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ABOUT US

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THE LEGAL OBLIGATIONS OF THE DOCTORS CORRESPONDING TO MEDICAL CONFIDENTIALITY

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INTRODUCTION

Medical confidentiality is a concept of doctors maintaining all the information received amid the patient's treatment. The patient's privacy with respect to his/her treatment is of imperative importance and ought to be secured. It is the right of a person that his/her individual and therapeutic data is kept private or confidential. The private and confidential medical information of an individual should remain exclusively between themselves and their healthcare provider or authorized parties. Unless the patient grants permission for the disclosure of their medical data to others, healthcare providers must refrain from revealing it to anyone else. Various laws and regulations in different countries, for e.g., HIPAA in the United States and GDPR in the European Union, exist to protect the privacy of medical information. It alludes to an individual's right to have personal and recognizable medical data which remains private between the patient and the doctor. It is an extension of protection.

CONFIDENTIALITY

The need for privacy is not only an ethical or moral code imposed on doctors. There is additionally a therapeutic view. If there is no privacy, a patient would delay in uncovering the information he or she considers as disgrace or humiliated. Subsequently, a patient would not believe the doctor. This would have a negative impact on patient's treatment since the doctor does not get the complete information which is fundamental to oversee the patient. Hence, a doctor must keep up confidentiality of patient's information.

Exceptions in Maintaining Confidentiality

A registered doctor shall not reveal patient's secret that he acquired during the treatment except under the following circumstances:

- In the court of law under the presiding judge's orders. In situations where there is a serious and clearly identified hazard to a particular person or community.
- In case of Notifiable Diseases.
- To healthcare professionals involved in patient's treatment that only on need-to-know-basis.
- To patient's friend and close relatives only if non-revelation of the same information could pose a threat to them
- To public authorities only if it is related to infections.
- A registered doctor shall not reveal or publish patient's photographs or case reports in any medical journals/ publications by which their identity can be disclosed without their consent. Consent is not mandatory, if patient's identity is not divulged.
- Insurance company, employer, or managed health care.

Prevention of Common Mistakes in Maintaining Confidentiality

- Confidential Information of any competent adult should not be given even to parents/husband or wife.
- Patient's medical records can be disclosed to another doctor or hospital only after taking written consent of patient.
- Information about the donor of blood ought not be revealed
- It is to be ensured that patient's information need not be shared by hospital's staff to any other person.

Confidentiality in the sphere of Medicolegal Cases

- In certain cases, medico legal reports are claimed by the legal authorities such as police. In such cases, doctor-patient relationship is not applicable. Hence, patient's report can be given to an appropriate authority without patient's consent.
- On the other hand, keeping medicolegal reports as confidential is also obligatory.
- Medico legal reports need not be shared with any other person except the requesting legal authority, even not with the patient or victim.
- Any person other than the requesting authority should essentially have a clear written consent from the requesting authority to get medico legal reports.

The Legal Obligation for Disclosing the Privileged and Confidential Information in the Court of law.

- There is a substantial difference between privileged and confidential information.
- Privileged information must not be disclosed without written consent of owner, even not in the courts. Privileged information is confidential in nature.
- However, all confidential information is not privileged.
- According to the Indian Evidence Act, 1872 - only two categories of information are privileged between advocate and client and between husband and wife.
- A doctor who is called as witness in the legal court cannot claim to have privilege not to reveal confidential information given by the patient. Henceforth, a doctor must reveal confidential information in accordance with court orders.
- According to the law, in such cases the doctor is not liable to patient for revealing such confidential information.

Information About Dead patients

- Doctor should take permission from the legal representative or heirs of the dead patient before giving information about dead patient to insurance company or TPA. It is a moral and obligatory duty on the part of the doctors.

No Excessive Disclosures are Permitted

- In case of information disclosure to third parties, with or without consent of patient, doctor or hospital must ensure that there is no excessive disclosure of information that is likely to be confidential in nature.
- Relevant and needed information must be given on need-to-know-basis only.

