

Doctors and Hunger Strikers

Amar Jesani

Is it the Doctor's duty to force-feed hunger strikers? Or is he only required to explain the pros and cons of their decision to them?

Twice in the month of June 1993, Ms Medha Patkar and Mr Devram Kanera, activists of the Narmada Bachao Andolan who were on indefinite hunger fast were arrested under the charge of attempted suicide, taken to the hospital and with the help of doctors, forcefully administered intravenous nourishment. The doctors who participated in these acts presumably did so on the orders of their superiors and State police authorities.

Irrespective of the validity of the demands for which these activists thought it fit to risk their lives, should the doctors participate in force feeding and can the authorities take it for granted that they can order doctors to act in violation of medical ethics? Medical ethics give paramount importance to the autonomy of patient who is conscious and sane. In this case both activists were conscious, mentally competent, knew what they were doing and forcefully protested against the administration of nourishment. Therefore, the use of such medical actions by authorities was in gross violation of medical ethics.

However, a big majority of doctors did not find anything wrong with their colleagues' participation in force feeding of Ms Patkar and Kanera. Although the media covered the event of hunger strike and the force-feeding on their front pages, nobody protested against the actions taken by the state and offending doctors. The only protest that came was from two members (one of them a doctor) of Medico Friend Circle (MFC) who in their letter to the editor in The Times of India, questioned doctors' conduct on ethical grounds.

The practice of medicine confers both privileges and obligations. Medical skills are taught with highest ideals in mind but sometimes those skills may be subverted, or used in an ay exploitative way.

There is a misconception prevalent amongst some medical professionals that when a person is arrested, he or she loses autonomy because the responsibility of that person's welfare is transferred from him/her to the state. This idea is reinforced by some well known forensic experts whose books are used as text books of forensic medicine in most of medical colleges in India. For instance, Parikh's Textbook of Medical Jurisprudence and Toxicology (1990, Fifth Edition) says that when hunger strike is resorted to by a mentally ill or by a prisoner "forcible feeding is not an assault but quite lawful because the prisoners are under the care of the State which must take adequate steps to prevent a prisoner from injuring himself or taking his own life." A strange point of view which considers insanity and imprisonment similar grounds for incompetency. Modi's Medical Jurisprudence and Toxicology (1988, 21st Edition) on the other hand states that "the forcible feeding of

prisoners, when they refuse to take any food on account of passive resistance, is not an assault but is quit lawful."

Clearly both renowned medical teachers have taken, at best, "legalistic" position. A question that must be answered is not only what is legal but also what is ethical. A distinction between law and ethics, and the principle that ethics is of paramount importance compared to law should not be lost sight of. Further, in this case the law, if at all, gives power to force feed a prisoner; gives such power to the relevant State agencies. It is their business to use or not to use it and the responsibility of society to oppose that which is impunity. The minimum that is required of doctors is not to voluntarily collude with the State in exercising its power perversely.

Let us take a concrete example. In the U.S.A. a prisoner awarded death sentence is killed by injecting a lethal dose of drug/poison. When the government enacted a law on it, the doctors (of the American Medical Association) refused to collude with the state agencies in carrying out the death sentence. The government was thus forced to train its own people for the task. But by taking ethical position, the doctors dissociated themselves from such unacceptable work.

Medical ethics give paramount importance to the autonomy of a patient who is conscious and sane
--

What must be kept in mind is that irrespective of the powers conferred to police in relation to prisoner (whether hunger striking or not) by the law in India, there is absolutely no specific law directing the doctor that he or she should force feed the prisoner. In other words and specifically, it is perfectly legal for the doctor to refuse to force feed anybody, including hunger striking prisoner.

Another misconception prevalent amongst some doctors is that a person arrested by police and a prisoner loses, most of his/her civil liberties. From this it is assumed that he/she loses right to take most vital decisions concerning his/her personal welfare and that the right to take such decisions, on his behalf, is automatically transferred to the State. This means, like a person who is unconscious or insane, the prisoner too is considered incompetent to take rational decisions concerning his/her well-being.

This is a highly dangerous misconception. It denies personhood or status of individual to a prisoner who is conscious and under full control of his/her mental faculties. It also erroneously teaches doctors to discriminate against such set of patients. This is fundamentally unethical simply because ethics do not allow doctors to discriminate against a patient on the ground of any social, economic, legal or religious attribute of the patient.

