the expense, it must be increased, in point of magnitude, in proportion as it falls short in point of certainty.⁹ Hard-to-detect crimes will have a greater penalty".

6. "Where the act is conclusively indicated of a habit, such an increase must be given to the punishment as may enable it to outweigh the profit not only of the individual offence, but of such other like offences as are likely to have been committed with impunity by the same offender".¹⁰ A third offence will be dealt with more severely than a first offence.

Bentham says, "Men calculate, some with less exactness, indeed, some with more: but all men calculate. I would not say, that even a madman does not calculate". So Bentham would have the state calculate also so that people may be constrained from acting against the public interest. Although his concern in the chapter cited is with the "political sanction", he does point out that use of the other sanctions, especially the moral one, may produce the same effect.

9. Ibid., p. 184.

10. Ibid.

Having done with utilitarian Deterrence theory, we now turn our attention to Professor Nagel's ABSOLUTISM. Nagel's rule is intended to be restricted in scope; it applies only to what "we deliberately do to people". This is an important restriction. He rejects the law of double effect and says he prefers to "stay with the original, unanalyzed distinction between what one does to people and what merely happens to them as a result of what one does".

Professor Nagel seems to support offenders on the basis of restriction on legitimate targets and weapons in this: "hostility or aggression should be directed at its true objects". This means both that it should be directed at its true objects. This means both that it should be directed at the person or persons who provoke it and that it should aim more specifically at what is provocative about them. An action, according to Professor Nagel, is justified if one can justify to its victim what is being done to him. For instance, he implies that if you were to say to a prisoner, "you understand, I have to pull out your finger nails because it is absolutely essential that we have the name of your confederates" and the prisoner agreed to this as following from principles he accept, then the torture would be justified. We rather assume that the prisoner would not agree, in an appropriate sense. In this

connection, we must be clearly aware of an important distinction. A judge who sentences a criminal might also be unable to persuade the criminal to want the sentence to be carried out; and if persuading him to want this were necessary for a moral justification of the criminal law; then the system of criminal justice would also be morally objectionable. We must distinguish between persuading a person to whom something horrible is about to be done to want that thing to happen or to consent to its happening at that very time and something quite different - getting him to accept, when he is rational and choosing in ignorance of his own future prospects, some general principles from which it would follow that this horrible thing should or might be done to a person in his present circumstances. I think Nagel must mean, or ought to mean, that a set of rules of punishment must be such as to command the assent of rational people choosing behind a veil of ignorance, not that a person must be got to assent at the time to his finger nails being pulled out in order to get information, if that act is to be justified. It may be, that Nagel does not agree with this distinction, since he hints at the end of his discussion that something more may be required for moral justification.

Continuing with the Deterrence theory, there arises two main objections:

(1) Emphasis is not made on the individual nature of the offensive act and its punishment.

(2) Whether punishment works, whether it does indeed deter.

The first objection is met with the answer that it would be better to interpret utilitarian deterrence in terms of RULE utilitarianism. To punish an innocent person is in violation of a rule that has a powerful utilitarian backing. It should thus be upheld in particular cases whenever the extenuating circumstances. The objection be also met by an interpretation in term of act utilitarianism. Even when punishing this particular innocent person would serve a limited utilitarian purpose, it would reduce respect for the general principle that innocent people are exempted from punishment. An act of punishing the innocent tends to weaken a general principle the recognition of which leads to lawful conduct.

Anyone who has committed a crime must be punished even if the punishment does little good for the general good. Consistent adherence to general rules has an enormous deterrent effect. Our obedience of the law ensures us safety and breaking of the law means punishment. This is the general and common principle which every individual

knows. To weaken the rule that the law represents would be to say to all that the apparatus of justice operates capriciously, and that it hardly matters what we do.

In courtrooms also, the final decision are always, indeed, made in the light of individual circumstances, but they would be within the parameters specified by law. Each case would not be a new and unprecedented one where all the consequences would have to be charted. Most end results are taken into account before the laws are enacted. Laws are code of conducts adopted for the happiness of society on the basis or experience of what does serve this happiness. As Mill said:

Mankind has been learning by experience the tendencies of actions; on which experience all the prudence, as well as all the morality, of life are dependent. People talk as if the commencement of this course of experience had hitherto been put off, as if at the moment when some man feels tempted to meddle with the property or life of another, he had to begin considering for the first time whether murder and theft are injurious to human happiness... There is no difficulty in proving any ethical standard whatever to work ill if we suppose universal idiocy to be conjoined with it... It is a strange notion that the acknowledgement of a first principle is consistent with the admission of secondary ones.¹¹

11. Utilitarianism, pp. 24-25.

Similar to "secondary principles" of action, (by which individual decides his private actions) are secondary principles of law by which the state can make its law and prescribe its punishment. The justification of punishment, accordingly are in kind:

(1) Each rule has been shown to deter.

(2) The consistent application of a system of rules deters. The individual knows what punishment is to be expected and that it will be inflicted.

Some people are also, of the opinion that instead of punishing law breakers, we 'ought' to rehabilitate them. In simpler words, they should be so treated that they will never be moved to commit the crime again. For instance, in the popular award winning serial "Picket Fences" aired in Star T.V. network, the episode of "THE DANCING BANDIT", shows just this.

Rehabilitation is itself a kind of deterrence. The word is derived from the Latin word 'terere' which means "to frighten". But it works in the opposite direction as the authorities of such centres help heal the patient. The aim of both is the same: reduce their tendency to break the law.