How the Confidentiality for HIV Patients is Maintained

- In AIDS/HIV condition, doctors must maintain greater degree of confidentiality.
- Diagnosis of HIV positive must be kept confidential. Doctors should avoid public disclosure of patient's identity.
- Medical records of such patients must be maintained separately. The medical records must only be shared with other health care professionals, sexual partner of patient as they are most likely to come into contact, but that also only on need-to-know-basis.

Disclosure of HIV Status to Patient's Sexual Partner?

- The patient's sero-positive status should not be revealed to his/her sex partner without final confirmation. Information can be given only after taking patient's written consent.
- Doctors should first make efforts to make the patient voluntarily disclose the information of HIV/ AIDS or inform the fact to the sexual partner of patient by taking patient's consent. If the patient refuses to do so then it is duty of doctor to inform patient's sexual partner about patient's HIV status. Law defences this action taken by doctors.
- However, there is a confusion about what should be done if the diagnosis is provisional and not final. In such situation, the best solution is taking patient's consent to reveal this fact. Not informing after provisional diagnosis is like putting patient's sexual partner at threat.¹

RIGHT TO CONFIDENTIALITY

The period at which the 'Right to Confidentiality' begins is yet to be defined by either the statute or the courts. For instance, the issue of privacy emerges when a 16-year-old young lady needs to know about contraceptive procedures. Under the present legal provisions, it is vague whether a healthcare professional ought to inform the guardians or respect the right to privacy of the patient. In cases where a pregnancy is confirmed to have resulted from rape, medical termination of the pregnancy may be performed. This is because the emotional distress caused by such a pregnancy is believed to pose a significant risk to the pregnant woman's mental health. In such circumstances, either the consent of the woman if she is above the age of 18 years or the consent of the parents/guardian if she is below the age of 18 years is obtained, this has been stressed under Section 3(2)(i) and 4(a) of the MTP Act, 1971. Section 6 of the MTP Regulations, 2003 also emphasizes the confidentiality of patient information related to termination of pregnancy. The admission register, which includes the necessary details of the pregnant woman, is considered a confidential document and should only be shared with individuals authorized by the Regulation. On the other hand, Sections 2 (1) (d), 19 (1) and 21 (1) of the Protection of Children from Sexual Offences Act, 2012 and the Criminal Law Amendment Act, 2013, Section 357C of Criminal Procedure Code, 1973 and Section 375 of IPC, 1860, criminalizes sex below 18 years of age, even if it is consensual; thereby it is presumed that pregnancy is a result of rape reportable to the police. Section 202 of the IPC imposes a moral obligation on individuals to report criminal offenses, such as rape, to the appropriate law enforcement authorities. However, such conflicting legal provisions may

¹ Dr.Arvinde Singh, Handbook on Doctors & Law 94-98 (2019). ISBN No: 979-81-934377-2-8.

create a dilemma for healthcare professionals when faced with a pregnant minor. To address this issue, a comprehensive approach is necessary that considers the concerns of healthcare providers while also safeguarding the minor girl's right to a safe and legal MTP, as well as her right to privacy. Otherwise, the current situation may lead pregnant minor girls to seek unsafe services from unqualified individuals.²

DUTY OF THE PHYSICIAN TOWARDS HIS PATIENT

Maintaining patient confidentiality has been a fundamental principle of medical ethics since the era of Hippocrates, and physicians have a responsibility to uphold this duty. The Hippocratic Oath says: "What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself holding such things shameful to be spoken about."³ The Oath, and certain more recent versions, allow no exception to this duty of confidentiality⁴. The Declaration of Geneva necessitates of the physician that the health of his patient will be his first consideration, and the International Code of Medical Ethics states that a physician shall owe his/her patient complete loyalty and all the scientific resources available to him/her⁵. Doctors no more take the original Hippocratic Oath, but variations of it are still pledged today. Declaration of Geneva of the World Medical Association includes the statement, 'I will respect the secrets which are confided in me, even after the patient has died'⁶. As per the International Code of Medical Ethics of the WMA, it is considered ethical to reveal confidential information with the patient's permission or when there is an actual and immediate danger of harm to the patient or others, and only by breaching confidentiality can the threat be eliminated."⁷

In certain circumstances it is not unethical to disclose confidential information. However, other codes discard this absolutist approach to confidentiality. The WMA's International Code of

