## Moral Obligation of Pharmaceutical Companies towards HIV Victims in Developing Countries

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#### Abstract

The objective of the paper is to analyze whether that the pharmaceutical companies producing HIV drugs have moral obligation(s) towards the HIV victims in developing countries who don't have access to get drug to reduce their risks. The primary assessment is that the pharmaceutical companies have minimum moral obligation(s) to the HIV patients especially in developing countries. It is because they are human beings and hence they are the subject of moral considerations. The paper argues that from the sense of benevolence, there may be an obligation that will tend pharmaceutical companies to make an opportunity of the concerned HIV patients of developing countries to get drugs. The discussion will be made from the utilitarian point of view. Though it is assumed that, utilitarianism is too demanding, I will show that the too demanding ness of utilitarianism can be minimized and it will not be contradictory with the main theme of utilitarian morality. In this respect the counter examples and arguments will also be analyzed to make the claim stronger. The paper also argues that though the primary aim of the pharmaceutical companies is to make money, the actions that might be taken by the pharmaceutical companies for the welfare of HIV victims will not hamper them in making money for which they are deployed.

Key Words: health care ethics, morality and HIV, moral obligation, utilitarianism, developing countries

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#### Introduction

There are only a few (around five) global pharmaceutical companies that produce suitable drugs for the HIV infected patients. The paper argues that these pharmaceutical companies and other parties do have moral obligations to help the HIV victims. There are three parts of the paper, the developing countries, moral obligations and pharmaceutical companies. For this paper, I have chosen the developing countries because of two reasons; one, most of the HIV patients are living in developing countries and two, these people do not have minimum opportunity to have drugs either by themselves or by their Government. Among many organizations that can feel obligation to do good for the HIV victims I have chosen the pharmaceutical companies for two causes, firstly the issue is primarily regarding drugs and the pharmaceutical companies are directly related to the issue and secondly, the pharmaceutical companies possess more affordability to help the HIV victims, either the individual person or the country as a whole in various ways. It has been chosen to show the 'moral obligation' because legal obligation is not as appropriate as that of moral obligation. It is because I believe the actions if taken by the pharmaceutical companies are voluntary one. In respect of voluntary actions it is not usual to categorize it something other than the issue of moral concern. Moreover the moral obligation may be connoted by several concepts e.g. moral duty, moral responsibility etc. In the following discussion, it will be made clear that the pharmaceutical companies have minimum responsibilities towards the HIV victims.

### Present Situation of HIV/AIDS in Developing **Countries**

It is thought that around ninety five precents of HIV positive resides in developing countries. The scenario of African countries is worse than that of Asian countries. It is assumed that the Sub-Sahara Africa has just over 10 precents of the world's population but is home of more than 60 precents of all people living with HIV---25.8 million. In 2005, an estimated 3.2 million people in the region became newly infected, while 2.4 million adults and children died of AIDS (World Bank Report, August, 2006). In Asia an estimated 2.3 million adults and children now live with HIV/AIDS in countries in the East Asia and Pacific region. The terrible thing is that these countries are economically poor and most of the victims don't have minimum affordability to get access to medicine for AIDS. The Government of respective countries is also not capable either to produce drug or to buy enough drug to give its people free of cost or in a cheap cost with subsidy. It is inferred that in some countries like China, Indonesia, Thailand, Philippine, Gayana, the infected people of HIV will be doubled if preventive measures are not taken seriously. Schuklenk and Ashcroft remarks that, 'the scope of epidemic and its likely devastating consequences for socio-economic development has made the issue of access to essential medications a primary urgent one' (2002). To be mentioned that the HIV drug producing companies are in developed countries. As a result due to various reasons the price of the drugs is high which is beyond the capacity of the most vulnerable people of the world. This situation tends to think whether these companies have any moral responsibilities to make the drug accessible to the victims of the developing countries.

## **General Tendency of the Pharmaceutical Companies**

Basically the pharmaceutical companies are the commercial institutions. It is the most profitable business sector. The main aims of the pharmaceutical companies have been explained hereunder in brief.

One of the basic aims of the pharmaceutical companies is to make money. They will invest money only to those projects that will have beneficiary consequences. Whenever they tend to invest money to research project, they make summations whether it will give them proper feedback or not. Being business establishment it may be their primary aim and in this respect there is no controversy. The World Bank report says that pharmaceutical industries place the first position to make profit in their business.