However, there are certain drawbacks to this approach. It is extremely difficult to differentiate genuine sick from the functional ones. Therefore, the following points have to be carefully noted when judging such cases: (i) Punishment would have to be retained for some crimes (examples, speeding, embezzlement) for their commission cannot always plausibly be traced to a damaged psyche. In any case, as already mentioned, it is difficult to draw the line between the deliberate criminal and the "driven" one. (ii) The social expenditures for the comprehensive and systematic treatment of neurotic (or even psychotic) law breakers would have to be very great indeed. Until the public is willing to spend much more than it does now, the function of even the most humane penal institutions will have to be more custodial than therapeutic. (iii) The success rate of penal institutions and mental health agencies is even more discouraging than that of the system of deterrence (in the narrow sense). Fatal errors are often made with respect to the criminally insane; and very few wardens can guarantee that real rehabilitation has taken place with respect to their charges (in those institution where it is offered). Successful treatment of personality disorders is very difficult and very time consuming. Even under the best of conditions it often eludes us.

Sometimes in such cases as explained above, a person is inflicted with punishment yet blessed with rehabilitation. How is this so? The treatment is so pleasant that punishment is not felt at all. But in cases where such treatment proves to be a failure, no deterrence is an achievement. The confinement itself or the condition of confinement may be so resented that the prisoner only "goes through the motions" of rehabilitation; if any deterrence at all is achieved, it would have to result from a resolve, never to get into such a terrible place again ("reform"). So far as the prisoner is concerned, both deterrence (in the narrow sense) and rehabilitation are problematical. If we can get the best of both worlds, fine. But if we cannot get both, we should be sure to get one of them. What must be avoided is the kind of "punishment" that neither reforms nor rehabilitates. Yet, this approach¹² to punishment and reform is by and large the best and proves to be the most useful through research in both sociology and psychology. Rehabilitation offers the offenders education and training, thus making him or her eligible and fit to take up some

12. There is a common saying, "tout comprendre, c'est tout pardonner". Actually, we can already forgive. But if we understood, we could do much more: prevent the evil in the first place.

employment when released. Rehabilitation is utilitarian in spirit for the end result, is 'good'. It also falls within the general concept of deterrence, for the objective is PREVENTION OF CRIME.

Deterrence includes Rehabilitation which could also be said to be the theory of "no punishment". It does come very close to "punishment". The individual is detained against his or her wishes and might have to undergo some very unpleasant treatment. It has long been recognised that offenders should not be held responsible for their crimes if they were insane at the time the act was done. The problem is that it constitutes insanity. The United States had adopted the criterion set down in the famous M'Naghton case in Britain:

"To establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong".¹³ This criterion of "knowing right from wrong" was long thought to be too narrow and was supplemented by the

13. 8. Eng. Pep. 718, 722 (1843).

"irresistible impulse" test of 1929: "This impulse must be such as to override the reason and judgement and obliterate the sense of right and wrong to the extent that the accused is deprived of the power to chose between right and wrong."¹⁴ The accused may know right from wrong, but he or she is impelled to do wrong. The criterions was broadened even more in the case of DURHAM V UNITED STATES. Judge Bazelon of the U.S. Appeals Court gave us the "Durham rule" when he wrote:

We find that as an exclusive criterion the right-wrong test is inadequate in that (a) it does not take sufficient account of psychic realities and scientific knowledge, and (b) it is based upon one sympton and so cannot validly be applied in all circumstances. We find that the 'irresistible impulse' test is also inadequate in that it gives no recognition to mental illness characterized by brooding and reflection and so relegates acts caused by such illness to the application of the inadequate right-wrong test. We conclude that a broader test should be adapted.... It is imply that an accused is not criminally responsible is his unlawful act was the product of mental disease or mental defect.¹⁵

Bazelon, further describes mental disease as something that can improve or deteriorate, and mental defect as something that is congenital or the effect of injury of

14. Smith V. United States (1929).

15. Durham Vs. United States, 1954.

disease (in either case, permanent). He concludes his opinions this way:

The legal and moral traditions of the western world require that those who, of their own free will and with evil ... commit act which violate the law, shall be criminally responsible for those acts. Our traditions also require that where such acts stem from and are the product of mental disease or defect as those terms are used herein, moral blame shall not attack, and hence there will not be criminal responsibility.¹⁶

More serious problem are woven here than one's eye can see. One of the most complex question which automatically crop up here is "How sick does one here to be and who certifies it?" To what extent does anyone have "free will?" Many people are poorly adjusted because of the environment in which they have been reared. Juvenile delinquents are indeed "crazy, mixed-up kids". To what extent can mental illness be responsible for declaring a person "not guilty" and instead recommend him or her for a more conventional punishment? What about individuals (often highly placed in business and politics) who commit "white-collar crimes?" Are they sick also? Have they been victims of a disadvantaged youth or racial discrimination? Is it possible to draw the line between actions coolly and rationally selected and those that resulted from a personality defect of some kind?

16. Ibid.

Answers to these questions could be the most easy way out - blame the society for violation of laws. But this would not solve the problems but pose the following dangers:

(i) The individual is deeply in the clutches of society. It can reshape him (in theory) to whatever form it conceives a healthy and adjusted personality should have. The individual has no protection against indoctrination and "brainwashing".

(ii) Society can confine a troubled person as long as it likes - indefinitely - until it believes that he or she has "recovered".