² A.K Saini, 07-20-4-Sfm, (Sept. 9, 2014), <http://archive.nmji.in/archives/Volume-27/Issue-1/27-1-SFM-III.pdf>. SPEAKING FOR MYSELF, Law on consent and confidentiality in India: A need for clarity KARUNAKARAN MATHIHARAN, THE NATIONAL MEDICAL JOURNAL OF INDIA VOL. 27, NO. 1, 201, pg no.40

³ Reich WT, editor. Encyclopaedia of Bioethics. Vol. 5. Simon & Schuster Macmillan; New York: 1995. Oath of Hippocrates; p. 2632.

⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3032388/#:~:text=The%20pertinent%20provision%20of%20the,shameful%20to%20be%20spoken%20about.%E2%80%9D>, last accessed on 11.03.2023 at 8.40 pm.

⁵ [WMA - The World Medical Association-WMA Declaration of Geneva, \(July 9, 2018\), https://www.wma.net/policies-post/wma-declaration-of-geneva./](https://www.wma.net/policies-post/wma-declaration-of-geneva/), last accessed on 05.04.2023 at 3.30 pm.

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5870282/>, last accessed on 05.04.2023 at 3.45 pm.

⁷ WMA - The World Medical Association-WMA International Code of Medical Ethics, (Dec. 13, 2022), <https://www.wma.net/policies-post/wma-international-code-of-medical-ethics/>, last accessed on 05.04.2023 at 3.45 pm.

Medical Ethics provides guidance on the ethical disclosure of confidential information. According to the code, confidential information can be shared only with the patient's consent or in circumstances where there is a genuine and immediate danger of harm to the patient or others that can only be prevented by breaking confidentiality. That breaches of privacy are in some cases justified calls for clarification of the very idea of secrecy. There are three primary reasons why privacy is highly valued: autonomy, respect for others, and trust. Autonomy relates to Medical Ethics Manual – Doctors and Patients Medical Ethics Manual – Essential Highlights of Medical Ethics confidentiality in that individual information about any person that belongs to him or her ought not to be made known to others without his or her consent. When a person reveals individual information to another, a doctor or nurse for illustration, or when information comes to limelight through any medical test, those in the know are bound to keep it private/confidential unless authorized to divulge it by the individual concerned. Confidentiality is additionally vital since human being's merit respect. One important way of showing them respect is by protecting their privacy. Within the medical setting, privacy is regularly enormously compromised, but typically even more reason to prevent further superfluous interruptions into a person's private life. Since individuals vary regarding their desire for privacy, we cannot assume that everybody needs to be treated as we would need to be. Care must be taken to determine which individual information a patient wants to keep secret and which he or she is willing to reveal to others. Trust is an essential portion of the physician-patient relationship. In order to get medical care, patients must reveal individual information to doctors and others who may be total outsiders to them, information that they would not need anyone else to know. They must have a good reason to believe their caregivers not to unveil this information. The basis of this belief is the moral and legal standards of confidentiality that healthcare professionals are expected to maintain. Without an understanding that their revelations will be kept secret, patients may withhold personal information. This could prevent doctors in their endeavours to provide effective medications or to accomplish certain public wellbeing goals.

The patient's right to confidentiality is summarized as follows in the WMA Declaration on the Rights of the Patient:

- All recognizable information about a patient's health status, medical condition, diagnosis, prognosis, and treatment as all other data of a personal kind, must be kept confidential, even after death. Specifically, the descendants may have a right of access to information that would

inform them of their health risks.

- Confidential data can only be disclosed if the patient gives express consent or if explicitly provided for in the law. Information can be unveiled to other healthcare providers only on a strictly “need to know” basis unless the patient has given express consent.
- All identifiable patient information must be secured. The security of the information must be apposite to the manner of its storage. Human substances from which identifiable information can be inferred must be moreover protected.