Another function of the pharmaceutical companies is to produces drugs. They produce different types of drugs for different diseases. The same drugs of different price and different quality are also produced by the pharmaceutical companies. Suppose the larger pharmaceutical companies like Glaxo Wellcome produces different types of drug for HIV, Malaria and so.

In order to exist in the competitive market the pharmaceutical companies have to produce new drugs for the crucial diseases like AIDS, Cancer and so on. And for that purpose they are to conduct research work by the specialists in that field, by the scientists. Therefore research is a by-product of the pharmaceutical companies. Glaxo Wellcome company spent millions of dollar to research work aiming to produce drug for the HIV patients.

Developing the quality of the existing drug is also one of the basic functions of the pharmaceutical companies. It is because if a company wants to combat the competitive market, it has to develop the quality of its drugs day by day. Without doing this it would become difficult for the company to continue its business.

### **Moral Obligations of the Pharmaceutical Companies**

Moral obligations may have two forms, absolute moral obligation that are conducted by the strict rule of law and the contingent moral obligations that are conducted by the rule of benevolence. This sense of benevolence has no limits. Therefore if the pharmaceutical companies possess a good will to do good to the HIV sufferers, they can do it in various ways. And being the royal member of human beings, it becomes our duty to help other human beings if it does not hamper our pleasure. It is not an absolute moral obligation i.e. it is not imperative for the pharmaceutical companies to help the distressed people, distressed by the HIV. Rather it is conditional or contingent. The condition is that the Government of the developing countries gives assurance to the HIV drug producing companies regarding a) minimum profit on the drug, b) honouring companies' intellectual property right c) security.

The first issue of discussion is do the pharmaceutical companies have moral obligations to wards the HIV victims? In this respect it is held that pharmaceutical companies have corporate social responsibilities, and so. Resnik (2001) shows that pharmaceutical companies have moral responsibilities towards the HIV victims.

He pointed out two arguments supporting the view that pharmaceutical companies have a moral obligation towards the HIV victims. He argues that social values like honesty, integrity, fidelity, diligence, and fairness helps the business to be conducted in the society by creating a suitable atmosphere. Without these values, corruptions, theft, fraud, disloyalty and other moral problems would not make the business to go on smoothly. Therefore, the pharmaceutical companies must have some responsibilities to the society in return. The responsibility is to help the people. He continues that business like pharmaceutical companies has social responsibilities because it exists within societies where people care for the environment, public safety, public health and other good. And ignoring what societies care may create public wrath which is harmful for the business. Therefore, for their own sake the pharmaceutical companies should be benevolent. Describing the pharmaceutical companies as corporations Resnik says, two kinds of duties can be applied to pharmaceutical companies, 1) beneficence i.e. pharmaceutical companies should promote the greatest balance of benefits/harms for society. They should avoid doing harm and try to do good, and 2) justice, i.e. pharmaceutical companies should distribute benefits and burdens equitably. He also contends that considering the relevant factors if a company decides to do business in the developing countries then it has several reasons to exercise their social responsibility. Firstly, reciprocity i.e. if you make money in a country, you are to give back something to that country excluding taxes, goods and services. Secondly, company should promote the welfare of mankind which implies duties of beneficence and justice to all people and it is mostly applicable to global pharmaceutical companies. In this way Resnik says about the moral obligation in the form of social responsibilities of the pharmaceutical companies in developing countries especially in respect of access of drug and conduct of medical research.

Supporting Resnik, Dan W. Brock remarks, ... it would be a significant step in the direction of justice for pharmaceutical companies to accept a social responsibility to do substantially more to make drugs accessible in the developing world, and I would welcome their doing so, but I believe an adequate and convincing case delineating the moral obligations of pharmaceutical companies in this has to be more carefully made than he has done (2001).

But the discussion of Resnik is not enough to show the moral obligations of the pharmaceutical companies towards the HIV victims. Because, firstly the pharmaceutical companies of developed world may have a reciprocal responsibility to its society but why will they do good to the HIV victims of the developing countries? Secondly, global pharmaceutical companies cannot work alone in the developing countries and are not bound to do welfare there if they do not see any business/profit there. The government of the developing countries should come forward for solving the problem. Therefore Resnik position is not so strong for showing the obligation of the pharmaceutical companies though he rightly shows that the companies have moral responsibilities to the infected people of the society. It also does not say how far the responsibility of the companies to the HIV victims is. Rather I think the utilitarian approach may give a better out line regarding the moral duties or obligations of the pharmaceutical companies.