(iii) The tendency to excuse all crimes as acts beyond the agents control has the effect of destroying all sense of human responsibility. "A society does not presume that most of its adult members are sane, intelligent, and in control of themselves in effect reduces them to second class citizenship. It takes away their self respect as moral agents - as persons who can in sincerity be told that they have done something wrong - and our respect for them as moral agents."¹⁷ Modern psychiatric treatment is based on

17. Golding, Philosophy of Law, p. 105.

the principle that the patient should be induced to accept responsibility for his actions - both past and future. Many of the "criminality insane" have admitted that they knew what they were doing, as well as some of the consequences.¹⁸

Dr. Karl Menninger and Dr. Thomas Szasz are of the opinion, that mental illness are diseases of the brain. But such cases are not hopeless cases. The mentally ill person can with some amount of difficulty adjust with the society. They further hold that what we call mental illness is not illness at all in any legitimate sense: it is an expression of the persons struggle with the problems of how to live.¹⁹

I now come to my question, ought we to punish the deserving and protect the innocent? 'Why punish the deserving?' is the most important question one may come across in the discussion of justification of punishment. The short reply one might accept to this curious question is "Because they deserve it". The foremost reason why the topic address has not been extensively examined is the uncritical supposition that the premise "a criminal C

18. Freedom and Determinism, 'Is the Title of the Third Section of Chapter 9'.

19. See Szasz, Law, Liberty and Psychiatry.

deserves a punishment P" establishes a definitive ground for concluding "justice requires that P be given to C", and/or "P ought to be given to C". If this inference were valid, the question "why punish the deserving?" would become as trivial as the question "why are bachelors unmarried?"

The question may give rise to a similar question - "why be moral?" once it is decided that an action is obligatory (or punishment is deserved), what further reasons are needed to act accordingly? Unless one demands non-moral answers to moral questions, it seems perverse and unreasonable to require an additional justification, consequentialist or otherwise, for doing what is obligatory (or for imposing a deserved punishment).

However, cases in which desert judgements provide insufficient reasons for action are neither rare nor exceptional. Any number of grounds are advanced to spare particular offender (or alleged offenders) the punishment they are thought to deserve. Arguments of social policy may militate against the punishment of public figures. Tawana Brawley may have deserved punishment for a subpoena, but prosecutors believed that an indictment might antagonise the black community. A different set of reasons is sometimes invoked to explain the reluctance to punish less well

known person. Age or Infirmity might justify the decision not to inflict a deserved punishment. The suffering of dependents or other third parties might provide a reason not to impose a deserved punishment.²⁰

The co-relations between desert judgements and punishment provides a reason to resist the tendency to draw conclusion about whether punishment should be imposed from premises about desert. One noteworthy feature of desert judgements is that they seldom, if ever, impose correlative obligations or duties on anyone to treat the deserving party in any particular way. As George Sher (1987:5) observes:

In many cases, what is most striking about desert-claims is that they do not imply anything about what particular persons ought to do. When we say that an especially hard-working self employed farmer deserves to succeed, or that a person of fine moral character deserves to fare well, we typically, do not mean that anyone is obliged to take steps to provide what is deserved.²¹

If this observation is correct, perhaps, no one has an obligation to impose even those punishments that are deserved.²²

20. This list could be expanded. See the United States sentencing commission, (1987).

21. However, Sher (1987:B) maintains that judgements about retributivists desert provide counter-examples to his generalization.

22. One might be especially sceptical that the state has an obligation to punish. See Murphy (1985).

A few Philosophers, apparently persuaded that desert requires punishment, have denounced various failures to impose punishment, for example, the dispensation of mercy, as incompatible with justice.²³ Among the most remarkable position on this issue has been defended by Herbert Morris (1968). His well-known claim, that, offenders have a right to be punished, commits him to the view that criminals who are granted a pardon can complain of violation of their rights. Morris acknowledges this extraordinary commitment, and writes:

Indeed,^d one can imagine a case in which, even^h in the face of an offer of a pardon, a man claims and ought to have acknowledged his right to punishment.

(1968:490)

But in responding that this scenario can be imagined, Morris has understated the oddity of his position. His thesis that criminal have a right to be punished entails that their rights are actually infringed whenever legal officials fail to impose a deserved punishment, and not simply in those unusual cases in which a convicted criminal happens to reject a pardon. Is it plausible to believe that the state violates the rights of a criminal by not apprehending or prosecuting him? These

23. According to Hestevold, (1983), mercy is permissible only when the sentencing authority.

commitments, although logically coherent, are so counter intuitive that one should be sceptical of a theory that give rise to them. One way of avoiding these commitments is to recognize that desert is not a sufficient ground for punishment.

After discussing in details questions such as what is meant by "Punishment, Is punishment justifiable morally", I now turn my attention as to how severe should a punishment be on an offender. On the question of severity there is a clash between the utilitarian and retributivist. The latter insists that the punishment must fit the crime; the former relates the penalty to the general aim of the system, to the prevention of further crime, and perhaps to the reform of the criminal. The most extreme form of punishment is adopted by the retributivist, "eye for an eye", as Kant further adds - hanged until death occurs for murders and castration for rapists.

Let us not try to construct a table of equivalents so that the amount of suffering inflicted by the criminal could be meted out to him in some form. How can such a table be drawn up? How many years must a black mailer spends in jail to experience suffering, equal to his victims? Is it possible in any case, to make comparison of sufferings between persons? Of course, we do assess the

gravity of an offence and try to ensure that the punishment for a trivial offence is less severe than for a serious one. But this is possible only because we take for granted an existing scale of penalties and grade new offences accordingly. Such grading does not imply an intrinsic relation between the crime and the penalty apart from that established by the scale. Penalties prescribed by the law ought to reflect the moral heinousness of the offence. The most serious offences against morals deserve the most severe penalties. This, however, only shifts the question a step back, for what makes one moral offence more serious than another?

In deciding the severity of penalties, we have to be very careful, so that we might not land ourselves in justifying severe penalties for trivial offences and vice versa. To eliminate parking offences might need heavier penalties than to eliminate blackmail, which would be monstrous. Blackmail, on the other hand, causes so much suffering that if heavier penalties would yield even a small reduction in the number of offences, there might be a net-gain even though offenders would suffer more than they did before.