As per the WMA Declaration, there are exceptions to the requirement to maintain confidentiality. A few of these are generally non-problematic; others raise exceptionally troublesome moral issues for doctors. Routine breaches of privacy occur regularly in most healthcare institutions. Access to a patient's medical records is necessary for various individuals such as doctors, nurses, laboratory specialists, and students to provide appropriate care to the patient, as well as for students to learn how to practice medicine. When patients speak a different language, interpreters may be required to facilitate communication. In situations where patients are unable to make their own medical decisions, other individuals must be provided with information to make decisions on their behalf and to care for them. Doctors typically inform the deceased patient's family members about the cause of death. While breaches of privacy are sometimes necessary, they should be minimized, and those who gain access to confidential information should be informed not to disclose it beyond what is necessary for the patient's benefit. Patients should be informed when possible that such breaches occur. Compliance with legal requirements is another commonly accepted reason for breaching confidentiality. For example, certain jurisdictions have laws requiring the reporting of patients with certain diseases, those deemed unfit to drive, and those suspected of child abuse. Doctors must be aware of the legal requirements for disclosing patient information in their respective jurisdictions. However, legal requirements can conflict with human rights, which physicians must scrutinize before complying with any legal requirement to breach confidentiality. If physicians are required to disclose their patient's medical information due to legal requirements, it is preferable to discuss with patients the necessity of any disclosure before it happens and to obtain their cooperation. For example, if a patient is suspected of child abuse, it is preferable for the patient to self-report to the child protection authorities in the presence of the physician, or for the physician to obtain the patient's consent before notifying the authorities. This approach will pave the way for subsequent interventions. If such

cooperation is not forthcoming, and the physician believes that any delay in reporting may result in serious harm to a child, then the physician must immediately notify the child protection authorities and subsequently inform the patient that this has been done.

In addition to those breaches of confidentiality that are required by law, doctors may have an moral obligation to give confidential information to others who may be at risk of harm from the patient. Two circumstances in which this may happen are when a patient tells a psychiatrist that he intends to harm another individual and when a doctor is persuaded that an HIV-positive patient is progressing to proceed to have unprotected sexual intercourse with his spouse or other partners. Conditions for breaching confidentiality when not required by law are that the anticipated harm is believed to be imminent, genuine, and irreversible, unavoidable except by unauthorized disclosure, and greater than the hurt likely to result from disclosure. In deciding the proportionality of these harms, the doctor must assess and compare the seriousness of the harms and the probability of their occurrence. In cases of doubt, it would be wise for the doctor to seek expert advice. When a physician has decided that the duty to caution justifies an unauthorized disclosure, two further decisions must be made. To whom the doctor must inform and how much should be revealed. The disclosure ought to contain only that information vital to avoid the expected harm and ought to be directed only to those who need the information in order to avoid the hurt. Reasonable steps ought to be taken to minimize the hurt and offense to the patient that may emerge from the disclosure. It is recommended that the doctor ought to advise the patient that confidentiality may be breached for his or her own protection of any potential victim. The patient's co-operation should be enlisted in case possible. When an HIV-positive patient is unwilling to educate their spouse or current sexual partner at risk, disclosure may not be considered unethical and can even be justified. Such disclosure requires that all the following conditions are met: the partner is at risk of contamination with HIV and has no other reasonable means of knowing the hazard; the patient has refused to inform his or her sexual partner; the patient has denied an offer of assistance by the doctor to do so on the patient's behalf; and the doctor has educated the patient of his or her intention to reveal the information to the partner. The medical care of any suspected and convicted criminals creates difficulties regarding confidentiality. Even though physicians providing care to those in custody have restricted independence, they should do their best to treat these patients like the others. They should uphold confidentiality by not revealing details of the patient's medical condition to

prison authorities without primarily obtaining the patient's consent.⁸

WMA Declaration states, there are special cases to the requirement to maintain secrecy.

- Numerous people – doctors, nurses, research facility technicians, students, etc. – require access to a patient's health records to provide adequate care to that individual and, for students, to learn and practice medicine.
- Where patients speak a diverse dialect than their caregivers, there's a need for mediators to encourage communication.
- In cases of patients who are not competent to make their own therapeutic choices, other individuals must be given information about them to make important decisions for their sake and care for them.
- Doctors routinely inform the family individuals of a deceased individual about the cause of passing- they ought to be kept to a minimum and those who gain access to confidential data ought to be made mindful of the requirement not to spread it anything further than is vital for the patient's or descendants' advantage.
- Breach of privacy is to comply with legal prerequisites. For example, numerous jurisdictions have laws for the obligatory announcing of patients who suffer from designated infections, those regarded as not fit to drive, and those suspected of child abuse.