## The concept of utilitarianism

Jeremy Bentham and John Stuart Mill are the two great proponents of utilitarianism. It is also considered as the principle of utility or greatest happiness principle. Bentham told about the quantity of pleasure and Mill accepting the quantitative aspect of utilitarianism also told about the qualitative aspect of it. Mill says that '... Utility or the Greatest Happiness Principle holds that actions are right as they tend to promote happiness and wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain and the privation of pleasure.' The main assertion of utilitarianism is doing greatest happiness for the greatest number of people. It seeks to maximize

the happiness. According to utilitarianism, maximization of pleasure is the criterion for an action to be good or bad. Right actions are those that produce the greatest amount of value.

Utilitarianism is also characterized as welfarism because it tends to do welfare of an individual. If an action does welfare to an individual, it is a good action. In hedonistic utilitarianism, the concept of pleasure, happiness and welfare are interconnected. Welfare is identical with happiness and happiness is identical with pleasure (absence of pain). Therefore, utilitarianism is considered as welfarism. An action is good if it brings welfare to maximum number of people. Maximization means maximization in short term and also in long term aspect. Utilitarianism does not tell about doing well to every person.

One of the basic forms of utilitarianism is consequentialism. According to this, an action is right or good if the consequence of it is good. Philip Petit, a consequentialist says that it is the duty of an agent to promote the happiness. And it can be done by producing good consequences of an action. Timmons says that, according to utilitarianism, 'an action A is obligatory if and only if A has a higher utility than any other alternative action that the agent could perform instead'. Now the moral obligation of pharmaceutical companies will be asked on basis of this utilitarian point of view.

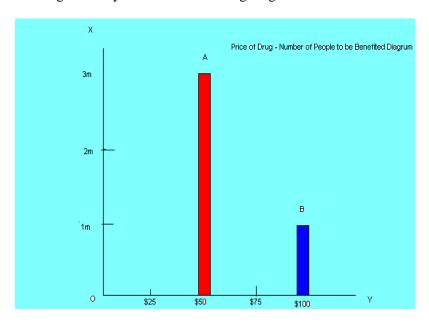
## How far do the pharmaceutical companies have moral obligations?

It is one of the most fundamental issues that if pharmaceutical companies might have moral obligations for the HIV infected, immediately the question arises how far do they have such obligations? I think though pharmaceutical companies have obligations, the range of this obligation is not unlimited. It can be assumed that the pharmaceutical companies have at least moral obligations of two folds, one is to do maximum profit and the other is to give access of the drug of AIDS to the maximum HIV victims. The main focus will be concentrated on the access of drug for the poor HIV infected people in developing countries. For this purpose,

the two possible actions that can be taken by the pharmaceutical companies will be considered. Those are, firstly, giving drugs to the HIV victims free of cost or at a lower cost and secondly, feasibility of handing over the patent of the drug to the pharmaceutical companies in developing countries.

The first subject to be discussed, Is it feasible for pharmaceutical companies to give drugs to the HIV victims free of cost? From the utilitarian perspectives I think it is not feasible to give drugs free of cost to the HIV victims. Suppose a HIV-drug producing company gives the drugs to the victims free of cost. The immediate result is that a major portion of the infected people is benefited by this. On the other hand if the company gives the drugs free of cost, the company will face bankrupt, the shareholder and the employees of the company will loss their capital and job respectively. In this case, the felicific calculator utilitarians might argue that the number of people who get pain by losing their job or capital is still less than the number of people benefited by the free drug. But the fact is that the HIV drugs are not for one time, it is a continuous process. It is a short term benefit when drugs are given to maximum people free of cost for one time. But what will happen if the company due to bankrupt stops producing drugs any more? The result is that no one will get drug again and will not be benefited anymore. Therefore it is not wise to take a short term scheme though it brings welfare to maximum number of people; rather it is wise to take a long term plan for the company to give drugs to the HIV victims at a lower price. So that the company can make profit, can perform its obligation to the employees and shareholders and at the same time more people can get drugs. It is not contradictory with the utilitarian principle. Because utilitarianism does not say about the pleasure of all people but says about maximization of pleasure. The company can produce drug for a long time and more people will be benefited for this long period of time. Moreover the company could produce higher quality drugs which will benefit more people. Therefore the company can give drugs to the victims at a lower price instead of giving drugs free of cost.