An important civil liberties/democratic rights issue is also involved here. Simply put, do citizens of India have a right to go on indefinite hunger strike as a means of peaceful democratic protest? Or looking at the way government has handled hunger strikes, is the indefinite hunger strike a peaceful democratic means of protest only for the powerful like Ms Jayalalitha (the CM of Tamil Nadu who was neither arrested nor force fed during hunger strike) and not for those who work for powerless poor tribal (like Medha Patkar and Devram Kanera)?

While one must expose and fight such double standard, it is necessary to reiterate and reemphasize that going on fast is an internationally accepted democratic means of peaceful protest. It has also been a strong protest weapon of Indian people and of Mahatma Gandhi during the freedom struggle. Significantly, even the despotic British rule which could kill people in Jalianwalla baugh in broad day light could not force feed Gandhiji even after he was arrested and imprisoned. However, the British had their double standards, too. Though Gandhiji, like Jayalalita last year, was never force fed, the freedom fighters who used "armed struggles" and "terrorist means" often were force fed, often in such a brutal manner that some of them died primarily due to complications of resisted force feeding.

Similarly, in early 1980s the otherwise brutal power of England in Ireland could not force feed prisoners Bobby Sand and his other colleagues fighting for prison reform and Irish liberation. Sand and his colleagues in fact died after prolonged hunger. Nobody has ever said that Gandhiji had pathological mind and he was bent upon committing suicide. The freedom fighters from Bhagat Singh's group and others are never compared with the insane. Nor was Bobby Sand's death described as suicide.

However, this does not mean that on encountering a hunger strike a doctor faces no conflict of values and ethics.

The principle of beneficence says that the doctor uses his/her skills to save life and heal and also acts in the best interests of the patient. Many doctors do not consider hunger strike to be in the best interest of the patient. They consider it their duty to save the life or prevent harm to the health of the hunger striker by force feeding him/her. This issue comes up sharply in situations where a hunger striker who has issued clear instruction not to be resuscitated lapses into a coma and is about to die. Many doctors believe that it is his/her moral obligation to resuscitate such hunger striker even though it is against the patient's wishes.

The principle of patient's autonomy on his/her person says that it is doctor's duty to respect autonomy of patient. The doctor cannot do anything without the informed consent of the patient. This is to the extent that if patient refuses clinical examination, the doctor cannot force the patient to undergo such examination. Only when the patient is unconscious or incompetent the may act in what is considered the patient's best interest. Further, if the patient has left instructions about the possible emergency situations before lapsing into unconsciousness, and precisely the same emergency situations have arisen, the doctor is supposed to act in accordance with those instructions. In our country unfortunately doctors tend to apply medical paternalism as a rule instead of patient autonomy. It is assumed by doctors that they have final decision making power in the doctor-patient relationship. A large number of doctors feel no hesitation calling lay people/patients they see as ignorant persons. Such a high level of paternalism has effectively kept the patients' rights and their autonomy in a state of regular suppression. It is necessary to make the principle of autonomy becomes a regular governing principle to discard paternalism. Further, it must be accepted that, a patient howsoever illiterate or poor, knows his/her best interests. The doctor's duty is to help patient to understand the necessity of needs of medical intervention necessary, not to force it upon him/her. In the case of hunger striker the doctor should understand that the striker has weighed pros and cons of voluntary refusal to nourishment.

So far in our country the doctors have either been ignorant about the ethical conflict or erroneously believed that force feeding was duty that allowed for no ethical conflict.

The Conflict Resolution of the World Medical Association's (1991) resolves the ethical conflict of the doctor in the following way: "The ultimate decision on intervention or non-intervention should be left with the individual doctor without the intervention of third parties whose primary interest is not the patient's welfare. However, the doctor should clearly state to the patient whether or not he is able to accept the patient's decision to refuse treatment or, in case of coma, artificial feeding, thereby risking death. *If the doctor cannot accept the patient's decision to refuse such aid, the patient would then be entitled to be attended by another physician.*"

An unethical act becomes a precedent for others to follow if the medical profession and society do not take firm action to stop it as soon as reported. The concerned authorities must follow two things immediately:

(1) Make it publicly known that medical and nursing personnel are not required to accept any order which is in violation of the medical and nursing ethics (2) Formulate and supply clear, concrete and ethical guidelines to doctors and nurses on the medical management of hunger striking individuals.

Humanscape June 1994