PRIVACY AND CONFIDENTIALITY

The term 'Privacy' is utilized in numerous domestic legislations fundamentally in the context of the foundation of the fiduciary relationship between a doctor and a patient. This fiduciary relationship radiates from a reasonable expectation of mutual trust between the doctor and his patients and is built up through the Indian Medical Council Act of 1952, specifically section 20(A) of the Act which lays down the code of ethics which a doctor must always follow. Privacy is a complex issue in healthcare that encompasses various aspects, including but not limited to informational privacy (such as confidentiality, anonymity, and data security), physical privacy (such as modesty and bodily integrity), associational privacy (such as intimate sharing of illness, death, and recovery), proprietary privacy (such as self-ownership and control over personal identifiers, genetic information, and body tissues), and decisional privacy (such

⁸ https://www.wma.net/wp-content/uploads/2016/11/Ethics_manual_3rd_Nov2015_en.pdf,

World medical association, medical ethics manual, 3rd edition, 2015, written by John R. Williams, Director of Ethics, WMA (2003-2006, (NLM classification: W 50). Pg no.51, last accessed on: 26.02.2023 at 11.14pm.

as autonomy and choice in medical decision-making).⁹

National ethical guidelines for biomedical and health research involving human participants¹⁰

Privacy is the right of an individual to control or influence the data that can be gathered and stored and by whom and to whom that data may be unveiled or disclosed. Confidentiality is the responsibility of the researcher/research team/organization to the participant to protect the entrusted data. It includes the commitment to secure data from unauthorized access, use, divulgence, modification, loss, or theft.

- The researcher should maintain the confidentiality of the research related data of participants and the community.
- Probable limitations to safeguard strict and absolute confidentiality must be explained to the participant. Researchers must inform prospective participants that even though every effort will be made to protect privacy and ensure confidentiality, it may not be viable to do so under specific circumstances.
- Any publication surfacing out of research should uphold the privacy of the individuals by safeguarding that their photographs or any other information that may reveal the individual's identity are not published without former consent.
- Certain information may be delicate and should be protected to evade any form of stigmatization and/or discrimination (e.g., HIV status; sexual orientation like lesbian, gay, bisexual, and transgender (LGBT); genetic facts; or any other sensitive information).
- While conducting research with collected biological samples or medical records/data, encrypting or anonymization of personal information is important and limit access to both samples and records.
- Data of an individual participant/community may be disclosed in certain specific circumstances with the authorization of the Ethics Committee such as specific orders of a court of law, a threat to a person's or community's life as a whole, public well-being hazard that would supersede individual rights to privacy, and other serious adverse events (SAEs) that are

⁹Blog — The Centre for Internet and Society, <https://cis-india.org/internet-governance/blog/privacy-in-healthcare-policy-guide>, last accessed on 12.03.2023 at 12.30am.

¹⁰ NATIONAL ETHICAL GUIDELINES FOR BIOMEDICAL AND HEALTH RESEARCH INVOLVING HUMAN PARTICIPANTS, INDIAN COUNCIL OF MEDICAL RESEARCH 2017, Compiled & Edited by: Dr. Roli Mathur Head, ICMR Bioethics Unit NCDIR, Bengaluru Published by: Director-General Indian Council of Medical Research New Delhi 110 029 www.icmr.nic.in ISBN: 978-81-910091-94, Pg no. 7, last accessed on: 26.02.2023 at 11.23pm.

required to be communicated to an appropriate regulatory authority etc., are required to be communicated to an appropriate regulatory authority etc.¹¹

When a patient was found to be HIV positive, its revelation by the doctor might not be violative of either the rule of confidentiality or the patient's right to privacy as the woman with whom the patient was likely to be married was saved in time by such disclosure, or else, she too would have been contaminated with a dreadful disease in case marriage had taken place and been consummated.¹²

IN X vs HOSPITAL Z

A man was supposed to wed his fiancée but it was later called off since he was diagnosed as HIV positive patient and his doctor revealed the said fact to his fiancée. The man contradicted that the respondent hospital and doctor had breached their duty under medical ethics by disclosing the information and thereby violating his right to privacy.