In arguing with the severity of punishment and its application, one must establish a kind of standard penalty

for each class of offence. Official drafting new rules might consider whether a proposed maximum penalty would keep offences down to manageable proportions, or people concerned about road accidents might argue that heavier penalties for motoring offences would make drivers more careful. Deciding the sentence in a particular case, however, is clearly a different matter. The maximum penalty is a limiting factor, but questions like the degree of responsibility, provocation, and the offender's previous record are all relevant.

Let us now turn our attention to "Criminal Law" which is the sixth problem highlighted in this chapter. Professor H.L.A. Hart describes criminal law as:

A law that is used to punish immorality as murder or a deliberate assault, euthanasia, or mercy killing and also sexual morality including homosexuality, even if it causes no harm to other.

Lord Devlin claims that the "function" of the criminal law is "to enforce a moral principle and nothing else".²⁴

Both in England and in America, the criminal law still contains rules which can only be explained as

24. Ibid., p. 9.

attempts to enforce morality as such: to suppress practices condemned as immoral by positive morality though they involve nothing that would ordinarily be thought of as harm to other persons. Most of the examples come from the sphere of sexual, moral and in England they include laws against various forms of homosexual behaviour between males, sodomy between persons of different sex even if married, bestiality, interest, living on the earnings of prostitution, keeping a house for prostitution, and also, a conspiracy to corrupt public morals, interpreted to mean, in substance, leading others (in the opinion of a jury) "morally astray". To this list, some would add further cases: the laws against abortion, against those forms of bigamy or polygamy which do not involve deception; against suicide and the practice of euthanasia.

Lord Devlin says that the attitude of the criminal law to the victim's consent that if the law existed for the protection of the individual there would be no reason why he should avail himself of it if he did not want it.²⁵ But paternalism - the protection of people against themselves - is a perfectly coherent policy. Indeed, it seems very strange in mid twentieth century to insist upon this, for the wane of Laissez-Faire since Mill's days is one of the

25. The Enforcement of Morals, p. 8.

common places of social history, and instances of paternalism now abound in our law criminal and civil. The supply of drugs or narcotics, even to adults, except under medical prescription is punishable by the criminal law, and it would seem very dogmatic to say of the law creating this offence that "there is only one explanation", namely, that the law was concerned not with the protection of the would-be purchasers against themselves, but only with the punishment of the seller for his immorality. If, as seem obvious, paternalism is a possible explanation of such laws, it is also possible in the case of the rule excluding the consent of the victim as a defence to a charge of assault. In neither case are we forced to conclude with Lord Devlin that the law's "function" is "to enforce a moral principle and nothing else".²⁶

Criminal law is in the prevention of bigamy. It is a criminal offence for a married person, during the life time of an existing husband or wife to go through a ceremony of marriage with another person, even if the other person knows of the existing marriage. Why does the law interfere at this point, leaving the substantial immorality of sexual cohabitation alone? Various answers have been

26. See, for other possible explanation of these rules Hughes, Moral and the Criminal Law, p. 670.

given to this question. Some have suggested that the purpose of the legal punishment of bigamy is to protect public records from confusion, or to frustrate schemes to misrepresent illegitimate children as legitimate. The American Law Institute suggests in its commentary on the draft model penal code that bigamous adultery, even when it does not involve deception, might call for punishment because it is a public affront and provocation to the first spouse, and also because cohabitation under the colour of matrimony is specially likely "to result in desertion, non-support, and divorce."²⁷ These, it is urged, are harm to individuals which the criminal law may properly seek to prevent by punishment".

Jacob Alder also discusses criminal punishment in his article entitled "The Urgings of Conscience: A Theory of Punishment".²⁸ Instead of seeing punishment as consisting paradigmatically in the infliction of pain by others on unwilling offenders, we should see it as paradigmatically, or ideally, something that the offender herself willingly accepts, which need not be unwanted or painful. The latter ("Conscientious") paradigm is logically and morally prior

27. See page 220.

28. Adler Jacob, "The Urgings of Conscience: A Theory of Punishment", Ethics, Vol. 104, No. 1, (University of Chicago Press, Philadelphia, 1993).

to the former ("legal") paradigm: We must justify the infliction of painful punishment by first explaining and justifying the conscientious person's willing undertaking of a punishment which she seeks as beneficial. This shift also necessitates a revision of orthodox definition of punishment: Punishment is defined simply as "something done to or by an offender that is justified by prior commission of an offence, and generally not justified without it".

Adler's focus on the "Conscientious punishee" is illuminating; and there is good Moral case for the priority of the "conscientious paradigm"; punishment should be justified to the offenders as something he ought to accept, or even seek, for himself. But the logical argument for priority, which Adler emphasises seem less impressive. Why not simply say that what is logically prior is the (justified) claim that offenders should undergo punishment - a claim which simultaneously justifies the conscientious offenders willing acceptance of punishment, and its imposition on any one who do not submit voluntarily? His argument that punishment "doesn't have to hurt" show that pain as such need be no part of the aim of punishment, and that an offender can welcome his punishment as a benefit. But Adler himself portrays punishment as a "restriction" of the offender's "basic rights" which, if imposed by others,

"would ordinarily, count as violation of right": even if that restriction is welcomed by the offender, as rectifying his crime, surely it is burdensome character as a restriction is essential to its punitive rationale; to which one might add that if punishment expresses the condemnation of others, or the offender's awareness of his own wrong-doing, it necessarily involves or aims to induce the pain of recognized guilt. Nor does Adler's minimalist definition seem adequate: it would, for instance, count as "punishing" an offenders guilty plea at his trial.

The last problems of this chapter is the question of capital punishment and its necessity. It is eminent that the opinion of both Christian and non-Christian are sharply divided. Yet both would agree to the necessity of death.

