**Medical Privacy**

Privacy law is distinct from those laws such as trespass or assault that are designed to protect physical privacy. Such laws are generally considered as part of criminal law or the law of tort

Maintenance of medical privacy has been given utmost importance in medical practice. As per the text of oath adopted by *Indian Medical Council and State Councils,* based on *Geneva Declaration***,** *a medical practitioner takes an oath inter alia as follows:* **‘**I will respect the secrets which are confided in me’ Further, he also takes oath that, ‘I will maintain by all the means in my power, the honour & the noble traditions of the medical profession’

The code of conduct prescribed by Indian Medical Council to its members as guideline to be followed is intended to preserve protect and *uphold dignity of profession*. Physicians should merit the *confidence of patients* entrusted to their care**,** rendering to each a full measure of service & devotion.

While code of medical ethics requires a doctor to maintain secrecy and confidentiality. ‘*Right to Life’* of an individual which has been described as fundamental right and human right is an exception to the rule. Hon’ble Supreme Court laid down the fundamental principle on this subject in,

*Dr.Tokugha Yepthomi V/s Appollo Hospital Enterprises Ltd & Anr. III (1998) CPJ 12 (SC).*

**Brief facts of the case:**

Dr.Tokugha Yepthomi, after obtaining MBBS degree from Jawaharlal Institute of Post Graduate Medical Education and Research, Chandigarh, completed his internship and junior residence at the same college. Later he joined the Nagaland State Health Services as Assistant Surgeon Grade -1. One *Itokhu Yepthomi* who was ailing from a disease which was provisionally diagnosed as Aortic Anuerism was advised to go to the Appollo Hospital at Madras. Dr.Tokugha Yepthomiwas directed by the Government of Nagaland to accompany the said patient to Madras for treatment. *Dr.Tokugha Yepthomi and one Yehozhe* *who was the driver of Itokhu Yepthomi* donated blood for the latter. Their blood samples were taken and the results showed that *Dr.Tokugha Yepthomi ’s blood group was HIV(+ve).* In August, 1995 *Dr.Tokugha Yepthomi* proposed marriage to one *Ms.Akali* which was accepted and the marriage was proposed to be held on December 12th, 1995. But the marriage was called off on the ground of blood test conducted at the Respondents Hospital in which the *Dr.Tokugha Yepthomi* was found to be HIV(+). Since the marriage had been settled but was subsequently called off, several people including members of the *Dr.Tokugha Yepthomi* family and persons belonging to his community became aware of his HIV(+) status. This resulted in severe criticism and he was ostracised by the community. *Dr.Tokugha Yepthomi* left Kohima (Nagaland) and started working and residing in Madras.

Dr.Tokugha Yepthomithen approached the National Commission for damages against the respondents, on the ground that the information which was required to be kept secret under medical ethics was disclosed illegally and therefore the respondents were liable to pay damages. Learned Counsel for the complainant vehemently contended that the principle of “*duty of care*” as applicable to persons in medical profession, includes duty to maintain confidentiality and since this duty was violated by the respondents, they are liable in damages to the Complainant. The Commission dismissed the Petition holding that the Complainant may seek his remedy in Civil Court.

While disposing of the appeal, Hon’ble Supreme Court held that as a human being, *Ms.Akali* is entitled to all Human rights available to any other human being. This is apart from and in addition to the Fundamental Rights available to her under Article 21, which guarantees *“Right to life*” to every citizen. *This right would positively include the right to be told that a person, with whom she was proposed to be married, was a victim of deadly disease, which was sexually communicable. Since* ***right of life******includes right to lead a healthy life****, the respondents by their disclosure that the Appellant was HIV (+), cannot be said to have , in any way, either violated the rule of confidentiality or the right of privacy. Moreover where there is a clash of two fundamental rights, as in the instant case namely, Appellants right to privacy as part of right to life and Ms. Akali’s right to lead a healthy life which is her fundamental right under Article 21,* ***The RIGHT which would advance the public morality or public interest, would alone be enforced through the process of Court,*** *for the reason that moral considerations cannot be kept at bay and the judges are not expected to sit as mute structures of clay, in the Courtroom but have to be sensitive in the sense that they must keep their fingers firm upon the pulse of the accepted morality of the day.*

It was further held that the Code of medical ethics carves out an exception to the rule of confidentiality and permits disclosure in the circumstances enumerated above under which public interest would override the duty of confidentiality, particularly where there is an immediate or future health risk to others.

Chapter 2 of the **Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002** deals with **duties of physicians to their patients.** Regulation 2.2 deals with ‘*Patience, delicacy and secrecy* which provides that ‘*Patience, and delicacy should characterize the physician. Confidences concerning individual or domestic life entrusted by patient 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 instances, the physician should act as he would wish another to act toward one of his own family in like circumstances.’*

English common law has recognized no general right or tort of privacy, and was offered only limited protection through the *doctrine of breach of confidence* and a "piecemeal" collection of related legislation on topics like harassment and data protection. Further, public figures like politicians and film stars do not enjoy such a right to privacy and it can be said the members of public have legitimate interest in them unless such interest is held to be malicious.

The Human Rights Act 1998 incorporated into English law the European Convention on Human Rights. Article 8.1 of the ECHR provided an explicit right to respect for a private life for the first time within English law. The Convention also requires the judiciary to "have regard" to the Convention in developing the common law.

Quote,

ARTICLE 8

*Everyone has the right to respect for his private and family life, his home and his correspondence.*

*There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Unquote,

**Contractual obligation to maintain confidentiality and trade secrets:**

Obligations of contracting party: Business entities generally enter into non Disclosure Agreements with contractors, consultants and employees before getting into trade/business relationships.

Even the concept of patenting of inventions and innovations means disclosure of such inventions for public good in exchange for monopoly rights for a limited number of years. By its very nature an invention has to be kept secret/confidential till patent is granted.

The remedy for breach of contract in such cases is damages. Generally, corporate and other business entities disclose the confidential information on need to know basis only and obtain back to back confidentiality agreements.

Section 72 of Information Technology Act, 2000 which deals with breach of confidentiality and Privacy. As per this section anyone who secures electronic record or document without the consent of the person concerned and discloses such record or material to any other person is liable to 2 year imprisonment and one lac rupees fine.

**Conclusion:**

Thus, medical privacy is being considered both on ethical and legal grounds. Maintenance of medical records confidential is extremely important and is recognized as such. However, the right of an individual to enforce such confidentiality is not absolute. It has to be considered keeping in mind the right to life of people whose life is liked to such an individual. In other words, right to medical privacy has to be balanced with right to healthy life of another whose right will be affected unless such information is disclosed to her/him.

Section 8 of the Right to Information Act, 2005 interalia exempts disclosure of information relating to commercial confidence, trade secrets, information available to a person in his fiduciary relationship unless competent authority is satisfied that larger public interest is served by disclosure, personal information the disclosure of which has no relationship to any public activity or interest.

**Scope for a comprehensive legislation**: In view of the above, there is considerable force in the argument that there is a need for a comprehensive legislation to protect the interest of poor patients and ordinary citizens who cannot afford to initiate a protracted legal battle to protect their medical privacy. Medical ethics are not often adequate as revealed by illegal scan centers which have become a bane for the society. Legislations relating to privacy are mostly sectoral in nature. While business organizations and affluent people may be in a position to take legal recourse and protect their privacy by resorting to litigation ordinary citizens merely become statistics. Therefore, there is an urgent need for a comprehensive legislation on medical privacy. There is a great deal of urgency in study of this subject. I would like to compliment the organizers for taking up this important issue.

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