The doctor-patient relationship, though fundamentally a commercial relationship, is, professionally, a matter of confidence: and, therefore, Doctors are ethically and morally bound to preserve confidentiality. Additionally, the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 also propounds secrecy to be sustained by Medical Professionals which further legalises the denial of medical records of third parties under Section 8(1)(e) of the RTI Act.¹³

In case an individual has poor health and in the event that the condition of his health is made open, he may have trouble finding a life partner, obtaining health or life insurance, or obtaining employment. Some health conditions are slandering and, if known, may cause a person embarrassment or trouble in interpersonal relations. Hence, healthcare professionals have to keep patients' health information private and confidential.¹⁴

¹¹ Government of India (Nov. 14, 2017), https://main.icmr.nic.in/sites/default/files/guidelines/ICMR_Ethical_Guidelines_2017.pdf. last accessed on 12.03.2023 at 3.00 am.

¹² Mr. 'X' v Hospital 'Z' 2003 (1) SCC 500

¹³ Union of India v Subhash Chandra Agarwal, W.P. (C) No 8087 of 2012

¹⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5473905/>, last accessed on 12.03.2023 at 2.04 am.

RAGHUNATH RAHEJA V. MAHARASHTRA MEDICAL COUNCIL¹⁵

The court by its order has given directions to the Maharashtra Medical Board and the State of Maharashtra and has observed that hospitals or doctors cannot claim any secrecy or any confidentiality within the matter of copies of the case papers relating to the patient and that they must be made accessible to him on request subject to payment of usual charges.

RADIOLOGICAL & IMAGING ASSOCIATION V. UNION OF INDIA¹⁶

After all the contemplations of the truth, it was held that there was no violation of the doctor's duty of confidentiality or the patient's right to privacy. It was further observed that the outline of the right to privacy must be limited or constrained by the public interest and ought to move along with each provision of the PNDT rules.

MR. SURUPSINGH HRYA NAIK V. STATE OF MAHARASHTRA 23 MARCH, 2007¹⁷

In this [case](#), the Medical Council Code of Ethics and [Right to Information Act, 2005](#) was in dispute. In this case, it was examined that making the health records public, under the Right to Information Act would be a violation of the right to privacy. Therefore, in this case, was that the Right to Information Act can supersede the Medical Council Code of Ethics.

THE TARASOFF CASE (Tarasoff v. Regents of the University of California)¹⁸

Prosenjit Poddar was a student from India who enlisted at the University of California, Berkeley. In 1968 he met a fellow student, Tatiana Tarasoff, and started seeing her frequently. However, she told him there was no hope of a serious relationship, and he was smashed by this news. He was very disturbed and started to follow her around. He sought a psychologist and

¹⁵ (AIR 1996 Bom 198)

¹⁶ WRIT PETITION NO. 797 OF 2011

¹⁷ AIR 2007 Bom 121, 2007 (109) Bom L R 844, 2007 (4) MhLj 573

¹⁸ 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (Cal. 1976)

expressed that he intended to murder Tatiana. The psychologist informed the campus security who confined Poddar but then discharged him as they thought he appeared to be rational. Moore fizzled to inform Tatiana or her parents that she was in danger. In October 1969 Tatiana returned to the college after a holiday in Brazil, and Poddar murdered her. At first, he was convicted of second-degree murder, but this ruling was subsequently overturned and he returned to India. Tatiana's parents sued Dr Moore and the university. The majority judicial opinion in the subsequent court case is that when a therapist decides that his patient presents a genuine threat of violence to another, he brings about an obligation to use reasonable care to protect the intended victim against such danger. The judges accepted that the therapists might not be excused on the grounds that Tatiana was not their patient. Breaking the medical confidentiality rule in this case would be necessary in the interest of public safety against violent assault. However, a judge who opposed the decision argued that breaching confidentiality could have a negative impact on the psychiatric treatment of patients.¹⁹

SHARDA V DHARMPAL²⁰

A husband filed for divorce on the premise that his spouse was mentally ill. In order to demonstrate this truth, the spouse was compelled to undergo a medical examination. She claimed that being forced to do so without her consent would be violative of her personal liberty. After expressing that the 'right to privacy' isn't an absolute right, the Court held that the absence of such information would make it inconceivable to reach a decision on the facts of the case.