Capital punishment is often called "cruel and unusual". It is not necessary to term it as "cruel", for many convicted criminals have begged for it over life imprisonment. I would say, capital punishment is much better than life imprisonment, as the offender would not have to undergo the sheer anguish of being caged in. There are, however, some punishments that are cruel and unusual, and they can all be justified on utilitarian grounds. In the present world, capital punishment is unheard off except in such societies where there is no respect for human

beings. Every modern society agree that such punishment is "cruel". Even the utilitarian would not recommend such punishment on an offenders although such an extreme step would definitely deter more effectively than prison sentences in institutions walled off from public view. The retributivists, on the other hand, would never agree to this extreme step on the ground that a human being is a human being despite of whatever his action maybe. They have the ethical conviction that punishment should be inflected with sorrow and sympathy, that even the evildoer has a right to experience punishment with dignity.

"Mutilation" may spell horror to most of us but I am in favour of such an extreme cruel act for such an act would prove a very good preventive measure. For instance, in our country bride-burning and dowry deaths are on the rise beyond one's imagination. I will not horrify my readers with description of unimaginable torture. Being a victim of such traumatic experience, I cannot but support such punishment. Offenders of such crimes ought to have their own hands burned until they become useless! Questions of ethics would definitely rise. Can the law punish in this drastic way? Can the offenders (conspirators) burn alive a person just because she has no sufficient wealth to protect her invaluable life? If all human beings ought to be

respected and protected for being a 'Human', a bride is also but a human and sorry, not a lesser mortal!

E. Winslow Chapman, Police Director in Memphis, which led the nation in per capita rapes in 1980, hold that rapists should be castrated. His reasons are deterrent rather than, as was the case with Kant, retributivists. "The possible consequence of castration would dissuade 90 to 95 per cent of rapists", Chapman said "If maybe we can castrate rapists one or two time... that crime would go down the drain. I'm convinced of that". Chapman, a member of Reagan's National Advisory Task Force on Law Enforcement, reports that the local reception of his proposal was "almost totally positive".²⁹

There is a sharp line of difference between punishment for deterrence and offender used as a means to keep others in check. But this is not always observed. Whenever a particular crime is on the rise and well beyond control, the society usually asks for a victim. This victim in spite of a just and fair trial, may be imposed a death sentence rather than deter, so also to prevent any further occurrence of the same crime. The offender would be than publicly hanged. But this would amount to using the person

29. See, St. Louis Globe - Democrat, February 3rd, 1981.

as a means to put a stop to a certain crime and not as an end. According to Kant, it is morally unjust to use someone as a "means to an end". Voltaire, in commenting on a case of an inept British admiral, said that the king had him shot "pour encourager les autres" - to encourage the others. Perhaps the theory of deterrence can never get entirely clear of the mandate of the "second formulation of the categorical imperatives", but it can use the act of the offender and its normal punishment as a means for deterrence without destroying the entire person. The person is not used as a means only. And it will not make the mistake of choosing to punish a few people severely (for greater deterrent effect) instead of many people moderately.

However, capital punishment poses a number of problems. It is not so easy as pronounced. Even deterrence which offers the other way out of capital punishment has also a number of drawbacks. For instance, if we could make it a duty of the police force to arrest and detain any suspicious looking character on the street, than our streets would be safe indeed! And if we permitted police to enter homes without warrants, there would be more

convictions.³⁰ Even though this may be very true and help in eroding of crimes but police cannot enter houses without warrants for the security of inmates would be diminished. Gone are the days of honest and upright police force. In this world of the day, even the force that is supposed to protect us, is not far from corruption.

As Burton M. Leiser writes:

Some of the world's most orderly societies and some of its safest streets and parts are to be found in precisely those totalitarian countries where guarantee of individuals liberties are the weakest. Safety in the street and security at homes can be bought, for a time, by a citizenry that is prepared to forfeit certain rights and liberties that were considered to be fundamental during the developmental of the western democracies. That price, however, is too high.³¹

The most well-known protection that a suspect has is to be made aware of his or her rights with respect to interrogation. This was secured by the famous Miranda

30. In 1980, the Supreme Court in effect invalidated the laws of 23 States that exempted police from acquiring warrants in routine felony arrests. The Court permitted exceptions in such cases where police are in hot pursuit of a suspect or it is likely that the suspect will flee. See, "The court guards the door", Newsweek, April 28th, 1980, p. 81.

31. Leiser, p. 194.

decision in 1966, although the interpretation of this right is still being debated.³²

Those who favour capital punishment, commonly argue that the death penalty constitutes a unique deterrent and is therefore necessary for the protection of society. This is particularly true, they insist, in the case of a man already sentenced to a long term of imprisonment or setting out to commit a crime which would incur such a sentence - where to shoot his way out, for example, would facilitate escape and could only marginally affect his time in goal. But they would also argue that a long prison sentence, far from reforming a criminal, is apt either to harden him or result in a basic break-down of his personality. They would, moreover, maintain rightly, in my view - that to attempt to exclude any idea of retribution from criminal sanctions is to deprive them of any moral basis and to deny society, the right to show how deeply it disapproves of the crimes for which they were imposed or make any attempt to

32. The "Miranda Warning" given by the F.B.I. is "Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish. If you decide to answer questions now with a lawyer present, you will still have the right to stop answering at any time".

reflect the judgement - and justice - of God; and they would then proceed to argue that only the death penalty can adequately express society's reaction against the deliberate taking of an innocent life, or represent a suitable retribution for callous murder or the more extreme forms of treason.

However, a staunch Christian would never be in favour of capital punishment. He would argue that it is clearly written in the New Testament that a ruler of government has a divinely imposed responsibilities for the maintenance of justice; the encouragement of virtue and punishment of vice; and the reference of Romans 13:4 to the fact that a ruler "does not bear the sword in vain" can scarcely be interpreted in terms which exclude his right to inflict the death penalty where this seems to be necessary.

