

CONFIDENTIALTY IN MEDICAL PRACTICE: AN ANALYSIS



Law

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ABSTRACT

This article is an attempt to reflect the concept of confidentiality and right to privacy exclusively in medical practice. Maintaining secrecy and justifying right to privacy create a sacrosanct relation between a doctor and patient. Today as there is no concrete and acceptable definition of the right to privacy rather it is a continuously emerging fact whose character and scope is largely derived from the context. The present study focuses on relevant mechanisms of privacy protection and their application in doctor-patient relationship through various legislations and judicial analysis.

INTRODUCTION

Information furnished to a doctor by a patient, which is intended to serve as the basis of diagnosis and treatment is considered confidential and is technically known as privileged communication. Confidentiality is one of the most fundamental duties of medical practice in which health care providers is requires to keep a patient's personal health information private or secrete unless consent to release the information is provided by the patient. In medical law the rule is that a doctor must not disclose communication between himself and the patient in course of discharging his professional obligations. The requirement for maintaining confidentiality is not merely an ethical or moral code devolves upon doctors but also a therapeutic perspective. In many cases a patient would hesitate to disclose information of its disease which would expose him to humiliation. As a result of which the patient would cease to keep belief upon the doctors and the doctor would get the part information which would then not only have an adverse impact on the treatment but also have psychological impact on the patient. Certainly it will defeat the very sacred relation between doctor and patient. Therefore it is the prime concern for a doctor to make every endeavour to maintain confidentiality so that he can be trusted.

The Hippocratic Oath, the International Code of Medical Ethics and the Declaration of Geneva all begin with the premise that secrecy is vital as between doctor and patient. It follows that any disclosure contrary to a private interest is also potentially damaging to the public interest because it inhibits open disclosure to medical practitioners.¹ However under Professional secrets a doctor is under a moral and legal obligation not to divulge the information/knowledge which he comes to learn in confidence from his patient and such a communication is privileged communication.

RIGHT TO PRIVACY

Right to privacy, has been interpreted by the judiciary under Article 21 of the constitution of India through the spirit of the law of right to life and liberty. The right to privacy thus has been held to protect a "private space in which man may become and remain himself", and "privacy recognises that we all have a right to a sphere of private intimacy and autonomy which allows us to establish and nurture human relationships without interference from the outside community. The right to privacy has been guaranteed by Article 12 of the Universal Declaration of Human Rights (1948), Article 17 of the International Covenant of Civil and Political Rights and European Convention on Human Rights.

LEGISLATION ON CONFIDENTIALTY IN INDIA

Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002

Patience and delicacy should characterize the physician. Confidences concerning individual or domestic life entrusted by patients to a physician and defects in the disposition or character of patients observed during medical attendance should never be revealed unless their revelation is required by the laws of the State. Sometimes, however, a physician must determine whether his duty to society requires him to employ knowledge, obtained through confidence as a physician, to protect a healthy person against a communicable disease to which he is about to be exposed. In such instance, the physician should act as he would wish another to act toward one of his own family in like circumstances.

Epidemic Diseases Act, 1897

Under the Act, if any part of the state is "visited by, or threatened with, an outbreak of any dangerous epidemic disease", the state government can enforce certain measures and prescribe regulations to prevent the outbreak or spread of a disease. Measures that impact privacy include: Power to inspect: the State Government can undertake "inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease."

Mental Health Act, 1987

This Act, 1987 governs the law relating to the treatment and care of mentally ill persons. Confidentiality of Inspection: If the inspecting officer is satisfied that the inpatient is not receiving proper treatment and care, he may report the matter to the licensing authority. Otherwise the inspecting officer must not disclose the personal records and health information of a patient so inspected.

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

The Pre-natal Diagnostic legislation prescribes a blanket prohibition of sex selection, before and after conception. Specifically, it prohibits the determination and disclosure of sex of the foetus and prescribes criminal punishment for contravention. Pre-natal diagnostic testing can be conducted only for the purpose of detecting any abnormalities or diseases.

A woman's right to abortion is not recognised under Indian law; instead, there are liberal grounds under which women can seek an abortion. The Medical Termination of Pregnancy Act, 1971 mandates abortion by a registered medical practitioner under stipulated conditions. Therefore, decisional privacy or the autonomy and choice in medical decision-making are not afforded to patients and their families.