Z V FINLAND²¹

The European Court of Human Rights held the disclosure of a woman's medical records (uncovering her HIV status) during the trial of her spouse for the rape of other women to be a breach of her rights and liberty.

¹⁹Second edition, Peter de Cruz, Nutshells Medical Law in a nutshell, pg.97, Thomson Sweet & Maxwell, December 2002.

²⁰ AIR 2003 SC 3450

²¹ (1998) 25 E.H.R.R. 371, 405

W V EGDELL (1990)22

The patient, W, was a prisoner sentenced to indefinite detention in a secure hospital, following conviction for the murder of five individuals and the injuring of two others. He could be discharged only by order of the Home Secretary on the off chance that he was found to be not a threat to public safety. He applied, unsuccessfully, to a mental health review tribunal to be transferred to another unit which would be a step toward his discharge. He then applied for a conditional discharge. His legal advisers looked for the advice of Dr Egdell, an independent therapist to support his application but the latter's conclusion was that the patient was still perilous, had a psychopathic personality, no genuine insight into his condition, and a morbid interest in explosives. The application for release was withdrawn but the adverse report was not passed to the tribunal or the hospital where W was confined. Dr.Egdell inquired that a duplicate of his report is put in W's hospital record but W's solicitors denied it as the report has been commissioned secretly. Realizing that his report would not be included in his notes, Dr.Egdell sent a duplicate of the report to the medical director of W's hospital and to the Home Office. W's solicitors had obtained an order to restrain Dr.Egdell from uncovering the contents of the report at the hearing but unknown to them, disclosure had already taken place. W sued Dr.Egdell for breach of confidence, but both the lower court and Court of Appeal upheld the breach on the grounds of the public interest, i.e. the protection of the public from dangerous criminal acts.

RE HIV HAEMOPHILIAC LITIGATION (1990)23

Numerous hemophiliacs' received transfusions of blood infected with HIV. They sought to bring an action against the Department of Health on the grounds that the Department was careless in failing to ensure that there was sufficient blood accessible for donation within the UK, which necessitated having to obtain blood from the USA. The government denied the revelation of certain archives on the ground that the law did not allow such disclosure. These reports contained briefings for ministers as to whether a policy for self-sufficiency in blood products ought to be established and what measures ought to be required for such a policy, arranging choices relating to the Blood Products Laboratory and the decision whether and how to organize the Blood Transfusion Service. The Court of Appeal held that the revelation of the archives was necessary for the plaintiffs to make a thorough presentation of their case.

²² [1990] 1 All ER 835

²³ [1990] 41 BMLR 171 [1990] 140 NLJR 1349 (CA) [1990] EWCA Civ J0920-1 [1989] E N. 2111

However, reports prepared as part of the organization's normal administrative routine, would not be included and therefore subject to disclosure.²⁴

CONCLUSION

Maintaining privacy and confidentiality in healthcare is of utmost importance and should be a top priority for doctors. The doctor-patient relationship is built on trust and involves sensitive information that must be kept confidential to prevent any misuse. With the rapid shift from paper records to electronic ones, data protection has become even more critical, and stringent measures must be in place to ensure it. Currently, in India, only the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 exist, while many other acts are yet to be formulated or enforced.

However, there are several loopholes in the existing policies, as they give individuals the right to access information under the Right to Information Act, 2005, while also emphasizing the right to privacy. To create an effective framework, the government should play an active role in making laws on privacy and confidentiality in healthcare and encourage collaboration between various institutions in the private and public sectors. By working together, these stakeholders can create a robust foundation on which the Right to Privacy and Confidentiality in healthcare can be successfully developed.

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²⁴ 1st Edition, Dr. Shaun D Pattinson, Medical law and ethics, pg.101, London Sweet & Maxwell, 2006.