Mosaic law was formulated with divine approval and this law has all the place for capital punishment. It holds such penalties as essential and necessary in a number of offences as adultery, blasphemy or disrespect to parents. There are also quite a number who believe that capital punishment is necessary in case of deliberate murder. It is right and mandatory on the basis of genesis 9:1-7, which they would regard as almost tantamount to a "creation ordinance" rather than a foretaste, as it were, of the Mosaic law.

In my own view, Capital punishment becomes absolutely necessary when an innocent human life is deliberately violated, yet Capital punishment cannot and ought not be mandatory for murder, for a number of different reasons. If Capital punishment for homicide should be regarded as a form of "creation ordinance", then why was it explicitly precluded in the case of Cain, who killing of his brother Abel seems to have been a clear case of murder? The phrase "of every man's brother I will require the life of man. Whoever sheds the blood man by man (or possibly, "for that man") shall his blood be shed" cannot also be held as a commandant for murder also occurs in case of accident and other unavoidable circumstances. Even the most feverant advocates would reserve such penalties for deliberate, reckless or other heinous crimes. Moreover, in such cases as shedding the blood of animals, birds, fishes or reptiles for food, where we are again killing innocent and helpless lives for our pleasure. what would the law do? Would it forbid eating any such creature "with its life, that is, its blood, and which also, by implication, requires a judicial "reckoning" of man's blood at the hand of any beast who has killed him". This, I would say, be extremely difficult to decide since our's is a country of diverse culture, traditions and

religious beliefs. As such eating habits also differ. For some people, meat is almost the staple food (particularly the North East India) whereas some parts are total vegetarians. To put a total stop to animal and other slaughter would be an infringement on the basic rights of men and this is next to impossible. This prohibition of eating blood, I think was done to uphold the fact that the life of every creature belongs to God, that it should not be wantonly slaughtered, and that its life blood was of symbolic significance in the sacrificial system, while the slaughter of a beast who has killed a man is a common feature in early Semitic law, sanctioned by the Mosaic legislation. As Kidner justly remarks, the purpose of this passage is primarily didactic "If all life is God's, human life is supremely so", and the principles enshrined in these verses have an abiding validity, however, much the means of inculcating may change; for "one cannot simply transfer verse 6 to the statute book unless one is prepared to include verse 4 and 5(a) with it".³³ It would be difficult to regard this passage as part of the LEXTALIONIS, or law of retaliation, common to most primitive law and, especially, to all early semitic codes - and authorised as such with certain refinements, in the Mosaic legislation;

33. Geneses: An Introduction and Commentary (Tyndale Press, London, 1967), p. 101.

and few if any, would regard the lax talionis as incumbent on us today. It is important to remember, moreover, that the essence of the lax talionis was that the punishment must never exceed the offence - a shocking example of which is provided by the incident recorded in Genesis 4:23, when Lamech boasts that he has killed "a mere lad (Hebrew Yeled) for a mere wound".³⁴

I presume, I have discussed enough of punishment, highlighting Capital Punishment. I now turn to my own country, India, and try to find whether Capital Punishment is still practised in India. India, too, has the need and necessity of capital punishment for some offences in spite of being the land of Gandhiji's 'non-violence'. For sometime the movements for the abolition of capital punishment has been voiced on serious platforms as well as through newspaper columns.

The question - "Is Capital Punishment Necessary?" needs to be answered on the basis, not of emotional or sentimental but on the basis of scientific reasoning. Dr. U.K. Jadhav offers us a serious study as well as interviews of nearly three hundred male offenders, who were convicted for murder and sentenced to death or imprisonment for life,

34. Op.cit., p. 78.

during the year 1961 (March) to 1962 (March). As studies developed, it was found necessary to consider women offenders as well. Hence a random sample of fifty women offenders of the same category were taken and their case histories studied during 1965 to 1967. The consequent analytical significance of that study was brought out. On completing the detailed study of these three hundred and fifty murderers, male and female, the author, thinks that the court would solidly contribute to the development of the subject.

If we undertake a serious study of any case, when a person is sentenced to death, (by hanging) we will be touched by his psychological state of mind, particularly towards his last stage to Capital Punishment. I, personally think, that capital punishment is needless, it is too "cruel" to be imposed on any offender, however, heinous his crime maybe. Such a sentence hanging over his head; from the time the decision to execute him is communicated till he is actually executed is enough traumatic to reform him in a way that he will never again commit any crime in future. It would be far better to give a penalty of "life imprisonment", rather than "to be hanged until death". Capital Punishment is not really ethical as I do not think we are really authorised to execute anyone for any sort of

offence. By giving a death sentence to any offender, we are rather setting him or her "free forever". Apart from the effect on other criminals, Capital Punishment does not really give a chance for reformation or change for the better. It only acts as a "terror on the murderers".

Capital punishment duly meted out and executed is an important and effective weapon of social control and security in the hands of society and should not be lightly thrown away and that capital punishment should have a place in the Penal Code of any country.

To support my discussion, I have used the following statistics: Under the Indian Penal Code of 1860 in all there are eight sections dealing with offences punishable by death. They are:

- (i) Murder (Section 300 Indian Penal Code I.P.C.)
- (ii) Waging war against the Government of India (Section 121).
- (iii) Abetment of mutiny, if mutiny takes place (Section 122).
- (iv) Giving of false evidence by which an innocent person is executed (Section 194).
- (v) Murder by a person under sentence of imprisonment for life (Section 303).

(vi) Attempt to murder by a life convict (Section 307).

(vii) Abetment of suicide by a child or an insane person (Section 305).

(viii) Dacoity with murder (Section 396).