In this connection, the pharmaceutical companies may argue that it is their obligation to make maximum profit and to preserve money for the future research. Therefore if they make lower the price of the drug, they would not be able to do either. In respond to the objection from utilitarian point of view, it can be told that it is true, whenever any pharmaceutical company, after the production of the drug, tends to price the drug; they think how to make the maximum profit. Therefore, they price it in such a way so that it be neither too expensive nor too cheap. As a result, more people could buy it. But the fact is that still there are also a portion of people who fail to buy the drug due to acute financial crisis. They remain out of the calculation of the company. And without calculating this portion of people the company makes the maximum profit. Now if the company gives the drug to this portion of infected people with the production cost, the company will not fail either in making the maximum profit or in preserving money for the future research and at the same time a larger portion of poor people would get access to the drug. We may look at the following diagram:



the above price of drug- consumer of drug graph shows that , suppose the per unit drug of AIDS is \$100 and it will be found that very small number people will be able to consume that drug, say 1m. But if the price of the drug decreases say it is \$50, then it is

assumed that around 3m people might be directly or indirectly can consume the required drug. In this situation, the pharmaceutical companies may ensure their planned profit though they lessen the price of the drug. Therefore I think it will not be over demanding to claim to decrease the price of drug to the affordable level. And it is consistent with the principle of utilitarianism- maximum profit and at the same time maximum welfare for the maximum number of people.

But another supplementary question might be asked that if the quantity of drug becomes higher, then there might be a possibility to decrease the quality of the drug. In this connection, one solution might be that pharmaceutical companies may produce drugs of different quality. And they can produce drugs of different prices for different countries. So that more people of different counties would get access to the drugs. There is no contradiction of this position of the company with the utilitarian principle. Because utilitarianism says about the maximization of pleasure and by the way of producing drugs of different price for different countries more infected people could get drugs and relief themselves from pain.

Now the next issue, 'Is it feasible for a company to handover the patent of drug to the companies of a developing country? To be noted that there are various complex and legal issues regarding patent protection and it is not the objective of the paper to analyse all those issues here rather the issue will be discussed from the utilitarian point of view i.e. how handing over of patent of drug can make welfare of the maximum number of people.

It is obvious that some patent system is important to enabling companies to earn back the large development cost for new drugs. And it is noticeable that the vast majority of pharmaceutical industry profits come from the developed world where the product patents are respected. It may be argued that as the pharmaceutical companies are getting more profits for the patent from the developed countries they should not bother whether the developing countries do respect the patent of the drug or not. The fact is that it is not morally right not to respect the patent of the product. To be noted that patent protection is necessary for the maximum benefit

of the maximum number of people, because if it is not done then new invention in respect of HIV drug will not be encouraged and maximum pleasure would not be ensured for the infected people. Maintaining the regulations of WTO/TRIPS especially regulation regarding property protection, it is possible for pharmaceutical companies to hand over the patent of the drug to the developing countries. If the patent of a drug is handed over to a company of a developing country, I think it will make maximum welfare for the maximum number of people. Now if it is possible to hand over the patent of a drug to a pharmaceutical company of a developing country, the infected people of the country will get easy access to the HIV drugs and will be able to relieve themselves from pain. Therefore, it is feasible for the global pharmaceutical companies to handover the patent of the drug to developing countries for doing welfare for the maximum number of people and in this respect the positive attitude towards patent protection of the people of the developing countries is necessary.

Moreover, producing drugs in developing countries is also another possible option before the global pharmaceutical companies. It will be more profitable for them and more helpful to the HIV infected people. It is profitable for them because they may make a negotiation with the Government of the developing countries to get extra benefit from the Government and I think the Government will help the companies a lot (because it has to prevent its people). Moreover, the labour cost and other experimental expenses are not as high as that in developed countries. Therefore it is profitable for the global pharmaceutical companies to build up industries in developing countries. They also have another option i.e. to conduct business with joint collaboration with the Government which will be more effective and profitable. If it could be done, then the HIV patients of the developing countries will be more benefited and it will be possible to reduce the pain of maximum number of people. And according to utilitarian principle of morality it will be considered as a good deed.

I think it is a moral obligation of pharmaceutical companies to make access of the drugs for the HIV infected patients because accessing drug has a higher utility than any other alternative actions the pharmaceutical could perform for the welfare of the infected people. There may be so many alternative actions such as donation to the Government for buying drugs, training up the people of the developing countries about how to treat the HIV victims, etc. Among these alternatives accessing drugs is the one that can ensure or has a great possibility to do maximum benefit for the maximum number of people.