EXCEPTIONS TO CONFIDENTIALITY

Even though confidentiality is a rule but it has exceptions where a physician is bound to disclose information to others. There are instances where privileged communication between doctor and patient cannot be established. If free and informed consent of the patient is taken, the confidential information can be disclosed to the third parties, in case of children and mentally unsound persons their guardians consent is required. When a physician is under legal compulsion or summoned by the court of law for any opinion regarding the matter, he is bound to disclose confidential information. But the physician must take caution for excessive disclosure. In case of communicable diseases where for the interest of the public a physician must inform public health authorities or if it involves AIDS or other form which is communicable in nature must inform to the spouse/ sexual partner of the patient. For the purpose of research and education to a certain extent without disclosing the names and photographs of the patient confidential information can be disclosed for the said purposes as it is in public interest.

JUDICIAL INTERPRETATION ON CONFIDENTIALITY

In *R.R. Gopal and Anr. v. State of Tamil Nadu and Ors.*,¹ right to privacy has been inferred from Article 21 of the constitution of India. In *Mr. "X" v. Hospital "Z"*,² was the first decision of sensitive health information and privacy. The Supreme Court of India granted liberty to clinical establishments to disclose the HIV positive status of an individual to the public, without his/her knowledge. Hospital "Z" disclosed the HIV positive status of Mr. "X" to his fiancé without his consent. After the revelation, his marriage was called off and he was ostracized by the community. Mr. "X" sued Hospital "Z" for violation of privacy by disclosing information about his health, which, ought to have been kept confidential. The court affirmed that the disclosure of information prevails over the duty of confidentiality between a doctor and patient to protect public interest.

In *Ms. X vs. Mr. Z & Anr.*,³ the right to privacy is not absolute and a woman's right to privacy does not extend to a foetus which is no longer a part of her body. The right to privacy may arise from a contract as well as a specific relationship, including a marital relationship.

availed of maternity leave. Life Insurance Corporation of India (LIC) required the women applicants to furnish personal details like their menstrual cycles, conceptions, pregnancies, etc. at the time of appointment. Alarming, the Supreme Court, without mentioning the right to privacy, required the Corporation to delete such questions on the grounds that they were 'embarrassing if not humiliating' and that 'modesty and self-respect may perhaps preclude the disclosure of such personal problems'. It held that termination was only because of disclosures in Application, which was held to be intrusive, embarrassing and humiliating.

In *Smt. Selvi Ors. v. State of Karnataka*,⁵ the Supreme Court of India found that narco analysis violated individuals' right to privacy by intruding into a "subject's mental privacy," denying an opportunity to choose whether to speak or remain silent, and physically restraining a subject to the location of the tests and amounted to cruel, inhuman or degrading treatment.

Right of Privacy may, apart from contract, also arise out of a particular specific relationship which may be commercial, mat-

rimonial, or even political. As already discussed above, Doctor-patient relationship, though basically commercial, is, professionally, a matter of confidence and, therefore, Doctors are morally and ethically bound to maintain confidentiality. In such a situation, public disclosure of even true private facts may amount to an invasion of the Right of Privacy which may sometimes lead to the clash of person's "right to be let alone" with another person's right to be informed.⁶

In *Radiological & Imaging Association v. Union of India*,⁷ the court held that, the use of "Silent Observer" system on sonograph machines has enough safeguards to prevent any violations of the system and hence does not violate any privacy rights.

In *Mr. Surupsingh Hrya Naik vs. State of Maharashtra*,⁸ the court held that the Right to Information Act, 2005 would supersede, the Medical Council Code of Ethics. The health records of an individual in judicial custody should be made available under the Act and can only be denied in exceptional cases, for valid reasons.

CONCLUSION

Trust, Confidence, Confidentiality and Privacy are the vital elements that together fertilize to conceive a relation called doctor-patient relationship. The disclosure of personal health information creates embarrassment and humiliation to the patient in certain cases. However the right to privacy of medical information is not absolute a physician may disclose personal information, against patients will, whenever required.