(i) Of these eight capital offences, attempt to murder by a life convict, if hurt is caused, and murder by a person undergoing, sentence of imprisonment for life, are the only offences for which capital punishment is mandatory.

(ii) In the case of the other offences capital punishment is discretionary, the discretion being left to the judges themselves.

A discretion in the award of capital punishment is the first mode through which the pronouncement of capital punishment is reduced in this country. That discretionary power has been persistently used more and more in the discretion leading to non-award of capital punishment, which, in other terms, is disinclination by the administration of justice to award capital punishment.

Disinclination to award capital punishment has been the second mode which has resulted in modification, curtailment and reduction of capital punishment in India. Statement 20 indicates the disinclination by the Administration of Justice to award capital punishment.

Statement 20

Number of persons convicted for murder and sentences of
Deaths in India during the decennium 1954 to 1963

Serial Number	Year	Number of persons convicted for murder	Number of sentences to death	Percentage of award of capital punishment
1.	1954	6,122	600	9.8
2.	1955	6,088	634	10.4
3.	1956	6,860	533	7.8
4.	1957	6,418	498	7.8
5.	1958	7,253	695	9.6
6.	1959	8,493	671	7.9
7.	1960	7,992	521	6.5
8.	1961	8,536	496	5.8
9.	1962	9,319	622	6.7
10.	1963	8,636	687	6.7

Percentage of Serial No. 1 to 10 141.07 114.5 68.36

Percentage increase in the Number of persons convicted for murder - 41.07 14.5

Percentage of decrease in the percentage of award of capital punishment - Number of sentences to death = Nil, percentage of award of capital punishment = Nil; (31.64).

Notes:

(1) Figures of number of persons convicted for murder are taken from "Crime In India", Central Bureau of Investigation, New Delhi, as per pages indicated:

1954	P 19;	1955,	P 17;
1956,	P 23;	1957,	P 27;
1958,	P 21;	1959,	P 23;
1960,	P 23;	1961,	P 25;
1962,	P 27;	1967	P 47.

(2) Figures of numbers of persons sentenced to death are taken from "Statistical Abstract of the Indian Union", as per pages indicated below.

For the year 1954, "Statistical Abstract of the Indian Union", 1965, p. 607. For the years 1955 to 1963, "Statistical Abstract of the Indian Union", 1967, p. 535.

Statement 20 shows that the trend to award capital punishment for the offence of murder has been on the decline. The figures in the fifth column of the statement are the percentage which the number of award of capital punishment form the number of persons convicted for murder. In the first year 1954, the percentage is 9.8 whereas in 1963, it is at 6.7. It can be seen that decrease in the percentage of these awards is progressive during the period. The percentage of conviction for murder has increased by 41.0 percentage in 1963 whereas the percentage of persons sentenced to deaths decreased by 31.64 in the same year.

So far, we have seen how the extent, pronouncement and execution of capital punishment have been reduced in India through the Administration Justice. We shall now deal with the mode of its whitting down in India after the judicial decision is pronounced, through the extra judicial device of clemency.

In British India, the Governors of Councils of Provinces and the Governor General in Council were empowered to grant clemency. In Republican India, according to the Constitution of 1950, this power is vested in the Governor of States and the President of India who are guided by the council of ministers.

Although capital punishment is commuted to that of imprisonment of life, in practice the life sentence is never carried out literally. No prisoner whose sentence of death is commuted to imprisonment for life is kept in prison until he dies a natural death. Under provision of section 54 of the Indian Penal Code 1860, imprisonment for life means twenty years of actual imprisonment. But so far, no prisoner is reported to have been kept in prison until the expiry of twenty years of actual imprisonment. Even one of the murderers of Mahatma Gandhi, had to be released prematurely on commutations of his sentence by government. Invariably commutation is granted for a second time in India and after periodical review of the case, the sentence

of life imprisonment is further cut down to specific number of years, less than twenty years as per rules and regulations framed by government.

The following examples would bring clarity to the above. On February 12th, 1996, in a significant verdict, the Madhya Pradesh High Court has confirmed the capital punishment awarded by a trial court to a 35 year old man Kamata Tiwari for raping his neighbour's minor daughter and subsequently killing her.³⁵

On February 21st, two members of a family were sentenced to life imprisonment for the dowry death of a young woman, Sushma, on May 15th, 1993, in their house at Gumar village in this district.

District and Session Judge M.C. Aggarwal, in his judgement said that Sushma had been harassed for dowry and subjected to cruelty by her husband Dalbir, and his mother Dhanno.

In his order, the judge rejected the plea of the accused that Sushma had died of cholera.³⁶ It is clear that

35. "H.C. Confirms Capital Punishment", Times of India, 12th February, 1996, Jabalpur.

36. Two get life term in dowry death case: Sonepat, Times of India, February 21st, 1996.

in such unpardonable case life terms or capital punishment are unavoidable and the best possible punishment.

Theory of punishment was based on two premises, one that man is a free moral agent and two, that punishment, especially capital punishment, has a deterrent effect on future law breakers. It was maintained that the theory of deterrence on close analysis was found to be ineffective and outmoded in conception. In spite of the retention of capital punishment murders did take place. The irrevocable nature of capital punishment, made the sentence of death abhorrent.³⁷ Man on the whole is redeemable. In India, it was pointed out that there are eight crimes punishable by death under the Indian Penal Code. They were, by and large, treason and murder. The murderer is not punished with death if he could only prove that he was insane or that his reason was paralysed at the time of commission of the crime. It was further argued that, "there have been many cases in India and in foreign countries where people, out of mercy, have given poison or some injection to their near and dear ones to end their agony. "Should such persons be sentenced with Capital Punishment?"³⁸

37. "Report of the Rajya Sabha Debates", New Delhi, 1958, p. 493.