# Justifying the claim i.e. the moral obligation of the Pharmaceutical Companies

From the above discussion of section.3, it might be considered that the pharmaceutical companies have some social responsibilities, and in order to perform their duty they can make some options to do and choose the best one. The best one might be to promote good and reduce bad as much as possible. It is the view of Philip Petit also. And it is a matter of fact that some of the pharmaceutical companies have already started to help the HIV victims and the country in the form of donation, lowering the price of the drug, compulsory licensing and handing over the patent of the drug. This attitude of the pharmaceutical companies indicates that they also feel that they have a social responsibility towards the HIV victims in developing countries. They have done it voluntarily. From the utilitarian principle of view, their decision regarding helping the poor victims by whatever means, if it increase pleasure to them then it is a good action.

It is hold that utilitarian principle is characteristically over demanding i.e. utilitarian principle demands impartiality and universality in respect of the distribution of happiness as explained by mark Timmons (2002). Therefore, it demands on the one hand, access to get drug of sufferers both from developed and developing countries and on the other hand it demands medicine for most of the people which is impossible for the pharmaceutical companies to provide. It is true that utilitarianism, by nature, is too demanding but it can be minimized. Whether the pharmaceutical companies will be able to give access to medicine to all the sufferers depends on the capability of the pharmaceutical companies. But the fact is

that it is better to get rid of some people from suffering than all people to suffer. And it is not contradictory to the main theme of the utilitarian principle. Moreover, impartiality is not an unconditional characteristic of utilitarianism i.e. in our practical life sometimes we have to be partial without committing wrong. And as the pharmaceutical companies are supposed to do welfare for the HIV victims from the sense of benevolence, it is not rational to impose the concept of impartiality upon them. Therefore, if the pharmaceutical companies do better to a portion of the victims in developing world, it will not go against the main theme of utilitarianism. Thus the too demanding ness issue of the utilitarianism can be minimized in this respect.

I also agree with both Resnik and Schuklenk regarding their concern upon the reciprocal responsibilities of the developing countries. It is because I think the benefits of the two parties should be considered. And if it can be done then the major portion of the victims could get minimum drugs to save themselves from serious sufferings. Two-way initiatives are better and more fruitful than one way initiative. It means if only the pharmaceutical companies take the responsibilities to reduce the sufferings and continuous spreading of the life-taking diseases, it will not be as fruitful as that if the responsibility is taken by the both parties i.e. the pharmaceutical companies and the Government of the developing countries. It will be more effective if the pharmaceutical companies possess a good will to do good to the victims.

Another cause for the pharmaceutical companies to be benevolent to the victims is that they also have the possibility to be affected by the HIV. People from developed countries frequently go to the developing countries for various reasons e.g. academic, commercial, research, personal amusement and so. If the scenario becomes such that the HIV becomes an epidemic form in developing countries then it will be difficult for the visitors from developed countries to save themselves from being infected. Therefore, it is one type of indirect responsibility of the developed countries to take initiatives to reduce the rate of HIV infections in developing countries. And pharmaceutical companies can do this

job better. Better, in the sense that they can make direct contact with them by means of drugs.

The painful fact is that the test of most of the drugs is conducted in developing countries to ensure the effectiveness of the drug. If the drug works well then it is circulated and marketed in developed countries. Therefore, it becomes a moral duty of the companies of developed countries, according to the theory of reciprocity, to provide drugs to the people of those countries either free or in lower or marginal cost so that the victim can be benefited. Moreover utilitarianism claims that it is the duty of the agent to choose the option, among many, that produce maximum return.

#### Conclusion

Joe Thompson (1998) observes that 'access to optimum AIDS treatment in developing countries presents unique global challenges to AIDS activism, public health advocacy and global leadership in AIDS prevention and care efforts'. This challenge can well be faced if the pharmaceutical companies and other social organizations take effective initiatives. The above discussion on the social responsibility of the pharmaceutical companies towards the HIV victims from the ethical point of view will not fruitful if there absent any feelings in the mind of the authority of the pharmaceutical companies. The basic ethical principle of the discussion is utilitarianism. The principle of benevolence is a component part of utilitarianism. J.S Mill also told about the sense of benevolence as one of the forces of utilitarianism to do good for the majority of the people. The people of the developing countries who are being suffered by HIV infections are a large portion of human beings. Both the Government and the pharmaceutical companies should come forward to save these people from this life taking disease. From the discussion above it has been showed that the pharmaceutical companies cannot keep themselves free from doing such benevolent activities that will do welfare for the poor people. Joint programme to combat the HIV should be taken so that the rest of the people will be safer from being infected.

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