38. "Report of the Rajya Sabha Debates", New Delhi, 1958, p. 457.

"You must look to the criminal and not to the crime itself".³⁹ If we really want to bring down the incidence of crime, the argument proceeded, we must think of methods other than hanging.

The discussion would not be complete without a discussion of the responsibility involved in punishment. There is an acute problem here, which arises in relation to punishment as it does in relation to blame in moral theory. It is highly important that a man ought not to be punished for doing what he cannot help creates difficulties when extended to actions which a man could not help doing because of his own state of mind instead of external or contingent factors, like duress or ignorance of fact. An insane man, as defined, say, by the M'Naghton rules (that is, one who did not know what he was doing or did not know that what he was doing was wrong), cannot be said to choose his act because he cannot know it for what it is. But sometimes a man may know that what he is doing is wrong yet still be unable to stop himself from doing it. He may be subject, for instance, to an irresistible temptation or provocation. But how is that to be understood? A temptation is not irresistible merely because a particular man has

39. Ibid., p. 964.

yielded to it or even because he might have been expected to yield to it. However, a temptation maybe so strong that we might expect any ordinary person to yield to it (even though a few people may in fact resist), or, as, one might say, it might be "more than human nature can stand". In that sense it may be "irresistible".

Some people, of course, find it much more difficult than others to resist temptation. Some, like Kleptomaniacs, are "impelled" to act in the sense that deliberation neither plays, nor could play, any part in what they do. Such people might be distinguished from plain wrong doers by the fact that nothing - not blame, punishment, praise, or rational argument - seems to affect their disposition to break the rules. Or, again, their actions may lack any point, or if they can be said to have any point, it is only in relation to a set of aims and standards of achievement so distorted and eccentric that they are intelligible only to a psychiatrist.

It is arguable, in any case, that the concept of responsibility requires that human behaviour be causally accountable rather than the reverse. As Hume pointed out in An Enquiry Concerning Morals.

[where actions] ... proceed not from some cause in the character and disposition of the person who performed them, they can neither rebound to his honour, if good; nor infamy; if evil... The person is not answerable for them; and as they proceeded from nothing in him that is durable and constant, and leave nothing of that nature behind them, it is impossible [that] he can, upon their account, become the object of punishment or vengeance.⁴⁰

In Hume's view universal causality is consistent with the concept of choice and is a necessary condition for responsibility and, therefore, for blame and punishment.

Strictly speaking, all that is necessary for a theory of punishment is that human conduct should be capable of being modified by threats. For some people - for instance, compulsive law breakers like Kleptomaniacs - that is not the case. Others, however, commit crimes believing they can escape punishment; still others, in a spirit of rebellion, in difference, or more rarely, of martyrdom, prefer to do what they want and risk the consequences rather than conform. Why they prefer it? - what conditions account for their being the men they are - is irrelevant. To say "they prefer it" is to say they might have chosen to do otherwise but did not, and that is all that is necessary

40. Hume, David. An Enquiry Concerning Morals, Edited, with an Analytical Index by L.A. Selby-Bigge, Oxford at the Clarendon Press.

for the concept "responsibility". To ask whether they were free to prefer otherwise, being what they were, is to ask whether they could choose to choose, and it is not clear that this really means anything. The experience of punishment may provide a reason for choosing differently next time, but to have a reason for choosing is not to be without a choice and, therefore, without responsibility.

To conclude I would like to make the following suggestions and remarks. The absence of punishment lead to moral bankruptcy. Prevention of crimes and reformation of the criminal can be only possible by the presence of the institution of Justice. In this chapter, I have discussed seven major problems of the different theories of punishment.

- (i) What is punishment?
- (ii) Can punishment be morally justified?
- (iii) Basic distinction between law and morality, morality and justice.
- (iv) What good does punishment bring about?
- (v) Are we cautious enough to punish the guilty and only the guilty?
- (vi) What is criminal Law?
- (vii) Lastly, why capital punishment is necessary?

Punishment has been defined by the Encyclopedia of Philosophy in a metaphorical sense. It is inflicted on one when there is a breach of conduct.

Punishment is justifiable when inflicted rightly on the offender for the offence committed. Here there is a controversy among the Retributivist and the Utilitarian. The former looks back to the crime to justify punishment and stresses on guilt and desert. Utilitarian, on the other hand, insists that an act of punishment is justified only when it outweighs the intrinsic evils of inflicting sufferings on human being and has untold benefits.

There can be no law without morality. Justice would be impossible without the existence of morality which alone brings fairness to actions.

If there were no merits of punishment, then the institution of justice would be up in smokes. Would then there be any cosmic order in the world? Would there be not chaos and crime but a child's play?

The fifth problem is really the most difficult of all. Sometimes not all offenders are convicted. They may go "scotfree". But can they survive the accusing fingers of their conscience? Here one is reminded of the fate of Judas who betrayed Jesus for twenty-five pieces of silver. But

what happened? He could not withstand the pang's of 'guilty conscience' and committed suicide.

The necessity of criminal law is the enforcement of morality and suppression of all immoral practices such as deliberate assault, euthanasia, mercy killing, sexual morality including homo-sexuality even if such practices bring about no harm to others.

My last problem is capital punishment and its necessity in the present day criminology. In this context, I may be criticised by some as deviating from my preliminary premise which forms the foundation of the thesis. The word 'person' is a value-loaded term; life is a value. I still retain my initial standpoint even though I may support capital punishment and its usage today. Why? The answer would be 'who is guilty of a capital punishment?' - that person who no longer regards his fellow person as a 'person'; that is why he is able to carry out his crime. He himself no longer remains a person. Therefore, he 'ought' to be convicted. To ensure that all life of human beings are treated as a value and all men are respected with equal value and dignity, the existence and necessity of capital punishment makes this statement possible.

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